



## ENGAGING SCIENCE GRANTS PROGRAM 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 Engaging Science Grants program to support teachers, scientists, organisations, citizen science groups and community groups to deliver STEM-based (science, technology, engineering and mathematics) events, educational activities, or citizen science projects to tackle important issues in Queensland, and support the vision of the Engaging Queenslanders in science strategy (2021-2024).

### 1. Relationship between the Parties & Term

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 Commencement Date and ends on the Agreement End Date, unless terminated earlier in accordance with clauses 11 or 12.

1.3 For the avoidance of doubt the terms and conditions in this Agreement are not binding on any party until the Funding Offer is signed by both parties.

### 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) commence the Project by the Project Start Date and complete the Project by the Project End Date;
- (b) exercise all reasonable diligence, care and skill in carrying out the Project, including standards of professional care and diligence of the industry to which the Recipient belongs;
- (c) spend the Funding for the purpose of the Project and in accordance with the Agreement;
- (d) not replace the Project Leader named in the Application with another person, without notifying the Department;
- (e) provide required information, reports and financial acquittals by their relevant due dates;
- (f) meet the Milestones by the relevant Milestone due date;
- (g) maintain timely progress in the performance of the Project and complete the Project, including providing updates to the Department upon request, during the Term;
- (h) 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;
- (i) notify the Department of any breach of these terms or any matter that may affect the performance of the Agreement;

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- (j) comply with all relevant laws;
- (k) ensure that during the Project it implements and maintains an anti-Cyberbullying policy and process for the detection, prevention, intervention, reporting and management response of Cyberbullying acts or allegations; and
- (l) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland and/or the Project and Program.

### 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 notify the Department of any Partner Organisation's assistance for the Project, including financial or in-kind contributions.

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 Engaging Science Grants Final Report by the due date set out in the Funding Offer at Item 11, to the reasonable satisfaction of the Department;
- (b) maintain records of expenditure of the Funding;
- (c) provide Financial Acquittal Statements in relation to expenditure of the Funding and a

valid tax invoice as required by this 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 Recipient's premises and inspect records and documentation related to this Agreement and/or audit the performance of this Agreement, upon reasonable notice.

### 4. Payment

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

- (a) meeting the Milestones by the relevant due date set out in the Funding Offer;
- (b) providing the Engaging Science Grants Final Report and Financial Acquittal Statement by the relevant due date;
- (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 clause 4.1.

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 Engaging Science Grants Program Final Report or Financial Acquittal Statement reveals that the Recipient holds unspent Funding. The Department may, at its discretion, pay the

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deferred or withheld funding upon receiving evidence of expenditure of the unspent Funding, to its satisfaction, subject to clause 5.1.

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 unspent at the end of the Project, 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 set-off or 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 Intellectual Property Rights:

- (a) in the Engaging Science Grants Final Report vest upon creation in the Department; and
- (b) in the Project Material will vest upon creation in the Recipient.

6.3 The Recipient must:

- (a) use its best endeavours to make the Project Material (except for restricted information such as threatened species locations) available to the public; and
- (b) share the Project outcomes and published Project Material with the citizen scientists involved in the Project, if applicable.

6.4 The Recipient grants to the Department:

- (a) a perpetual, non-exclusive, royalty-free licence (including right of sublicense) to use, adapt, reproduce, publish and exploit any Project Material which has been produced by

or on behalf of the Recipient for any non-commercial purpose of the Department.

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 those persons comprised in such 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 Funding and the general details and outcomes 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.

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7.4 The Recipient agrees to acknowledge the support of its citizen scientists involved in the Project in Material published in connection with this Agreement and in peer reviewed publications.

7.5 Notwithstanding any other provision of this Agreement and unless otherwise notified by the Department in writing, the Recipient must not make any public statement, announcement or publish any material about the success or otherwise of their application for the Funding, this Agreement or the Project, prior to a public announcement being made by either the Department or the Minister.

### 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 this Agreement.

### 9. Confidentiality

9.1 A Disclosee 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:
- (e) to its personnel who are aware that the Confidential Information is confidential and are subject to the same obligations of confidentiality as the Disclosee 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 Disclosee's professional advisers;
- (f) 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, and
- (g) where the Department is the Disclosee:
- (i) to the responsible Minister administering the Department and their personal and departmental advisors;
  - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland; or
  - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability processes.

### 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 seeking 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;

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- (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) notifies the Department that it is unable/unwilling to continue with 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 on 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 and information due under this Agreement at the date of termination or expiration;
- (b) 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.

### 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 12 of the Funding Offer, 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 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 be only varied in writing, signed by the Parties.

#### 16.6 Force Majeure

(a) 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.

(b) If a Party is prevented from performing the Project by a Force Majeure for a continuous period of 3 months, either party may terminate this agreement by 30 days written notice to the other party.

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:

**Agreement** means:

- (a) the Terms and Conditions (including the Funding Offer);
- (b) the Application; and
- (c) the Guidelines,

and take precedence in that descending order, to the extent of any inconsistency between those documents.

**Agreement Commencement Date** means the date set out in Item 8 of the Funding Offer.

**Agreement End Date** means the date set out in Item 9 of the Funding Offer.

**Application** means the Engaging Science Grants funding application submitted by the Recipient, as amended and as approved by the Department, and any annexures to it.

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**Background Material** means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Project and are:

- (a) in existence at the Agreement Commencement Date; or
- (b) brought into existence after the Agreement Commencement Date other than as a result of the performance of the Project.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) in Brisbane, Queensland.

**Confidential Information** means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Disclosee) that:

- (a) is by its nature confidential;
- (b) is designated or marked by the Discloser as confidential; or
- (c) the Disclosee knows or ought to know is confidential. and includes the terms of this agreement and any information provided or received by a party pursuant to this agreement but does not include information which:
- (d) is or becomes public 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.

**Cyberbullying** means the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group, that is intended to harm others.

**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.

**Engaging Science Grants Final Report** means a report the Recipient is required to prepare and the Project Leader is required to endorse, for submission 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 in connection with carrying out the Project.

**Force Majeure** means any circumstances, other than an industrial dispute, 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 but only to the extent that:

- (a) despite the exercise of reasonable diligence it cannot be (or be caused to be) prevented, avoided or removed by the Affected Party;
- (b) it materially adversely affects (in cost and/or time) the Affected Party's ability to perform its obligations under this agreement;
- (c) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of the circumstance on its ability to perform its obligations under this agreement (and to mitigate the consequences of it); and
- (d) the circumstance is not the direct or indirect result of the Affected Party's failure to perform any of its obligations under this agreement, and includes:
  - (i) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mudslides, explosions, fires or other natural disasters, pandemics, epidemics, acts of war, acts of public enemies, riots, civil commotions, malicious damage, invasions, sabotage, blockades and revolution;
  - (ii) strikes, lockouts, work bans, blockades or picketing, limitation of work or other industrial disturbance, other than an industrial dispute; and

the failure of a third party to supply goods, works or utilities provided such a failure is due to a Force Majeure event affecting the third party. **Funding** means the money, or any part of it, payable by the Department to the Recipient as specified in Item 10 of the Funding Offer.

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**Funding Offer** means the document containing the details of the Applicant's Project and which will form Annexure 1 to these terms and conditions, upon the execution of the Funding Offer by the parties.

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority.

**Guidelines** means the Engaging Science Grants program guidelines published by the Department

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

**Intellectual Property Rights** means all intellectual property rights, whether created before or after the Agreement Commencement Date, including:

- (a) plant breeders' rights, patents, copyright, rights in circuit layouts, trade marks, registered designs and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

**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., which may comprise Background Material and/or Project Material.

**Milestones** means the milestones specified in Item 14 in the Funding Offer.

**Partner Organisation** means an organisation 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.

**Program** means the Engaging Science Grants Program.

**Project** means the project description outlined in Item 4 of the Funding Offer.

**Project End Date** means the date specified in Item 7 of the Funding Offer being the date the Project is completed.

**Project Leader** means the person named in the Funding Offer at Item 3 as the primary person to lead the performance of the Project.

**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 Recipient in the course of undertaking the Project.

**Project Start Date** means the date specified in Item 6 of the Funding Offer 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 the Funding Offer, and includes, where relevant, its officers, employees, contractors, agents, volunteers and invitees.

**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;

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- (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 13 of the Funding Offer.

### 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.