

# ADVANCE QUEENSLAND ENGAGING SCIENCE GRANTS - FINANCIAL INCENTIVE AGREEMENT TERMS AND CONDITIONS

These Terms and Conditions form part of the Agreement made

## BETWEEN

**STATE OF QUEENSLAND** acting through the Department of Environment and Science (ABN 46 640 294 485) ("the Department")

## AND

**THE RECIPIENT** named in the Application as the applicant organisation ("the Recipient")

## BACKGROUND:

The Queensland Government has established the Advance Queensland Engaging Science Grants program to support scientists, researchers, science communicators, journalists, teachers, organisations and community groups to deliver science engagement and communication projects, events or activities that align with the Engaging Queenslanders in Science strategy.

## 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 perform the Project in accordance with this Agreement.
- 2.2 In performing the Project, the Recipient must:
  - (a) exercise reasonable diligence, care and skill;
  - (b) administer the Funding in accordance with the Agreement;
  - (c) not replace the Project Leader named in the Application with another person without notifying the Department;
  - (d) complete the Deliverables by the relevant Deliverable due dates. This includes the provision of the required Advance Queensland Engaging Science Grants Report, Financial Acquittal Statements and valid tax invoices;
  - (e) maintain timely progress in the performance of the project and ensure that the Project Leader completes the Project;
  - (f) notify the Department of any matter which may affect the Recipient's eligibility for Funding under the Guidelines, including but not limited to cessation of the Project;
  - (g) not assign, transfer or subcontract its obligations;
  - (h) notify the Department of any breach of these terms or any matter that may affect the performance of the Agreement; and
  - (i) comply with all relevant laws.

- 2.3 The Recipient must ensure:
  - (a) the Project Leader has the qualifications and expertise necessary to lead the performance of the Project;
  - (b) the Project Leader is available to work on the Project; and
  - (c) if the Project Leader becomes unavailable to work on the Project, the Recipient promptly notifies the Department, and provides a suitably qualified replacement Project Leader.
- 2.4 The Recipient must:
  - (a) notify the Department of any changes in Partner Organisation's assistance for the Project;
  - (b) ensure any Partner Organisation complies with the Terms and Conditions of this Agreement; and
  - (c) immediately notify the Department of any breach of these Terms and Conditions by a Partner Organisation, and if directed by the Department, terminate the involvement of that Partner Organisation.
- 2.5 Irrespective of the involvement of any Partner Organisation (or permitted Subcontractor), the Recipient remains entirely responsible for the performance of the Project.

## 3. Reporting, records keeping, access and audit

- 3.1 The Recipient agrees to:
  - (a) submit the Advance Queensland Engaging Science Grants Report by the due date set out in Item 10 of Schedule 1;
  - (b) maintain records of the expenditure of the Funding;
  - (c) provide Financial Acquittal Statements in relation to expenditure of the Funding and a valid tax invoice as required by the Agreement;
  - (d) provide any information reasonably requested by the Department, including the completion of surveys about the Project; and
  - (e) 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) completing the relevant Deliverables set out in Schedule 2;
  - (b) providing the Advance Queensland Engaging Science Grants Report and Financial Acquittal Statement 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 to undertake any part of the Project.

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- 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 Advance Queensland Engaging Science Grants 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.
- 4.6 The Department has no obligation to provide further funding or assistance beyond the Funding, in relation to the Project.

## 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, upon written request.
- 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 and equitable interest in Project Material.
- 6.3 Intellectual Property Rights in Advance Queensland Engaging Science Grants 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 Intellectual Property Rights in Project Material for the purposes of this Agreement and for any other non-commercial purpose.
- 6.5 The Recipient expressly consents, and will ensure that its officers, employees, contractors, agents and volunteers, 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 Project Material.
- 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 such material.

- 6.7 The Recipient expressly consents, and will use reasonable endeavours to obtain the express written consent of its officers, employees, contractors, agents and volunteers, to the disclosure to, and use of, personal information by other Queensland government agencies or contractors bound by obligations of confidentiality, for the purposes of administration of the Project and this Agreement and related purposes.
- 6.8 Upon request by the Department, the Recipient must promptly provide copies of the express written consents obtained pursuant to clause 6.5, 6.6 and 6.7.

## 7. Acknowledgements

- 7.1 The Recipient agrees to acknowledge the Department's support in Material published in connection with this Agreement.
- 7.2 The Department may publicly disclose the Recipient, 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, marketing, and communications 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.
- 8.2 The Recipient consents and must ensure its officers, employees, contractors, agents and volunteers consent to their Personal Information being used and disclosed by the State in accordance with the Agreement.

## 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;

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- (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 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 the Application for Funding which is found to have been false or misleading;
  - (c) has failed to maintain satisfactory progress towards completion of the Project;
  - (d) has become ineligible for Funding under the Guidelines;
  - (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.
- 11.2 The Department may immediately terminate this Agreement by notice, if the Recipient has failed to remedy a breach of the Agreement within 15 Business Days of provision of a notice to the Recipient detailing the breach.
- 11.3 Upon termination of the Agreement, the Recipient must deliver to the Department (within 20 Business Days):
  - (a) all reports and information due under the Agreement on or before the date of termination;
  - (b) the pro-rata amount of the Funding, calculated from the date of termination 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 15 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 Project;
  - (b) the Recipient and its officers, employees, contractors, agents and volunteers (or any other person for whose conduct the Recipient is liable including a Partner Organisation) act or omission; or
  - (c) 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 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. 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.

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## 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 non-exclusive 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 only be varied in writing, 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 **Subcontracting** – Subject to clause 2.4, the Recipient must not transfer, assign or subcontract its obligations or rights without the prior written approval of the Department, which may be given subject to conditions.

## 17. Definitions

17.1 In this Agreement, unless the contrary appears:

- **Advance Queensland Engaging Science Grants Report** means a report the Recipient is required to prepare and the Project Leader is required to endorse and submit to the Department as outlined in Item 10 of Schedule 1 in a format notified by the Department.
- **Agreement means:**
  - (a) the Terms and Conditions including the Schedules,
  - (b) the Application and
  - (c) the Guidelines.
- **Agreement End Date** means the date 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 Engaging Science Grants funding application submitted by the Recipient, as amended and as approved by the Department, and any annexures to it, and attached in Schedule 4.
- **Business Day** means a day (other than a Saturday, Sunday or public holiday) in Brisbane, Queensland.
- **Confidential Information** of a party means information, trade secrets and knowledge of or disclosed by a party (the Discloser) to another party (Disclosee) that:
  - (a) is by its nature confidential,
  - (b) is designated or marked as communicated as being confidential; or
  - (c) the Disclosee knows or ought to know is confidentialbut does not include information which:
  - (d) is publically known, other than by breach of this Agreement or any other confidentiality obligation; or
  - (e) is independently developed by a party while having no knowledge of or access to the other party's Confidential information.
- **Deliverables** means the performance of requirements set out in Schedule 2.
- **Department** means the State of Queensland as represented by the Department of Environment and Science, and includes, where relevant, its officers, employees, contractors and agents.
- **Financial Acquittal Statement** means an official financial statement detailing the receipt and expenditure of the Funding.
- **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 industrial strikes.
- **Funding** means the money, or any part of it, payable by the Department to the Recipient as specified in Item 9 Schedule 1 of the Agreement.
- **Guidelines** means the Advance Queensland Engaging Science Grants program guidelines published by the Department, and attached in Schedule 3.
- **Information Privacy Principle** has the same meaning as in the *Information Privacy Act 2009 (QLD)*.
- **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 Organisation** means an organisation

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- assisting the Recipient in their performance of the Project.
- **Party** means the Recipient or the Department, as the context requires.
  - **Personal Information** has the same meaning as in the *Information Privacy Act 2009 (QLD)*.
  - **Project** means the Advance Queensland Engaging Science Grants project outlined in the Application and described in Items 3 and 4 of Schedule 1.
  - **Project End Date** means the date specified in Item 6 of Schedule 1 of the Agreement being the date the Project is completed.
  - **Project Leader** means the person named in the Application and named in Item 2 of Schedule 1 as the primary person to undertake the Project and supported under the Agreement.
  - **Project Material** means all the material including but not limited to documents, computer software, videography, photography and data stored by any means which is created by the Recipient in the course of undertaking the Project.
  - **Project Start Date** means the date specified in Item 5 of Schedule 1 of the Agreement being the date the Project starts.
  - **Recipient** means the applicant specified in the Application to carry out the Project and named in Item 1 of Schedule 1 of the Agreement and includes, where relevant, its officers, employees, contractors, agents, volunteers and invitees.
  - **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;
- (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; and
- (g) a reference to "\$" or "dollars" means Australian dollars.

## 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 Any written notice must be 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 - Reporting, records keeping, 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.

# ADVANCE QUEENSLAND ENGAGING SCIENCE GRANTS - FINANCIAL INCENTIVE AGREEMENT TERMS AND CONDITIONS

## SCHEDULE 1 – PROJECT DETAILS

1.	Recipient	
2.	Project Leader's name	
3.	Project title	
4.	Project Description	
5.	Project Start Date	
6..	Project End Date	
7.	Agreement Execution Date	The date that the last party signs the Agreement.
8.	Agreement End Date	15 months from the Agreement Execution Date.
9.	Advance Queensland Engaging Science Grants Funding	\$_____ (excluding GST).
10.	Advance Queensland Engaging Science Grants Report	A report due 1 month after the Project End Date.
11.	Insurance	Public liability insurance for the amount of \$10,000,000, in respect of each claim.  Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers' Compensation and Rehabilitation Act 2003 (QLD)</i> .
12.	Contact Officers	<p><u>For the Department:</u>  Director  Office of the Queensland Chief Scientist,  Department of Environment and Science,  Level 24, 111 George Street, BRISBANE QLD 4000  Telephone: (07) 3199 7423  Email: info@chiefscientist.qld.gov.au</p> <p><u>For the Recipient</u></p>

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**SCHEDULE 2 – DELIVERABLES AND PAYMENTS**

Deliverable No	Deliverable	Funding Instalment Amount	Due Date
1	<ul style="list-style-type: none"><li>• Confirmation by the Recipient of the details 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 to the Department.</li></ul>	\$_____ (excluding GST)	Following approval of the Application by the Department.
2	<ul style="list-style-type: none"><li>• The submission and acceptance of the Advance Queensland Engaging Science Grants Report to the Department.</li><li>• The provision of a valid tax invoice (if applicable).</li></ul>	\$_____ (excluding GST)	[date] 1 month after the Project End Date.

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**SCHEDULE 3 – GUIDELINES**

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**SCHEDULE 4 – APPLICATION**



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FINANCIAL INCENTIVE AGREEMENT EXECUTION PAGE  
DEPARTMENT OF ENVIRONMENT AND SCIENCE**

Recipient's Name: \_\_\_\_\_

Application Number: OQCSxxxAQESG

The State of Queensland acting through the Department of Environment and Science (ABN 46 640 294 485) approves the Advance Queensland Engaging Science Grants funding not exceeding \$\_\_\_\_\_ (excluding GST) to be awarded to the Recipient to support the Project Leader to undertake the Project outlined in the Application.

By signing this page the State of Queensland represented by the Department enters into a legally binding agreement with the Recipient consisting of:

- (a) the Advance Queensland Engaging Science Grants Application and any supporting information,
- (b) the Advance Queensland Engaging Science Grants Guidelines 2019-20, and
- (c) the Advance Queensland Engaging Science Grants Financial Incentive Agreement Terms and Conditions.

SIGNED for and on behalf of the State of Queensland through the Department of Environment and Science.

.....  
name of authorised officer

.....  
signature of authorised officer

.....  
date

in the presence of:

.....  
name of witness

.....  
signature of witness