

Hot DesQ Fund Terms and Conditions

1. Recipient Obligations

1.1 The Recipient agrees to undertake the Project in accordance with this Agreement.

1.2 In undertaking the Project, the Recipient must:

- (a) exercise reasonable diligence, care and skill;
- (b) provide required information and reports detailed in the Application and the Agreement;
- (c) achieve the Project aims and outcomes, by the relevant milestone dates detailed in the Application and Guidelines;
- (d) maintain all Recipient Key Personnel visas required during the term of the Agreement;
- (e) maintain GST and ABN registration and other eligibility requirements during the term of the Agreement;
- (f) only spend the Funding for the purpose of undertaking the Project and in accordance with the Agreement;
- (g) ensure it and its Key Personnel comply with the Host's reasonable workplace health and safety and security requirements and directions while at the Host's premises;
- (h) not assign, transfer or subcontract its obligations;
- (i) notify the State of any breach of these terms or any matter that may affect the performance of the Project; and
- (j) comply with all relevant laws.

2. Acknowledgements

2.1 The Recipient agrees to acknowledge the State's support in Material published in connection with this Agreement.

2.2 The State may publically disclose the Recipient, Funding and Project details and outcomes (subject to notified commercial in confidence restrictions).

2.3 The Parties agree to make their officers available for media opportunities.

3. Notices

3.1 The Parties agree to notify the other Party of anything reasonably likely to affect the performance of the Project or otherwise required under this Agreement.

3.2 A notice under this Agreement must be in writing, and sent to the Party at their address specified in the Application or Guidelines.

4. Relationship between the Parties

4.1 A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

4.2 The Recipient acknowledges that it is responsible for all obligations required by law with respect to its employees for work done in connection with this Agreement, including obligations relating to employee entitlements, superannuation, deductions for taxation, and industrial awards and related agreements.

5. Payment

5.1 The State agrees to pay the Funding to the Recipient in accordance with the Application upon the Recipient:

- (a) achieving the relevant Project milestone;
 - (b) providing any relevant due report, and the State receiving the Host's validation of that report
 - (c) providing the State with a correctly rendered invoice, and
 - (d) complying with this Agreement;
- to the State's reasonable satisfaction.

5.2 The State may by notice withhold payment of any amount where it reasonably believes the Recipient has not complied with this Agreement or is unable or unwilling to undertake the Project.

5.3 A notice under clause 5.2 will contain the reasons for any payment being withheld and the steps the Party can take to address those reasons.

5.4 The State will pay the withheld amount once the Party has satisfactorily addressed the reasons contained in a notice under clause 5.2.

6. Spending the Funding

6.1 The Recipient agrees to spend the Funding for the purpose of undertaking the Project only in accordance with this Agreement.

7. Repayment

7.1 If any of the Funding has been spent other than in accordance with this Agreement or any amount of the Funding is additional to the requirements of the Project, the Recipient agrees to repay that amount to the State.

7.2 The amount to be repaid under clause 7.1 may be deducted by the State from subsequent payments of the Funding.

8. Reporting, Record keeping, access and audit

8.1 The Recipient agrees to:

- (a) maintain records of the expenditure of the Funding;
- (b) provide milestone reports within one month after each milestone date;
- (c) if requested, provide a financial acquittal in relation to expenditure of the Funding;
- (d) provide a final report within 1 month of the conclusion of the Project.
- (e) provide any information reasonably requested by the State; and
- (f) allow the State's employees, contractors and agents to access the premises and inspect records and Project documentation and/or audit the performance of the Agreement, upon reasonable notice; to the satisfaction of the State.

9. Intellectual Property

The Recipient owns the Intellectual Property Rights in Project Material created in undertaking the Project.

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10. Privacy

When dealing with Personal Information in performing their obligations, the Parties agree not to do anything which, if done by the State, would be a breach of an Information Privacy Principle.

11. Confidentiality

The Parties agree not to disclose each other's confidential information without prior written consent, unless required or authorised by law or Parliament.

12. Insurance

The Recipient agrees to maintain adequate insurance, (including at least \$5 million public liability insurance, and workers compensation insurance) for the term of this Agreement and provide the State with proof when requested.

13. Indemnities

13.1 Subject to clause 13.3, the State's liability in connection with this Agreement is limited in aggregate to the Funding amount.

13.2 The Recipient is liable for and indemnifies the State against any claim, loss or damage arising in connection with:

- (a) the Project;
- (b) the Recipient's and its employees, contractors and agents act or omission; or
- (c) the Recipient's breach of the Agreement.

13.3 The Recipient's obligation to indemnify the State will reduce proportionally to the extent any act or omission involving fault on the part of the State contributed to the claim, loss or damage.

13.4 The Parties will not in any circumstances be liable for any loss of, revenue, profit, opportunity, goodwill, reputation or any indirect or consequential loss in connection with the Agreement.

14. Dispute resolution

14.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.

14.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.

14.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

15. Termination for default

15.1 The State may terminate this Agreement immediately by notice where it reasonably believes the Recipient:

- (a) has breached this Agreement, if the State reasonably considers such breach is not capable of remedy;
- (b) has submitted information in support of the Application or in the Application itself which is found to have been false or misleading in a material particular;

- (c) has failed to maintain satisfactory progress towards completion of the Project;
- (d) has become ineligible for Funding;
- (e) has withdrawn from the Project; or
- (f) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

15.2 The State may immediately terminate the Agreement by notice, if a Party has failed to remedy a breach of the Agreement within 15 business days of service of a notice upon that Party detailing the breach.

15.3 Upon termination or expiration of the Agreement, the Recipient must deliver to the State (within 20 business days):

- (a) all reports due under this Agreement at the date of termination or expiration; and
- (b) the Recipient must repay any unspent or legally uncommitted Funding, or Funding not spent in accordance with this Agreement, which will be a debt due to and recoverable by the State.

16. Termination for convenience

16.1 The State may terminate this Agreement by 15 business days' notice, due to a change in government policy.

16.2 The Recipient agrees on receipt of a notice of termination under clause 16.1, to stop the performance of its obligations as specified in the notice, and take all available steps to minimise loss resulting from that termination.

16.3 In the event of termination under clause 16.1, the State will be liable only to:

- (a) pay any part of the Funding due and owing for activities satisfactorily performed, to the Recipient under this Agreement at the date of the notice; and
- (b) reimburse any reasonable expenses the Recipient unavoidably incurs that relate directly to the termination (excluding all travel and relocation expenses) and are not covered by 16.3(a).

16.4 The State's liability to pay any amount under this clause is subject to:

- (a) the Recipient's compliance with this Agreement; and
- (b) the total amount of the Funding.

17. Term and Survival

17.1 This Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier.

17.2 Clauses 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19 & 20 survive termination or expiry of this Agreement.

18. GST

18.1 Unless otherwise stated, all amounts payable are exclusive of GST.

18.2 A Party need not make a payment for a taxable supply until it receives a tax invoice (or adjustment

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note) for that supply.

18.3 The Parties agree to use all reasonable endeavours to assist each other in meeting their lawful obligations under the GST law.

19. General

19.1 **Governing Law** – The Agreement is governed by the law of the State of Queensland and the Parties agree to submit to the jurisdiction of the courts of the State of Queensland.

19.2 **Entire Agreement** – The Agreement constitutes the entire agreement between the parties and supersedes all communications and negotiations (oral or written) between the Parties.

19.3 **Waiver** – No right under the Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce any provision of the Agreement will not constitute a waiver of that Party's rights.

19.4 **Severability** – The invalidity or unenforceability of any provision of the Agreement does not invalidate the remaining provisions. Any illegal or invalid provision will be severable and all other provisions will remain in effect.

19.5 **Variation** - This Agreement may be varied in writing only, signed by the Parties.

20. Definitions

20.1 In this Agreement, unless the contrary appears:

- **Agreement** means these Terms and Conditions, the Guidelines, and the Application. The Terms and Conditions prevail over the other documents to the extent of any inconsistency.
- **Application** means the funding application document as approved by the State (including the details of the notice of acceptance issued by the State).
- **Commencement Date** means the date the Recipient enters into the Agreement, as specified in the Agreement.
- **Completion Date** means the date 12 months from the Commencement Date.
- **Confidential Information** means information of a Party relating to this Agreement or the Project:
 - (a) that by its nature is confidential, or the recipient knows or ought to know is confidential; and excludes information which is publically known, other than by breach of this Agreement.
- **Funding** means the money, or any part of it, payable by the State to the Recipient as specified in the Application.
- **Guidelines** means the funding program guidelines document published by the State.
- **Host** means the host organisation with which the Recipient and its Key Personnel will be based.
- **Information Privacy Principle** has the same meaning as in the *Information Privacy Act 2009*.

- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **Key Personnel** means the Recipient's personnel specified to be based with the Host in accordance with the Agreement.
- **Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- **Party** means the Recipient or the State, as the context requires, and **Parties** means both of them.
- **Personal Information** has the same meaning as in the *Information Privacy Act 2009*.
- **Project** means the project activities described in the Application.
- **Project Material** means any Material, other than reports, created or developed by the Recipient as a result of the Project.
- **Recipient** means the legal entity specified in the Application to carry out the Project and includes, where relevant, its officers, employees, contractors and agents.
- **State** means the State of Queensland as represented by the Department of Science, Information Technology and Innovation, and includes, where relevant, its officers, employees, contractors and agents.
- **Terms and Conditions** means the terms and conditions contained in this document.

23.2 In these Terms and Conditions, except where the context otherwise requires:

- (a) a reference to a Party, includes the Party's executors, administrators, successors, and substitutes;
- (b) the meaning of general words is not limited by specific examples;
- (c) a reference to a government entity includes any successor or replacement government entity;
- (d) a reference to a document includes the document as altered, amended or replaced from time to time;
- (e) a rule of construction does not apply to the disadvantage of a Party because that Party drafted the Terms and Conditions;
- (f) where an obligation must be performed on a day that is not a business day, the obligation must be performed on or by the next business day.