



ADVANCE QUEENSLAND IGNITE IDEAS FUND FINANCIAL INCENTIVE AGREEMENT

made between:

State of Queensland through the Department of Tourism, Innovation and Sport

(ABN 83 481 966 722) ('THE DEPARTMENT')

and:

Name of recipient (ABN

) ('THE RECIPIENT')

BACKGROUND:

- A. The Department administers the Advance Queensland Ignite Ideas Fund (the Fund) which supports small to medium size businesses that have high-growth potential to undertake commercialisation projects that will strengthen key industries in Queensland; diversify the Queensland economy; compete in global markets; engage and/or benefit regional Queensland; and, create new jobs.
- B. The Recipient applied for Funding for the Project under the Fund.
- C. The Department has agreed to provide the Funding to the Recipient for the Project on the terms of this Agreement.

AGREED TERMS:

1. Recipient Obligations

- 1.1 The Recipient agrees to undertake the Project in accordance with this Agreement.
- 1.2 In undertaking the Project, the Recipient must:
 - (a) exercise reasonable diligence, care and skill;
 - (b) make the Recipient Contribution;
 - (c) provide the required information and reports specified in this Agreement;
 - (d) undertake the relevant Project milestone activities specified in Item 10 of Schedule 1;
 - (e) not assign, transfer or subcontract its obligations;
 - (f) notify the Department of any breach of these terms or any matter that may affect the performance of the Project; and
 - (g) comply with all relevant laws.

2. Acknowledgements

- 2.1 The Recipient agrees to acknowledge the Department's support in Material published in connection with this Agreement.
- 2.2 The Department may publicly disclose the Recipient, Funding and Project details and outcomes (subject to notified commercial in confidence restrictions).

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

3. Notices

- 3.1 The Parties agree to notify the other Party of anything reasonably likely to affect the performance of the Project or otherwise required under this Agreement.
- 3.2 A notice under this Agreement must be in writing, and sent to the Party at their address specified in Item 11 of Schedule 1.

4. Relationship between the Parties

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

5. Payment

- 5.1 The Department agrees to pay the Funding to the Recipient in accordance with Item 9 of Schedule 1 upon the Recipient:
 - (a) completing the relevant Project milestone activities;
 - (b) making the Recipient Contribution;
 - (c) providing any relevant due report;
 - (d) providing the Department with a valid tax invoice, and
 - (e) complying with this Agreement;to the Department's reasonable satisfaction.
- 5.2 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 the Project.
- 5.3 A notice under clause 5.2 will contain the reasons for any payment being withheld and the steps the Party can take to address those reasons.
- 5.4 The Department will pay the withheld amount once the Party has satisfactorily addressed the reasons contained in a notice under clause 5.2.
- 5.5 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 remaining amount upon receiving evidence of expenditure of the unspent Funding.

- 5.6 The Recipient agrees that any request for changes to the Recipient organisation details, including Australian Business Number and bank account details must be made in writing within 20 Business Days of the change taking effect and that it will assist the Department in undertaking any required verification of the new details.

6. Spending the Funding

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

7. Repayment

- 7.1 If any of the Funding has been spent other than in accordance with this Agreement or any amount of the Funding is additional to the requirements of the Project, the Recipient agrees to repay that amount to the Department.
- 7.2 The amount to be repaid under clause 7.1 may be deducted by the Department from subsequent payments of the Funding.

8. Reporting, Record keeping, access and audit

- 8.1 The Recipient agrees to:
- (a) maintain records of the expenditure of the Funding;
 - (b) provide each required Milestone Progress Report by the due date specified in Item 9 of Schedule 1;
 - (c) provide an update report, at the Department's request, up to 12 months after the Project End Date;
 - (d) provide any information reasonably requested by the Department; and
 - (e) allow the Department's employees, contractors and agents to access the premises and inspect records and Project documentation and/or audit the performance of the Agreement, upon reasonable notice

to the satisfaction of the Department.

9. Intellectual Property

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

10. Privacy

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.

11. Confidentiality

The Parties agree not to disclose each other's

confidential information without prior written consent, unless required or authorised by law or Parliament.

12. Insurance

The Recipient agrees to maintain adequate insurance, (including at least \$10 million public liability insurance, and workers compensation insurance) for the duration of this Agreement and provide the Department with proof when requested.

13. Indemnities

- 13.1 Subject to clause 13.3, 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's and its employees, contractors and agents act or omission; or
 - (c) the Recipient's breach of the Agreement.
- 13.3 The Recipient's obligation to indemnify the 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. Dispute resolution

- 14.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.
- 14.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.
- 14.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

15. Termination for default

- 15.1 The 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 support of the Application or in the Application itself which is found to have been false or misleading in a material particular;
 - (c) has failed to maintain satisfactory progress towards completion of the Project;

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

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

15.3 Upon termination or expiration of the Agreement, the Recipient must:

- (a) deliver all reports to the Department that are due under this Agreement at the date of termination or expiration (within 20 Business Days); and
- (b) repay any unspent or legally uncommitted Funding, or Funding not spent in accordance with this Agreement, which will be a debt due to and recoverable by the Department.

16. Termination for convenience

16.1 The Department may terminate this Agreement by 15 Business Days' notice, due to a change in government policy.

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

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

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

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

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

17. Survival

Clauses 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17 survive termination or expiry of this Agreement.

18. GST

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

18.2 A Party need not make a payment for a taxable

supply until it receives a tax invoice (or adjustment note) for that supply.

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

19. General

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

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

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

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

19.5 **Variation** - This Agreement may only be varied in writing with the agreement of both Parties. Changes to the Agreement can be requested by the Recipient via submission of a Variation Request Form.

19.6 **Term** – The Term of this Agreement is the period from the Agreement Start Date and concluding on the Agreement End Date, unless terminated earlier in accordance with this Agreement.

20. Definitions

20.1 In this Agreement, unless the contrary appears:

- **Agreement** means this deed document and any schedules or attachments to it;
- **Agreement End Date** means the date on which this Agreement will end as specified in Item 4 of Schedule 1;
- **Agreement Start Date** means the date this Agreement is signed by the last Party to sign this Agreement;
- **Application** means the funding application documents submitted by the Recipient to the Department that formed the basis of the approval for the provision of Funding for the Project including the Expression of Interest and the Full Application attached as Schedule 2;
- **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** means information of a Party relating to this Agreement or the Project

that by its nature is confidential, or the recipient knows or ought to know is confidential; and excludes information which is publicly known, other than by breach of this Agreement;

- **Funding** means the money, or any part of it, payable by the Department to the Recipient as specified in Item 7 of Schedule 1;
- **Guidelines** means the Ignite Ideas Fund Guidelines published by the Department and attached as Schedule 3.
- **Information Privacy Principle** has the same meaning as in the *Information Privacy Act 2009*.
- **Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).
- **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.
- **Milestone Period** means the period of time within the Project as set out in Item 10 of Schedule 1.
- **Milestone Progress Report** means a report on Project progress during the specified Milestone Period in terms of activities undertaken, outcomes achieved and expenditure incurred as contained in a Financial Acquittal Statement in a format specified by the Department using its online grants management system.
- **Party** means the Recipient or the Department, as the context requires, and **Parties** means both of them.
- **Personal Information** has the same meaning as in the *Information Privacy Act 2009*.
- **Project** means the project activities described in the Application.
- **Project Material** means any Material, other than reports, created or developed by the Recipient as a result of the Project.
- **Project End Date:** means the date that the Project will end as set out in Item 6 of Schedule 1.
- **Project Start Date:** means the date that the Project will start as set out in Item 5 of Schedule 1.
- **Recipient** means the legal entity specified in the Application to carry out the Project and includes, where relevant, its officers, employees, contractors and agents.
- **Recipient Contribution** means the cash contribution that the Recipient is required to make to the Project as specified in Item 8 of Schedule 1;
- **State** means the State of Queensland as

represented by the Department of Tourism, Innovation and Sport, and includes, where relevant, its officers, employees, contractors and agents.

- **Variation Request Form** means a form in a format specified by the Department using its online grant management system.

20.2 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.

21. Counterparts

- 21.1. This Agreement may be executed in two (2) counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which shall constitute one and the same instrument.
- 21.2. Delivery of an executed counterpart of this Agreement by email delivery in portable document form (PDF) shall be equally effective as delivery of a manually executed counterpart thereof.

SCHEDULE 1 – PROJECT DETAILS

1	Project Title:	XXXX XXXX XXXXX XXXXX XXXXX			
2	Project Description:	XXXX xxx xxxxx xxx xxxx.			
3	Agreement Start Date:	The date this Agreement is signed by the last Party to sign this Agreement.			
4	Agreement End Date: (clause 20.1)	XX Xxx XXXX <Project End date plus 3 months>			
5	Project Start Date:	XX/XX/XXXX			
6	Project End Date	XX Xxx XXXX <Final Milestone Progress Report due date>			
7	Funding (GST exclusive):	\$XXX,XXX			
8	Recipient Contribution: (clause 20.1)	\$XXX,XXX			
9	Payments:	Payment Number	Deliverable	Due Date	Amount (GST exclusive)
		1	Execution of this Agreement	Agreement Start Date	\$XX,XXX
		2	Submission of <i>Milestone 1 Progress Report</i>	XX Xxx XXXX	\$XX,XXX
		3	Submission of <i>Milestone 2 Progress Report</i>	XX Xxx XXXX	\$XX,XXX
		4	Submission of <i>Milestone 3 Progress Report</i>	XX Xxx XXXX	\$XX,XXX
		5	Submission of <i>Milestone 4 Progress Report</i>	XX Xxx XXXX	\$XX,XXX
10	Milestones:	Milestone Number	Milestone Activities and Outcomes	Milestone Period	
		1	Planned Activities <ul style="list-style-type: none"> • Xxx Expected Outcomes <ul style="list-style-type: none"> • Xxx 	Six months	
		2	Planned Activities <ul style="list-style-type: none"> • Xxx Expected Outcomes <ul style="list-style-type: none"> • Xxx 	Six months	
		3	Planned Activities <ul style="list-style-type: none"> • Xxx Expected Outcomes <ul style="list-style-type: none"> • Xxx 	Six months	
		4	Planned Activities <ul style="list-style-type: none"> • Xxx Expected Outcomes <ul style="list-style-type: none"> • Xxx 	Six months	
11	Contact Officers:	For the Recipient: XXXXXX XXXXXXXXXXXX Name Street Address Postal Address Email	For the Department: XXXXXX XXXXXXXXXXXX Department of Tourism, Innovation and Sport Level 3, Terrica Place, 140 Creek Street, Brisbane QLD 4000 PO Box 15168, City East QLD 4002 Recipients.igniteideasfund@ditid.qld.gov.au		

SCHEDULE 2 – APPLICATION

SCHEDULE 3 – GUIDELINES

EXECUTED AS A DEED by the Parties on the dates set out below.

SIGNED, SEALED AND DELIVERED for and on behalf of <the **Recipient**> (ABN: XX XXX XXX XXX) by:

.....(signature)

.....(name)

.....(position)

.....(date)

A duly authorised person, in the presence of:

.....(signature of witness)

.....(name of witness)

SIGNED, SEALED AND DELIVERED for and on behalf of **State of Queensland** through the Department of Tourism, Innovation and Sport (ABN 83 481 966 722) by:

.....(signature)

.....(name)

.....(position)

.....(date)

A duly authorised person, in the presence of:

.....(signature of witness)

.....(name of witness)