

# QUEENSLAND-COOPER HEWITT FELLOWSHIP FINANCIAL INCENTIVE AGREEMENT

## TERMS AND CONDITIONS

(version 2017-18)



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 Queensland - Cooper Hewitt Fellowship program to provide funding for Queensland teachers to undertake collaborative projects with the Cooper Hewitt Smithsonian Design Museum's Department of Education, based in New York, United States of America ('Cooper Hewitt Smithsonian Design Museum').

## 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) pay the Fellow's salary while the Fellow is visiting the Cooper Hewitt Smithsonian Design Museum;
  - (d) not replace the Fellow named in the Application with another person;

- (e) complete the Deliverables by the relevant Deliverable due dates. This includes the provision of the required Fellowship Report and valid tax invoices;
- (f) ensure that the Fellow completes the Deliverables outlined in Schedule 2;
- (g) notify the Department of any matter that may affect the Fellow's eligibility for Funding under the Guidelines, including but not limited to:
  - (i) the cessation of employment with the Recipient; or
  - (ii) the Fellow moving residence to outside of the State of Queensland;
- (h) not assign, transfer or subcontract its obligations without prior written consent of the Department;
- (i) notify the Department of any breach of these terms or any matter that may affect the performance of the Agreement; and
- (j) comply with all relevant laws.

## 3. Deliverables, records, access and audit

- 3.1 The Recipient agrees to:
  - (a) submit the Fellowship Report by the due date set out in Item 10 of Schedule 1;
  - (b) submit an interim Fellowship 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, if requested by the Department;
  - (e) provide information to the Department regarding the outcomes of the Project up to 24 months after submitting the Fellowship Report, if requested by the Department;
  - (f) provide any information reasonably requested by the Department, including the completion of surveys about the Project; and

- (g) 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 Deliverable as outlined in Schedule 2;
  - (b) providing the Fellowship Report, surveys and Financial Acquittal Statements due in accordance with the Agreement;
  - (c) providing the Department with a valid tax invoice; and
  - (d) 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 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 the Fellowship 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 program requirements, 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 the Fellowship Report or any reports provided under this Agreement 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, 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;
- (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 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) a report outlining the activities undertaken and the Project outcomes at the date of termination or expiration, in a format notified by the Department;
  - (b) the pro-rata amount of the Funding, calculated from the date of termination or expiration to the Agreement End 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 11 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** – This 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.
- 16.7 **Entering into the Agreement** – This Agreement is entered into by the nominated Fellow and an authorised representative of the Recipient signing the Advance Queensland Queensland-Cooper Hewitt Fellowship Program Financial Incentive Agreement declaration page.
- 16.8 **Record of Agreement** – Upon execution, a scan of the compiled Agreement will be provided electronically by the Department to the Recipient for their records.

## 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 Travel End 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 Queensland-Cooper Hewitt Fellowship funding application document and any annexures to it, and attached in Schedule 4.

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

**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) which is lawfully received from a third party, by 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 of 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, supported under the Agreement and set out in Item 2 of Schedule 1.

**Fellowship 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.

**Financial Acquittal Statement** means an official financial statement detailing the receipt and expenditure of the Funding outlined in Item 9 of Schedule 1.

**Force Majeure** means any circumstance beyond the reasonable control of a Party which results in that 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 9 of Schedule 1.

**Guidelines** means the Queensland-Cooper Hewitt Fellowship program guidelines document published by the Department, and attached in Schedule 3.

**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.

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

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

**Project** means the Queensland-Cooper Hewitt Fellowship project outlined in the Application and described in Schedule 1.

**Project Material** means all the material including but not limited to documents, computer software, and data stored by any means which is created by the Fellow in the course of undertaking the Project.

**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 and includes, where relevant, its officers, employees, contractors and agents.

**Schedule** means a schedule to the Terms and Conditions.

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

**Travel End Date** means the date on which the Fellow returns to Australia following the completion of the overseas visit as described in the Application and set out in Item 6 of Schedule 1.

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 12 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**

<b>1.</b>	<b>Recipient</b>	<i>The applicant organisation named in the Application.</i>
<b>2.</b>	<b>Fellow</b>	<i>The proposed Fellow named in the Application.</i>
<b>3.</b>	<b>Project title</b>	<i>The Project title from the Application.</i>
<b>4.</b>	<b>Project description</b>	<i>The Project description from the Application.</i>
<b>5.</b>	<b>Departure Date</b>	<i>Must be in 2018, preferably by 1 July 2018.</i>
<b>6.</b>	<b>Travel End Date</b>	<i>8 to 12 weeks after the Departure Date.</i>
<b>7.</b>	<b>Agreement Execution Date</b>	<i>The date that the last Party signs the Agreement.</i>
<b>8.</b>	<b>Agreement End Date</b>	<i>6 months after the Travel End Date.</i>
<b>9.</b>	<b>Funding</b>	<i>From \$15,000 to \$20,000 (excluding GST), depending on the duration of the international visit (8 to 12 weeks).</i>
<b>10.</b>	<b>Fellowship Report</b>	A report due 3 months after the Travel End Date.
<b>11.</b>	<b>Insurance</b>	<ul style="list-style-type: none"> <li>Public liability insurance for the amount of \$10,000,000, in respect of each claim.</li> <li>Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers' Compensation and Rehabilitation Act 2003 (Qld)</i>, as amended 29 Oct 2013.</li> </ul>
<b>12.</b>	<b>Contact Officers</b>	<p><b>For the Department:</b></p> <p>Stephen Lamb  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  <a href="mailto:sciencefunding@dsiti.qld.gov.au">sciencefunding@dsiti.qld.gov.au</a></p> <p><b>For the Recipient:</b></p> <p><i>Recipient details to be added if the Application is successful.</i></p>

**SCHEDULE 2 –DELIVERABLES AND PAYMENTS**

<b>Milestone No.</b>	<b>Deliverable</b>	<b>Funding Instalment Amount</b>	<b>Due Date</b>
<b>1</b>	<ul style="list-style-type: none"> <li>• Confirmation by the Recipient and/or Fellow of the details in the Application, and the details summarised in Schedule 1 (Project details).</li> <li>• The approval of the Application as evidenced by the execution of the Agreement by the authorised officer from the Department.</li> <li>• The provision of a valid tax invoice.</li> </ul>	The total funding awarded less \$2,000 (excluding GST)	Following approval of the Application by the Department.
<b>2</b>	<ul style="list-style-type: none"> <li>• The submission of a Fellowship Report satisfactory to the Department.</li> <li>• The submission of a Financial Acquittal Statement clearly documenting the expenditure of Department Funding.</li> <li>• The provision of a valid tax invoice (if applicable).</li> </ul>	\$2,000 (excluding GST)	3 months after the Travel End Date.



## **SCHEDULE 3 – GUIDELINES**

## **SCHEDULE 4 – APPLICATION**