

ADVANCE QUEENSLAND
WOMEN'S RESEARCH ASSISTANCE PROGRAM
TERMS AND CONDITIONS
(version 2019)



1. Parties

- 1.1 The **Recipient** is the applicant organisation specified in the Application and includes, where relevant, its officers, employees, contractors and agents.
- 1.2 The **State** is the State of Queensland as represented by the Department of Innovation, Tourism Industry Development and the Commonwealth Games and includes, where relevant, its officers, employees, contractors and agents.

2. Recipient Obligations

- 2.1 The Recipient agrees to perform the Project in accordance with the Agreement.
- 2.2 In performing the Project, the Recipient must:
- (a) exercise reasonable diligence, care and skill;
 - (b) spend the Funding for the purpose of the Project and in accordance with the Agreement;
 - (c) provide the Recipient's Contribution to the Project;
 - (d) provide required information, reports and financial acquittals;
 - (e) notify the State of any breach of the Agreement or any matter that may affect the Recipient's entitlement to the Funding;
 - (f) notify the State of any proposed changes to the Project (including proposed changes to leave periods);
 - (g) seek the State's prior approval of any substantial change to the Project; and
 - (h) comply with all relevant laws.

3. Acknowledgements

- 3.1 The Recipient agrees to acknowledge the State's support in Material published in connection with the Project.
- 3.2 The State may publically disclose the Recipient, Funding and Primary Researcher Project outcomes (subject to notified commercial in confidence restrictions).
- 3.3 The Parties agree to make their officers available for media opportunities.

4. Notices

- 4.1 The Parties agree to notify the other Party of anything reasonably likely to affect the delivery of the Project, or as otherwise required under the Agreement.
- 4.2 A notice regarding the Project must be in an email or letter, and sent to the Party at their address specified in the Application.

5. Relationship between the Parties

- 5.1 A Party is not by virtue of the Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.
- 5.2 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.

6. Payment

- 6.1 The State agrees to pay the Funding to the Recipient in accordance with the Offer, upon the Recipient:
- (a) providing the Recipient's Contribution to the Project; and
 - (b) providing the State with a correctly rendered invoice; and
 - (c) complying with this Agreement;
- to the State's reasonable satisfaction.
- 6.2 The State may by notice withhold payment of any amount where it reasonably believes the Recipient has not complied with the requirements of clause 6.1.
- 6.3 A notice under clause 6.2 will contain the reasons for any payment being withheld and the steps the Party can take to address those reasons.
- 6.4 The State will pay the withheld amount once the Party has satisfactorily addressed the reasons contained in a notice under clause 6.2.
- 6.5 The State has no obligation to provide further funding or assistance beyond the Funding.

7. Repayment

- 7.1 If any of the Funding has been spent other than in accordance with the Agreement or any amount of the Funding is unspent at the end of the Project, or has been spent while the Recipient is ineligible to spend that Funding, the Recipient agrees to repay that amount to the State upon written request.
- 7.2 The amount to be repaid under clause 7.1 may be set-off or deducted by the State from subsequent payments of the Funding.

8. Reports, record keeping, access and audit

- 8.1 The Recipient agrees to:
- (a) submit a Report, that is satisfactory to the State, as required under the Agreement;
 - (b) maintain records of the expenditure of the Funding;
 - (c) provide a Financial Acquittal Statement in relation to the expenditure of the Funding, and details of the Recipient Contribution to the Project, if requested by the State;
 - (d) provide any information reasonably requested by the State;
 - (e) provide information regarding the Project and the Primary Researcher's research employment for up to 24 months after submitting the Report, if requested by the State; and
 - (f) allow the State's employees, contractors and agents to access the premises and inspect records, documentation related to the Project and/or audit the performance of the Project, upon reasonable notice.

9. Privacy

- 9.1 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.
- 9.2 The Recipient consents and must ensure its personnel (including the Primary Researcher) consent to their Personal Information being used and disclosed by the State in accordance with the Agreement.

10. Confidentiality

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

11. Insurance

The Recipient agrees to maintain adequate insurance, (including at least \$10 million public liability insurance,

and workers compensation insurance) for the duration of the Project, and provide the State with proof if requested.

12. Indemnities

- 12.1 Subject to clause 12.4, the State's liability in connection with the Agreement is limited in aggregate to the Funding amount.
- 12.2 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.
- 12.3 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.
- 12.4 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.

13. Dispute resolution

- 13.1 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.
- 13.2 The Parties agree to continue to perform their respective obligations under the Agreement while a dispute exists.
- 13.3 The procedure for dispute resolution does not apply to seeking urgent interlocutory relief.

14. Termination for default

- 14.1 The State may terminate the Funding immediately by notice where it reasonably believes the Recipient:
- (a) has breached the Agreement, if the State reasonably considers such breach is not capable of remedy;
 - (b) has submitted information in the Application which is found to have been false or misleading in a material particular;
 - (c) has failed to maintain satisfactory progress towards the Project goals;
 - (d) has become (or the Primary Researcher has become) ineligible for Funding;
 - (e) has withdrawn (or the Primary Researcher 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.

14.2 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.

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

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

15. Termination for convenience

15.1 The State may terminate the Project by 15 business days' notice, due to a change in government policy.

15.2 The Recipient agrees on receipt of a notice of termination under clause 15.1, to stop the performance of its obligations as specified in the notice, and take all available steps to minimise loss resulting from that termination.

15.3 In the event of termination under clause 15.1, the State will be liable only to:

- (a) pay any part of the Funding due and owing for activities satisfactorily performed, to the Recipient 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 15.3(a).

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

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

16. Survival

16.1 Clauses 3, 5, 7, 9, 10, 12, 14, 15, 16 & 17 survive termination or expiry of the Agreement.

17. GST

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

17.2 A Party need not make a payment for a taxable supply until it receives a tax invoice (or adjustment note) for that supply.

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

18. General

18.1 **Governing Law** – The 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.

18.2 **Entire agreement** – The Agreement constitutes the entire agreement between the Parties and supersedes all communications between the parties.

18.3 **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.

18.4 **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.

18.5 **Variation** – Subject to clause 2.2(f) and (g), the Agreement may only be varied in writing signed by both Parties.

18.6 **Subcontracting** – The Recipient must not transfer, assign or subcontract its obligations without the prior written approval of the State, which may be given subject to conditions.

19. Definitions

19.1 Under the Agreement, unless the contrary appears:

Agreement means these Terms and Conditions, the Guidelines, the Offer and the Application. The Terms and Conditions prevail over the other documents to the extent of any inconsistency, and the Offer prevails over the Application to the extent of any inconsistency.

Application means the Advance Queensland Women's Research Assistance Program funding application document and any annexures to it.

Completion Date means the date or event specified in the Application for completion of the Project.

Confidential Information means information of a Party relating to the Agreement 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 the Agreement.

Financial Acquittal Statement means an official financial statement detailing the receipt and expenditure of the Funding, and the receipt and expenditure of the agreed Recipient Contribution as specified in the Offer.

Funding means the Advance Queensland Women's Research Assistance Program money, or any part of it, payable by the State to the Recipient as specified in the Offer.

Guidelines means the Advance Queensland Women's Research Assistance Program guidelines document published by the State.

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

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.

Offer means an email or letter from the State stating that the Application has been approved, and providing details of the approved Funding from the State and the Recipient's Contribution.

Party means the State or the Recipient (as the context requires) and **Parties** means both of them.

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

Primary Researcher means the researcher supported through maternity or adoption funding under this Agreement.

Project means the maternity leave or adoption leave and research undertaken by replacement research staff during the leave period as specified in the Application, and performed under this Agreement.

Recipient Contribution means the amount of Recipient organisation's own cash funds to be contributed to the Project as set out in the Offer.

Report means a written report in a format notified by the Department which includes, but is not limited to:

- (a) details of staff employed to undertake the Primary Researcher's research while she is on leave, including the names of staff, their position and

- their full-time equivalence employment status;
- (b) details of the research activities completed by the staff appointed under the Project; and
- (c) details of the outcomes for the Project with respect to the Primary Researcher, and the relief staff.

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

18.2 In this Agreement, 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 provisions of the Agreement;
- (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.