



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**  
Office for the Arts

**[Addressee]**

Office for the Arts  
Department of Infrastructure, Transport, Regional Development and Communications  
2 Phillip Law Street, New Acton ACT 2601

**[Date]**

Dear **[Name]**

### **Letter of Agreement**

The Commonwealth, represented by the Office of the Arts within the Department of Infrastructure, Transport, Regional Development and Communications (ABN 86 267 354 017), wishes to engage you, **[insert full name and ABN (if applicable)]**, as an Indigenous Contemporary Music Industry Representative (Industry Representative) to provide grant application assessment services (the Services) for the Indigenous Contemporary Music program in accordance with the requirements and terms and conditions set out in this letter and the attached Schedule (including the Code of Conduct).

As an Industry Representative, your experience and knowledge will assist in ensuring funding decisions are equitable and accountable, align with the objectives of the program and deliver sustainable outcomes for the Indigenous contemporary music industry.

To accept this offer and enter into an agreement with the Commonwealth, please sign the letter and email a scanned copy to the address below by **[insert date]**, otherwise this offer will lapse. Please also execute and return the attached Confidentiality Deed.

This letter and the Schedule(s) will form a legally enforceable agreement in relation to your engagement with the Commonwealth as an Industry Representative once it has been executed by the Commonwealth. You must comply with the requirements, terms and conditions set out in the Schedule (including the Code of Conduct).

Please email a scanned copy of the signed Letter of Agreement (including the Schedule) to:

**[Insert position and name of the Commonwealth entity's representative]**

**[Insert Commonwealth entity name]**

**[Insert postal address or email]**

Once the Commonwealth has executed the Letter of Agreement, a copy will be provided to you for your records.

If you have any questions about this offer, please contact [Name, phone number, email].

[SIGNATORY BLOCK]

#### EXECUTION CLAUSES

Executed by the parties.

SIGNED for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by and acting through the  
Department of Infrastructure, Transport,  
Regional Development and  
Communications (ABN 86 267 354 017),  
by **[print full name]** on **[insert date]**

.....  
*sign here*

in the presence of:

.....  
print name of witness

.....  
*witness sign here*

SIGNED for and on behalf of the **[FULL  
name and ABN (if applicable)]** on **[insert  
date]**

.....  
*sign here*

in the presence of:

.....  
print name and address of witness

.....  
*witness sign here*

# Schedule: Industry Representatives Requirements, Terms and Conditions

## PART 1. PROGRAM OVERVIEW

### Program description

The Indigenous Contemporary Music program (the Program) is an Australian Government initiative led by the Office for the Arts (OFTA) within the Department of Infrastructure, Transport, Regional Development and Communications (the Department). Commencing in 2019-20, the Program aims to provide grant funding of \$2 million over four years to provide development opportunities for Aboriginal and Torres Strait Islander musicians and bands throughout Australia. From 2020-21, successful grant recipients will be determined through an open competitive application process. Industry Representatives will be engaged to provide expert advice to OFTA by assessing eligible applications and providing recommendations on applications suitable for funding. The 2020-21 round of the program opened on 3 March 2021. There is expected to be two further funding rounds, in 2021-22 and 2022-23.

The Program contributes to the Australian Government's Arts and Cultural Development Program outcome of supporting participation in, and access to, Australia's arts and culture through developing and supporting cultural expression. The objectives of the Program align with this outcome, and all stages of the assessment process are to be conducted consistently with this outcome. The key objectives of the Program are outlined in the Indigenous Contemporary Music Program Guidelines (the Guidelines).

### Assessment Process

#### *What are the Steps in the Assessment Process?*

The Indigenous Contemporary Music program assessment process has four phases. Industry Representatives are involved in Phase Two and Three of the assessment process.

**1. Phase One – Eligibility check**

OFTA staff will check all applications for eligibility. Applications deemed eligible will progress to Phase Two.

**2. Phase Two - Industry Representatives Individual Assessments**

Industry Representatives will be allocated a number of eligible applications for assessment. Each Industry Representative will work individually in evaluating their allocated applications in accordance with the criteria set out in this Schedule. At this stage you will not meet or discuss applications with other assessors. This is to maintain the independence of each Industry Representative's views and to provide robust advice to the third stage of assessment.

**3. Phase Three – Industry Representatives moderation**

Officials from OFTA will convene a moderation meeting for Industry Representatives to meet (via video conference) and review all applications, in order to determine the final list of applications to be recommended for funding. This panel will consider elements such as geographic spread, level of co-contribution, variety of activity type, industry gaps and available funding.

#### **4. Phase Four - Funding Recommendations to the Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister)**

OFTA will provide funding recommendations to the Minister as the decision-maker for consideration and approval.

## **PART 2. REQUIREMENTS**

### **Services to be performed by the Industry Representative**

Industry Representatives must have read and become familiar with the Guidelines, in particular the Program's objectives prior to commencing their first assessment.

The role of an Industry Representative is to provide grant application assessment services (the Services) to OFTA. Applications will be assessed against the published assessment criteria. Industry Representatives will be provided with a guide to assessing applications relevant to the program. These assessments are used to assist OFTA in formulating funding recommendations in the context of Australian Government priorities and existing resources. When undertaking assessments, Industry Representatives will draw on their industry experience and expert advice.

The Agreement commences on **[insert date, or "the day the last party executes the letter of Agreement"]** and ends on **[INSERT]**, unless earlier terminated. Industry Representatives are expected to provide their Services as required during the term of the Agreement. Applications will be allocated to Industry Representatives on an ad hoc basis, dependent on the Industry Representative's availability and as the demand under the program requires. It is expected there will be one funding round per year, and the number of applications assigned to Industry Representatives for each round may vary.

### **Responsibilities of the Industry Representative**

Industry Representatives are responsible for being familiar with the Program Guidelines and having a sound understanding of the Program and its objectives. To ensure adherence to the Australian Government's requirement for strict probity in the administration of the program, Industry Representatives are required to comply with the relevant [Commonwealth Grant Rules and Guidelines](#). This includes declaring any direct or indirect conflict of interest with any applications allocated to them.

Should the Industry Representative discover a potential conflict of interest, the Industry Representative is required to advise OFTA in writing as soon as the Industry Representative has become aware of the conflict. Declarations must be sent to [music@arts.gov.au](mailto:music@arts.gov.au). Please refer to the Code of Conduct below for further information regarding conflicts of interest.

### **Allocation of Applications**

Following the Phase One eligibility check completed by staff within OFTA, the Industry Representative will be allocated applications deemed eligible for assessment. The Industry Representative will be asked to score each application against the Program criteria and provide comments against each criteria based on their industry knowledge and expertise.

It is anticipated up to 30 applications will be allocated to each Industry Representative engaged to provide Services for a particular funding round. Allocations will occur via SmartyGrants (the grant

management system used by the OFTA). The Industry Representative will be required to review applications and provide their expert advice within approximately two weeks. If for any reason, the Industry Representative is unable to complete the assessment within the timeframe, the Industry Representative must discuss this with OFTA.

**For guidance using SmartyGrants see *Quick Reference Guide– Getting Started***

### **Publishing of Names and Enquiries**

The Industry Representative's private contact details are kept confidential and held securely by OFTA, and their names will not be published with reference to any applications.

In the event that the Industry Representative is approached by an applicant requesting information about their application, the funding round, or any other aspect of the funding process, the Industry Representative must refer the applicant to OFTA. Please refer to the Code of Conduct below, for further information regarding communicating with applicants.

### **Limitations**

Industry Representatives do not have any Government financial, procurement, contracting or human resource delegations and cannot make any commitments in these areas.

Industry Representatives will be limited to:

- assessing applications in accordance with the Guidelines; and
- operating in accordance with the [Commonwealth Grant Rules and Guidelines](#).

The Minister and OFTA are responsible for the strategic direction of the Program.

## **PART 3. OTHER TERMS AND CONDITIONS**

### **Engagement, Rates and Payment**

Based on Phase Two being a full assessment of applications, OFTA estimates that Industry Representatives will take an average of 40 minutes to complete their assessment score and provide comments for each application.

Industry Representatives will be paid a fee for the amount of applications reviewed in performing the Services equivalent to the member rate listed at Part 2.11 (1) of the [Remuneration Tribunal \(Remuneration and Allowances for Holders of Part-Time Public Office\) Determination 2020](#). The daily rate is \$418 (plus GST, if applicable). A fee of \$41.80 (plus GST, if applicable) per application has been determined based on the daily fee of \$418 as follows (for the purpose of calculating fees, OFTA will calculate time spent undertaking reviews as hours worked consecutively):

- the daily rate is \$418 for 7 hours of work (7 hours = 420 minutes)
- 420 minutes divided by 40 minutes (average time per application) = 10 applications per day
- \$418 divided by 10 = \$41.80 per application (plus GST, if applicable).

The rate has been determined based on the nature of the role and is inclusive of payment for work performed incidentally to the review of applications (such as reading of all attachments to an application or independent research). No additional fee is payable.

In addition, Industry Representatives are expected to meet for either a half day or full day to moderate the applications as a group. The time required will be determined following closing of the round when the final number of applications submitted is known. Payment will be calculated as follows:

- \$418 for a full day (e.g. 5 hours or more) moderation meeting (plus GST, if applicable)
- \$209 for a half day moderation meeting (plus GST, if applicable).

The Industry Representative is not required to travel as part of their duties. As such, there is no travel allowance payable. Reimbursement for other incidental expenses involved in assessment is not payable (for example, electricity / internet connection / childcare costs / teleconferences).

Following the completion of Phase Three of the assessment process, OFTA will calculate the amount an Industry Representative is eligible to be paid and will notify them of this by email along with a request for an invoice reflecting the number of applications reviewed in performing the Services. On receipt of a correctly rendered invoice, payment of fees will be arranged in accordance with the Commonwealth's [Supplier Pay On-Time or Pay Interest Policy](#).

Subject to the Industry Representative's compliance with this Agreement and submission of a correctly rendered invoice payment(s) will be made into the following bank account:

**Account Name:** \_\_\_\_\_  
**Account Number:** \_\_\_\_\_  
**BSB Number:** \_\_\_\_\_  
**Bank Name:** \_\_\_\_\_

#### **Compliance**

In all dealings related to the Agreement, the Industry Representative agrees to comply with all reasonable directions and procedures relating to work health and safety, record-keeping and security whether specifically informed or as might reasonably be inferred from the circumstances.

#### **Notices**

A notice under this Agreement is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt).

A notice received after 5.00 pm, or on a day that is not a working day in the place of receipt, is deemed to be effected on the next working day in that place.

#### **Assignment and subcontracting**

The Industry Representative must not assign any rights under the Agreement without the Commonwealth's prior written consent. No part of the Services may be subcontracted.

#### **Termination**

The Commonwealth may, at its discretion, terminate the engagement of the Industry Representative (and this Agreement) with immediate effect by written notice for no cause. The Commonwealth may also terminate the engagement of the Industry Representative (and this Agreement) if the Industry Representative does not perform the Services as specified in the

Agreement. If the Commonwealth issues a termination notice, the Industry Representative must stop work associated with the Program in accordance with the notice and comply with any reasonable directions given by the Commonwealth.

An Industry Representative may also terminate this Agreement by giving the Commonwealth 14 calendar days' prior written notice. The Industry Representative must not undertake any further work associated with the Services after giving notification of the termination of their engagement.

No monies will be paid to the Industry Representative following the termination of the engagement (and this Agreement) other than monies owed for Services completed prior to the termination and appropriately invoiced.

OFTA does not provide advice on taxation issues. Advice from a qualified professional or the Australian Taxation Office [www.ato.gov.au](http://www.ato.gov.au) should be sought, as required.

#### **Governing law**

This Agreement (comprising the letter and this Schedule in its entirety) is governed by the laws of the Australian Capital Territory.

#### **Dispute resolution**

For any dispute arising under the Agreement, both the Industry Representative and the Commonwealth will seek to settle the dispute by direct negotiation. Despite the existence of a dispute, the Industry Representative will (unless requested in writing by the Commonwealth not to do so) continue their performance under the Agreement.

#### **Survival**

Items 4, 5, 12, 13 and 16 of the Code of Conduct survive termination or expiry of the Agreement.

#### **Entire Agreement**

This Agreement represents the parties' entire agreement in relation to the subject matter, at the time this Agreement was entered. No agreement or understanding varying or extending the Agreement will be legally binding upon either party unless in writing and agreed by both parties.

### **PART 4. CODE OF CONDUCT**

In order to maintain the integrity of the assessment process, Industry Representatives must at all times when performing the Services comply with the following requirements:

1. The Industry Representative must perform the Services impartially and fairly, uninfluenced by fear or favour.
2. In undertaking the Services under the Program, the Industry Representative must comply with all applicable Commonwealth laws in force from time to time. When dealing with Personal Information (as defined in the *Privacy Act 1988*) in carrying out the Services, the Industry Representative agrees not to do anything which, if done by the Commonwealth, would be a breach of the *Privacy Act 1988*.
3. The Industry Representative must be frank and honest in official dealings with OFTA staff.

4. All material provided by the Commonwealth (including third party material) remains the property of the Commonwealth (except where the material is owned by a third party). The Industry Representative must treat all materials associated with applications with the utmost care and confidentiality. All reports and materials produced by the Industry Representative in performing the Services vest in the Commonwealth immediately upon creation.
5. A funding application is deemed to be a confidential document, as it:
  - (a) contains information about the applicant personal affairs or an organisation's business;
  - (b) may contain confidential references, and
  - (c) contains ideas that are the intellectual property of an applicant under the Program.
6. The Industry Representative must take all reasonable measures to ensure that the materials provided in relation to applications are protected against loss, unauthorised access, modification, disclosure, copying, distribution, or other misuse. Failure to comply with this requirement constitutes a breach of this Code of Conduct.
7. The Industry Representative must avoid situations in which their private interest, whether monetary or otherwise, interferes or might reasonably be thought to interfere with the proper discharge of their duties. Any actual or potential conflicts should immediately be disclosed as per paragraph 8 below.
8. The Industry Representative cannot take part in the assessment of an application where they are the applicant themselves, or a beneficiary of an application.
9. When the Industry Representative possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict, in a matter being considered or about to be considered, the Industry Representative must, as soon as the relevant facts have come to their knowledge, disclose verbally and in writing the nature of the interest to the relevant Director within OFTA. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the Industry Representative shall disclose the further information.
10. The Industry Representative must immediately withdraw from providing advice on any application if they have an actual conflict of interest.
11. In instances where there is a perceived or potential conflict of interest, or the conflict is deemed minor, the relevant Director within OFTA will determine on a case-by-case basis if the Industry Representative concerned must withdraw from discussion and decision making in relation to the round.
12. When the interests of members of their immediate family are involved, the Industry Representative must disclose those interests to the extent that they are known to them. Members of the immediate family will ordinarily comprise only the Industry Representative's spouse (or partner) and dependent children, but may include other members of their household or family when their interests are closely connected with them.
13. The Industry Representative must not use information obtained in the course of official duties to gain directly or indirectly a monetary advantage for themselves or for any other person. In particular, the Industry Representative must scrupulously avoid investments or other transactions about which he/she has, or might reasonably be thought to have, early or



confidential information which might confer on them an unfair or improper advantage over other persons.

14. The Industry Representative must not:
- (a) solicit or accept from any person any remuneration or benefit for the discharge of the duties or their office over and above the official remuneration;
  - (b) solicit or accept any benefit, advantage or promise of future advantage whether for themselves or their immediate family or any business concern or trust with which he/she is associated from persons who are in, or seek to be in, any contractual or special relationship with government; and
  - (c) except as may be permitted under the rules applicable to his/her office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of their office.

The impression must be avoided that any person can improperly influence the Industry Representative or unduly enjoy their favour.

15. The Industry Representative must not enter into any communication with an applicant regarding their application. If approached by an applicant, an Industry Representative must state they are unable to discuss the application, refer the applicant to the relevant Director within OFTA, and advise OFTA.
16. The Industry Representative is not an officer, employee, agent or representative of OFTA, the Department or the Australian Government and is not authorised to speak on behalf of, or bind, them. An Industry Representative must not make any public comment concerning their duties and must direct all enquiries for information regarding all relevant policies, programs or procedures to the relevant Director within OFTA.

**DEED OF CONFIDENTIALITY**

DEED OF CONFIDENTIALITY IN RELATION TO THE INDIGENOUS  
CONTEMPORARY MUSIC PROGRAM

Department of **Infrastructure, Transport, Regional Development and  
Communications**  
ABN 86 267 354 017  
[name]

File reference: Smartygrants EOI number

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## DEED OF CONFIDENTIALITY

### Date

This Deed of Confidentiality is made on <sup>^</sup>day (numeric) March 2021.

### Parties

This Deed of Confidentiality is made by:

1. **[name] of [address] (the Confidant)**  
in favour of and legally enforceable by:
2. The **Department of Infrastructure, Transport, Regional Development and Communications** ABN 86 267 354 017 of 2 Phillip Law Street, Canberra, ACT 2601 (the **Department**)

### Context

This Deed is made in the following context:

- A. The Confidant may require access to Department Confidential Information in relation to the Purpose.
- B. The Department is willing to provide access to necessary Confidential Information to the Confidant strictly for the Purpose and in accordance with this Deed.

### Operative provisions

By this Deed the Confidant covenants and agrees as follows:

#### 1. Interpretation

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- 1.1. In this Deed, unless the context indicates otherwise:

**Australian Privacy Principle** has the same meaning as it has in the *Privacy Act 1988* (Cth).

**Confidential Information** means information, documents and data that is:

- a. reasonably designated in any way by the Department or its owner as confidential; or
- b. which the Confidant knows or ought to know is confidential,

that is provided by the Department to the Confidant or that the Confidant otherwise accesses or becomes aware of in relation to the Purpose.

**Deed** means this Deed and includes, all schedules and attachments (if any) to this Deed.

**Purpose** means ^ the Confidant's participation in providing advice on applications to the Indigenous Contemporary Music program^.

## **2. Confidentiality**

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- 2.1. The Confidant must use the Confidential Information only as is legitimate and necessary for the Purpose and strictly in accordance with this Deed.
- 2.2. The Confidant will not, without the prior written authorisation of the Department, disclose any Confidential Information to any person unless the disclosure is required by law. In giving its authorisation, the Department may notify the Confidant of conditions on the disclosure and the Confidant must comply with these conditions.
- 2.3. Where the Confidant is required by law to disclose the Confidential Information, the Confidant must:
  - a. use his or her best endeavours to notify the Department prior to disclosing the Confidential Information;
  - b. provide to the Department full details of the relevant legal requirement and information to be disclosed; and
  - c. take any reasonable action requested by, and reasonably cooperate with any action taken by, the Department to challenge, prevent or limit such disclosure.
- 2.4. The Confidant agrees to secure all Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 2.5. The Confidant agrees to implement security procedures to ensure that it meets its obligations under this Deed and will provide details of these procedures to the Department on request.
- 2.6. Without limiting the Confidant's obligations under this Deed, the Confidant will comply with any additional conditions set out in Schedule 1 to this Deed.

## **3. Privacy**

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- 3.1. The Confidant agrees, in relation to the use of the Confidential Information:
  - a. to comply with its obligations under the *Privacy Act 1988 (Cth)* and not to otherwise do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Australian Privacy Principle under the *Privacy Act 1988 (Cth)*; and
  - b. to comply with any directions, guidelines, determinations or recommendations of the Department to the extent that they are consistent with the obligations referred to in subclause a above.
- 3.2. The Confidant agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 3.

#### **4. Dealing with Copies**

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4.1. In this clause 3.1:

**Copy** means any document, device, article or medium in which Confidential Information is, or may be, embodied.

4.2. The Confidant agrees, immediately upon request by the Department, to deal with all Copies as directed by the Department, subject to any legal requirement binding on the Confidant.

#### **5. Confidant's obligations**

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5.1. The Confidant agrees to notify the Department immediately, and provide full details, if the Confidant is aware or reasonable suspects that:

- a. Confidential Information has, or might have been, accessed, used, modified or disclosed in any way other than as permitted under this Deed or any other breach of this Deed; or
- b. there has been any other breach of this Deed.

5.2. The obligations arising out of this Deed are in addition to any obligations of confidence at common law or equity.

#### **6. Period of confidentiality**

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6.1. Except as otherwise may be agreed by the parties in writing, all Confidential Information shall remain subject to the requirements of this Deed until it becomes available from a legal public source without restriction.

#### **7. Survival**

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7.1. This Deed will survive the termination or expiry of any deed, agreement or arrangement of any kind between the Department and the Confidant relating to the Purpose.

#### **8. Compliance with Legislation and Policies**

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8.1. Without limiting anything contained in this Deed, the Confidant acknowledges that it is aware of the following legislative provisions which may have application to its handling of Confidential Information:

- a. Section 91.1 and, Part 5.6 and Part 10.7 of the Schedule to the *Criminal Code Act 1995* (Cth);
- b. *Privacy Act 1988* (Cth);
- c. *Freedom of Information Act 1982* (Cth);

**9. Applicable law**

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- 9.1. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 9.2. The Confidant submits to the jurisdiction of the court of the Australian Capital Territory.

SAMPLE

**SCHEDULE 1 ADDITIONAL CONDITIONS**

**EXECUTED** as a Deed Poll

SIGNED, SEALED AND )  
DELIVERED by: )  
)

\_\_\_\_\_  
Name of Confidant

\_\_\_\_\_  
Signature of Confidant

In the presence of:

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of witness

SAMPLE