

**ADVANCE QUEENSLAND
ABORIGINAL AND TORRES STRAIT ISLANDER
RESEARCH FELLOWSHIPS
FINANCIAL INCENTIVE AGREEMENT
TERMS AND CONDITIONS**



(version 2017)

These Terms and Conditions form part of the Agreement made

BETWEEN

STATE OF QUEENSLAND acting through the Department of Science, Information Technology and Innovation (ABN 41 841 375 926) (“the Department”)

AND

THE RECIPIENT named in the Application as the applicant organisation (“the Recipient”)

BACKGROUND:

The Queensland Government has established the Advance Queensland Aboriginal and Torres Strait Islander Research Fellowships program to provide funding assistance to outstanding early-career Aboriginal and/or Torres Strait Islander researchers to undertake research at a Queensland-based agency that will benefit Queensland.

1. Relationship between the Parties

- 1.1 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.
- 1.2 This Agreement starts on the Agreement Execution Date and ends on the Agreement End Date.

2. Recipient Obligations

- 2.1 The Recipient agrees to support the Project in accordance with this Agreement.
- 2.2 In supporting the Project, the Recipient must:
 - (a) exercise reasonable diligence, care and skill;
 - (b) administer the Funding in accordance with the Agreement to support the Fellow to complete the Project;
 - (c) not replace the Fellow named in the Application with another person;

- (d) complete the Project Deliverables by the relevant Deliverable due dates. This includes the provision of the required Reports, financial acquittal statements and valid tax invoices;
- (e) ensure that the Fellow completes the Project Milestones annually;
- (f) ensure it makes the Recipient Contribution to the Project as per the Application and summarised in Item 11 of Schedule 1;
- (g) ensure the Partners provide the Partner Contributions to the Project as per the Application and summarised in Item 12 of Schedule 1;
- (h) ensure that the Project expenditure is managed in accordance with the project expenditure table in the Application;
- (i) notify the Department within 20 Business Days of any matter that may affect the Fellow or Recipient’s eligibility for Funding under the Guidelines, including but not limited to:
 - (i) the Fellow ceasing employment with the Recipient;
 - (ii) the Fellow moving residence to outside of Queensland;
 - (iii) the Fellow travelling outside of Queensland for more than six weeks;
 - (iv) the Fellow taking extended leave or being unable to undertake the Project for an extended period;
 - (v) the Fellow changing the proportion of their time committed to the Project;
 - (vi) the Recipient Contributions or Partner Contributions changing;
 - (vii) the Project Partner organisations changing; and
 - (viii) the Project expenditure changing.
- (j) ensure that (where relevant):
 - (i) the Project complies with National Health and Medical Research Council Guidelines;

- (ii) the Project complies with the Code of Ethical Practice for Biotechnology in Queensland;
- (iii) the Project is cleared by all relevant ethical committees prescribed by the Recipient organisation's research rules; and
- (iv) evidence of compliance with this clause is provided, if requested by the Department;
- (k) not assign, transfer or subcontract its obligations, without prior written consent of the Department;
- (l) notify the Department of any breach of these terms or any matter that may affect the performance of the Agreement; and
- (m) comply with all relevant laws.

3. Deliverables, records, access and audit

3.1 The Recipient agrees to:

- (a) submit the Reports outlined in Item 13 of Schedule 1 by their due dates;
- (b) submit an interim Report if the project ends prematurely or if there are significant changes to the Project described in the Application;
- (c) maintain records of the expenditure of the Funding;
- (d) provide Financial Acquittal Statements in relation to expenditure of the Funding, and the receipt of Recipient Contributions and Partner Contributions, as required in Schedule 2;
- (e) provide evidence of the receipt of the Recipient Contribution and Partner Contributions for the Project as outlined in the Application, and in Items 11 and 12 of Schedule 1;
- (f) provide information to the Department regarding the outcomes of the Project up to 24 months after submitting the Final Report, if requested by the Department;
- (g) provide any information reasonably requested by the Department, including the completion of surveys about the Project; and
- (h) allow the Department's employees, contractors and agents to access the premises and inspect records and documentation related to the Agreement and/or audit the performance of the

Agreement, upon reasonable notice.

4. Payment

4.1 The Department agrees to pay the Funding to the Recipient upon the Recipient:

- (a) achieving the relevant Project Deliverable;
- (b) ensuring the Fellow achieves the relevant Project Milestone(s);
- (c) providing the relevant Recipient Contribution and receiving the relevant Partner Contributions;
- (d) providing any Reports, surveys and Financial Acquittal Statements due in accordance with the Agreement;
- (e) providing the Department with a valid tax invoice; and
- (f) complying with this Agreement to the Department's reasonable satisfaction.

4.2 The Department 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 any part of the Project or the Agreement.

4.3 A notice under clause 4.2 will contain the reasons for any payment being withheld and the steps the Recipient can take to address those reasons.

4.4 The Department will pay the withheld amount once the Recipient has satisfactorily addressed the reasons contained in a notice under clause 4.2.

4.5 The Department may defer or reduce the amount of a payment where a Project report or Financial Acquittal Statement reveals that the Recipient holds unspent Funding. The Department will pay the deferred or withheld funding upon receiving evidence of expenditure of the unspent Funding.

5. Repayment

5.1 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 Department.

5.2 The amount to be repaid under clause 5.1 may be deducted by the Department from subsequent payments of the Funding.

6. Intellectual Property Rights

- 6.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights in Material produced prior to, or independently of, this Agreement.
- 6.2 Subject to 6.3, the Department hereby expressly disclaims any legal or equitable interest in Project Material.
- 6.3 Intellectual Property Rights in Reports vest upon creation in the Department.
- 6.4 The Recipient grants to the Department a perpetual, non-exclusive, royalty-free licence (including right of sublicense) to use, adapt, reproduce, publish and exploit any photos and videos either:
- (a) comprised within Project Material; or
 - (b) produced by or on behalf of the Recipient for publicity or media purposes;
- for the purposes of this Agreement and for any related purpose.
- 6.5 The Recipient expressly consents, and will ensure that its employees, including the Fellow, provide express written consent, to the exercise of rights by the Department as contemplated in clause 6.4, in relation to the personal information and likeness of the Recipient and/or its employees comprised in any photos and videos.
- 6.6 The Recipient will use reasonable endeavours to obtain the express written consent of any other person or third party, to the exercise of rights by the Department as contemplated in clause 6.4, in relation to the personal information and likeness of the other person or third party comprised in any photos and videos.
- 6.7 Upon request by the Department, the Recipient must promptly provide copies of the express written consents obtained pursuant to clause 6.5 and 6.6.

7. Acknowledgements

- 7.1 The Recipient agrees to acknowledge the Department's support in Public Statements published in connection with this Agreement.
- 7.2 The Department may publicly disclose the name of the Recipient, the name of the Fellow, the amount of Funding and the general details of the Project, including the names of Partners, subject to notified commercial-in-confidence restrictions.
- 7.3 The Parties agree to make their officers available for media opportunities.

8. Privacy

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

9. Confidentiality

- 9.1 A Receiver of Confidential Information:
- (a) must not, without the prior approval of the Discloser, use, make public or disclose to any person any Confidential Information;
 - (b) must immediately notify the Discloser if it becomes aware of any unauthorised use or disclosure of the Confidential Information;
 - (c) must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it;
 - (d) may disclose Confidential Information only:
 - (i) to its personnel who are aware that the Confidential Information is confidential and are subject to the same obligations of confidentiality as the Receiver and only to the extent necessary to exercise its rights and perform its obligations under this Agreement;
 - (ii) to the extent required by law, provided that the Receiver must use its best endeavours to immediately notify the Discloser prior to the information being disclosed; and
 - (iii) to the Receiver's professional advisers;
 - (e) will ensure that its personnel comply with any obligations of confidentiality in relation to the Confidential Information and will enforce those obligations in case of breach.

10. Dispute resolution

- 10.1 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.
- 10.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.
- 10.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

11. Termination for default

11.1 The Department may terminate this Agreement immediately by notice where it reasonably believes the Recipient:

- (a) has breached this Agreement, if the Department reasonably considers such breach is not capable of remedy;
- (b) has submitted information in, or in support of, the Application which is found to have been false or misleading;
- (c) has failed (or the Fellow has failed) to maintain satisfactory progress towards completion of the Project;
- (d) has become (or the Fellow has become) ineligible for Funding under the Guidelines attached in Schedule 4;
- (e) has withdrawn (or the Fellow 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.

11.2 The Department may immediately terminate this Agreement by notice, if the Recipient has failed to remedy a breach of the Agreement within 20 Business Days of written notice to the Recipient detailing the breach.

11.3 Upon termination or expiration of the Agreement, the Recipient must deliver to the Department (within 20 Business Days):

- (a) all Reports due under the Agreement at the date of termination or expiration;
- (b) the pro-rata amount of the Funding, calculated from the date of termination or expiration to the Completion Date, that the Recipient is not entitled to; and
- (c) any unspent or legally uncommitted Funding, or Funding not spent in accordance with the Agreement, which will be a debt due to and recoverable by the Department.

12. Termination for convenience

12.1 The Department may terminate this Agreement by 20 Business Days notice, due to a change in government policy.

12.2 The Recipient agrees on receipt of a notice of termination under clause 12.1, to stop the performance of its obligations as specified in the notice, and take all available steps to minimise loss resulting from that termination.

12.3 In the event of termination under clause 12.1, the Department will be liable only to:

- (a) pay any part of the Funding due and owing for activities satisfactorily performed, to the Recipient under the Agreement at the date of the notice; and
- (b) reimburse any reasonable expenses the Recipient unavoidably incurs that relate directly to the termination and are not covered by 12.3(a).

12.4 The Department's liability to pay any amount under this clause:

- (a) is subject to the Recipient's compliance with this Agreement; and
- (b) will not exceed the total amount of the Funding payable pursuant to this Agreement.

13. Indemnities

13.1 Subject to clause 13.4, the Department'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 Department against any claim, loss or damage arising in connection with:

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

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

13.4 Neither Party will, in any circumstances, be liable for any loss of revenue, profit, opportunity, goodwill, reputation or any indirect or consequential loss of the other Party in connection with the Agreement.

14. Insurance

14.1 The Recipient agrees to maintain adequate insurance, as outlined in Item 14 of Schedule 1 of the Agreement, for the duration of the Agreement. The Recipient must provide evidence of this insurance, if requested by the Department.

15. GST

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

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

adjustment note) for that supply.

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

16. General

- 16.1 **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.
- 16.2 **Entire Agreement** – The Agreement constitutes the entire agreement between the Parties and supersedes all communications and negotiations (oral or written) between the Parties.
- 16.3 **Waiver** – No right under this 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.
- 16.4 **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.
- 16.5 **Variation** – This Agreement may be varied in writing only, signed by the Parties.
- 16.6 **Force Majeure** – The time for a Party to meet its obligations under this Agreement may be suspended or extended in the event of a Force Majeure, but for no longer than the duration of the Force Majeure. The Party so affected will immediately give notice to the other Party in writing of the Force Majeure.

17. Definitions

- 17.1 In this Agreement, unless the contrary appears:

Agreement means these Terms and Conditions including the Schedules, the Guidelines and the Application.

Agreement End Date means the date three months after the Completion Date, as set out in Item 8 of Schedule 1.

Agreement Execution Date means the date that the last Party signs the Agreement, as set out in Item 7 of Schedule 1.

Application means the Advance Queensland Aboriginal and Torres Strait Islander Research Fellowships funding application document and any annexures to it, and attached in Schedule 5.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane,

Queensland.

Commencement Date means the date specified in Item 5 of Schedule 1 of the Agreement being the date the Project starts.

Completion Date means the date specified in Item 6 of Schedule 1 of the Agreement as the date for completing the Project.

Confidential Information of a Party (“the Discloser”) means information belonging to the Discloser and its activities of which the other Party (“the Receiver”) becomes aware in connection with this Agreement or in the course of the Project that by its nature is confidential, is communicated as confidential or the Receiver knows or ought to know is confidential and includes information:

- (a) relating to any Intellectual Property Rights of the Discloser;
- (b) relating to the internal management and structure of the Discloser or the personnel, internal policies and strategies of the Discloser;
- (c) that is of actual or potential commercial value to the Discloser; or
- (d) concerning the commercial operations, financial arrangements or affairs of the Discloser;
- (e) concerning the clients, affiliates and suppliers of the Discloser; but does not include information
- (f) which is publically known, other than by breach of this Agreement; or
- (g) is lawfully received from a third party, from the Discloser prior to any obligation of confidentiality, or independently developed by a Party; or
- (h) that a Party is required by law, or by this Agreement, to disclose.

Deliverables means the performance requirements set out in Schedule 2.

Department 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.

Fellow means the person named in the Application as the fellow who is the primary researcher supported under the Agreement.

Final Report means a Report the Fellow is required to prepare and the Recipient is required to endorse and submit to the Department in a format notified by the

Department, in accordance with Item 13 of Schedule 1.

Financial Acquittal Statement means an official financial statement detailing the receipt and expenditure of the Funding, and the receipt of Recipient Contributions and Partner Contributions outlined in Items 11 and 12 of Schedule 1.

Force Majeure means any circumstances beyond the reasonable control of a Party which results in the Party being unable to observe or perform on time an obligation under this Agreement including but not limited to:

- (a) acts of God, lightning, industrial disputes beyond the reasonable control of a Party, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) industrial strikes.

Funding means the money, or any part of it, payable by the Department to the Recipient as specified in Item 10 of Schedule 1.

Guidelines means the Advance Queensland Aboriginal and Torres Strait Islander Research Fellowships program guidelines document published by the Department, and attached in Schedule 4.

Information Privacy Principle has the same meaning as in the *Information Privacy Act 2009*.

Intellectual Property Rights means any:

- (a) invention or discovery;
- (b) manner, method or process of manufacture;
- (c) drawing or design;
- (d) improvement;
- (e) patent, application for a patent, or right to apply for a patent;
- (f) common law or registered trademark; and
- (g) copyright or other rights in the nature of copyright subsisting in any works including reports, software and circuit layouts.

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.

Partner means an organisation identified as a partner in the Application, or in the Agreement.

Partner Contribution means the cash

contributed to the Project by each Partner as set out in Item 12 of Schedule 1.

Party means the Recipient or the Department, as the context requires.

Personal Information has the same meaning as in the *Information Privacy Act 2009*.

Progress Report means a Report the Fellow is required to prepare and the Recipient is required to endorse and submit to the Department in a format notified by the Department, in accordance with Item 13 of Schedule 1.

Project means the Advance Queensland Aboriginal and Torres Strait Islander Research Fellowship research project outlined in the Application and described in Schedule 1.

Project Deliverables means the Project deliverables set out in Schedule 2;

Project Material means all the Material which is created by the Recipient and Fellow in the course of undertaking the Project.

Project Milestones means the Project milestones set out in Schedule 3;

Public Statement means any formal statement or address by the Recipient or on the Recipient's behalf in relation to the Project which is intended for the public domain, including:

- (a) media releases about the Project;
- (b) discussions about the Project with television or newspaper journalists;
- (c) presentations at conferences about the Project;
- (d) promotional and advertising material; and
- (e) any recording or publication resulting from the Project (including, without limitation, reprints) which is intended to be distributed into the public domain.

Recipient means the applicant organisation specified in the Application to carry out the Project and includes, where relevant, its officers, employees, contractors and agents.

Recipient Contribution means the amount of Recipient organisation's own cash funds contributed to the Project as set out in Item 11 of Schedule 1.

Report means a written report in a format notified by the Department which includes:

- (a) an outline of the key research findings of the Project;
- (b) an outline of the implications of the findings for Queensland, the Partner(s) and the Fellow's field of research;

- (c) details of fellowship staffing, including the names of staff, their position and their full-time equivalence employment status;
- (d) the completion rate of the annual Project Milestones listed in Schedule 3;
- (e) a statement of the general Project outcomes achieved;
- (f) the number of specific outcomes completed, including but not limited to, the numbers of: refereed publications accepted; patents filed or approved; new collaborations; additional grants secured; higher degree students supervised; new products, services or practices created; and new spin-out or start-up companies created.

Schedule means a schedule to the Terms and Conditions.

Terms and Conditions means the terms and conditions contained in this document.

17.2 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; and
- (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.

18. Notices

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

18.2 A notice under this Agreement must be in writing, and sent to the respective addresses outlined in Item 15 of Schedule 1.

19. Survival

19.1 The following clauses survive the termination or expiry of this Agreement:

- (a) Clause 3 - Deliverables, records, access and audit
- (b) Clause 5 - Repayment
- (c) Clause 6 - Intellectual Property Rights
- (d) Clause 7 - Acknowledgements
- (e) Clause 8 - Privacy
- (f) Clause 9 - Confidentiality
- (g) Clause 11 - Termination for default
- (h) Clause 12 - Termination for convenience
- (i) Clause 13 - Indemnities
- (j) Clause 15 - GST
- (k) Clause 16 – General, and
- (l) Clause 19 - Survival.

SCHEDULE 1 – PROJECT DETAILS

1.	Recipient	<i>Enter the Applicant Organisation named in the Application.</i>
2.	Fellow's name	<i>Enter the Fellow named in the Application.</i>
3.	Project title	<i>Enter the Project Title from the Application.</i>
4.	Project description	<i>Enter the Project Description from the Application.</i>
5.	Commencement Date	<i>Enter date (a date in 2017 that is after the date that the Minister for Science, Information Technology and Innovation approves the award).</i>
6.	Completion Date	<i>Enter date (3 years after the Commencement Date).</i>
7.	Agreement Execution Date	<i>Enter date (the date that the last Party signs the Agreement).</i>
8.	Agreement End Date	<i>Enter date (3 years and 3 months after the Commencement Date).</i>
9.	Advance Queensland Aboriginal and Torres Strait Islander Research Fellowships Funding	\$240,000 (excluding GST) over three years.
10.	Advance Queensland Aboriginal and Torres Strait Islander Research Fellowships Funding instalments	Payment 1: \$80,000 (excluding GST) Payment 2: \$80,000 (excluding GST) Payment 3: \$60,000 (excluding GST) Payment 4: \$20,000 (excluding GST)
11.	Recipient Contribution <i>(if applicable)</i>	Year 1: \$xx (excluding GST) Year 2: \$xx (excluding GST) Year 3: \$xx (excluding GST) TOTAL - \$xx (excluding GST) in cash over the term of the fellowship.
12.	Partner Contribution(s) <i>(if applicable)</i>	Partner 1: Year 1: \$xx (excluding GST) Year 2: \$xx (excluding GST) Year 3: \$xx (excluding GST) TOTAL - \$xx (excluding GST) in cash over the term of the fellowship. Partner 2: Year 1: \$xx (excluding GST) Year 2: \$xx (excluding GST) Year 3: \$xx (excluding GST) TOTAL - \$xx (excluding GST) in cash over the term of the fellowship.
13.	Reporting	Progress Report 1 due 12 months after the Commencement Date. Progress Report 2 due 24 months after the Commencement Date. Final Report due 36 months after the Commencement Date.
14.	Insurance cover	<ul style="list-style-type: none"> • Public liability insurance for the amount of \$10,000,000, in respect of each claim. • Workers' compensation insurance for the Recipient's employees in

		<p>accordance with the <i>Workers' Compensation and Rehabilitation Act 2003 (Qld)</i>, as amended 29 Oct 2013.</p>
<p>15.</p>	<p>Contact Officers</p>	<p>For the Department:</p> <p>Director Contract and Investment Management Department of Science, Information Technology and Innovation (Science Development) Level 3, EcoSciences Precinct Block B 41 Boggo Road, Dutton Park QLD 4102 GPO BOX 5078, Brisbane QLD 4001 Telephone: (07) 3170 5865 sciencefunding@dsiti.qld.gov.au</p> <p>For the Recipient:</p> <p>Recipient details to be added.</p>

SCHEDULE 2 – PROJECT DELIVERABLES

	Project Deliverable	Deliverable due date	Outcome of successful completion
1	<ul style="list-style-type: none"> • Confirmation by the Recipient of the details in the Application, and the information summarised in Schedule 1 (Project details) and Schedule 3 (Project milestones). • The approval of the Application as evidenced by the execution of the Agreement by the delegated officer from the Department. • The provision of a valid tax invoice. 	Following the approval of the Application by the Department, or the Commencement Date, whichever is the later.	The release of payment 1.
2	<ul style="list-style-type: none"> • The submission of a satisfactory first Progress Report. • The submission of a Financial Acquittal Statement clearly documenting the expenditure of Advance Queensland Funding. • The provision of details of the amount of Recipient Contributions and Partner Contributions received for the Project. • The provision of a valid tax invoice. 	12 months after the Commencement Date.	The release of payment 2.
3	<ul style="list-style-type: none"> • The submission of a satisfactory second Progress Report. • The submission of a Financial Acquittal Statement clearly documenting the expenditure of Advance Queensland Funding. • The provision of details of the amount of Recipient Contributions and Partner Contributions received for the Project. • The provision of a valid tax invoice. 	24 months after the Commencement Date.	The release of payment 3.
4	<ul style="list-style-type: none"> • The submission of a satisfactory Final Report. • The submission of a Financial Acquittal Statement clearly documenting the expenditure of Advance Queensland Funding. • The provision of details of the amount of Recipient Contributions and Partner Contributions received for the Project. • The provision of a valid tax invoice. 	36 months after the Commencement Date.	The release of payment 4 and the finalisation of the Project.

SCHEDULE 3 – PROJECT MILESTONES

SCHEDULE 4 – GUIDELINES

SCHEDULE 5 – APPLICATION