

COMMUNITY GRANT TERMS

GenQ Health and Wellbeing Community Grants Scheme

1. Term

The Agreement commences on the Agreement Start Date and continues until completion of the Project (**Term**).

2. Recipient Obligations

2.1 The Recipient agrees to perform the Project in accordance with this Agreement.

2.2 The Recipient must:

- (a) commence the Project by the Project Commencement Date;
- (b) exercise reasonable diligence, care and skill when conducting the Project;
- (c) provide the Recipient's Contribution, and ensure that each Collaborator provides the relevant Contribution(s) to the Project in accordance with item 6 of the Details and the funding principles in the Grant Guidelines;
- (d) provide the required information and reports specified in this Agreement;
- (e) perform the Project and deliver the Deliverables in accordance with the timeframes in the Details and complete the Project on or before the Project Completion Deadline ;
- (f) notify HWQld of any breach of these terms or any matter that may affect the performance of the Project;
- (g) comply with all relevant laws;
- (h) comply with the Grant Guidelines and HWQld's reasonable directions and requests; and
- (i) communicate with HWQld's contact and provide information as reasonably required by HWQld.

3. Acknowledgements

3.1 The Recipient agrees to acknowledge HWQld's support in Material published or public statements made in connection with this Agreement. Before the Recipient releases a public statement or publishes any such Material, it must:

- (a) at least 10 Business Days before the proposed publication or statement, provide to HWQld a copy of the proposed statement or publication; and

- (b) comply with all requests, amendments and conditions reasonably required by HWQld.

3.2 HWQld may publicly disclose the name of the Recipient and Collaborators, Funding and Project details and outcomes, subject to clause 13.

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

4. Disclosure of material issues

The Recipient must promptly notify HWQld:

- (a) of anything reasonably likely to affect the performance of the Project; or
- (b) if a conflict of interest arises during the Term.

5. Relationship between the Parties

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.

6. Payment of Funding

6.1 HWQld agrees to pay the Funding to the Recipient in accordance with Item 11 of the Details within 30 days of receipt of a correctly rendered invoice. A correctly rendered invoice means the Recipient has:

- (a) performed the Project and delivered the Deliverables in accordance with the timeframes in the Details;
- (b) made the Recipient Contribution;
- (c) provided any relevant due report;
- (d) provided HWQld with a valid tax invoice; and
- (e) complied with this Agreement to HWQld's reasonable satisfaction.

6.2 HWQld 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.

6.3 A notice under clause 6.2 will contain the reasons for any payment being withheld and the steps the Recipient can take to address those reasons.

6.4 HWQld will pay the withheld amount once the Recipient has satisfactorily addressed the

reasons contained in a notice under clause 6.2.

- 6.5 HWQld may defer or reduce the amount of a payment where a Project report or Financial Acquittal Statement reveals that the Recipient holds unspent Funding. HWQld will pay the deferred or remaining amount upon receiving evidence of expenditure of the unspent Funding.
- 6.6 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 HWQld in undertaking any required verification of the new details.

7. Spending the Funding

- 7.1 The Recipient must, and must ensure that any Collaborator, only uses the Funding:
- (a) for the purpose of undertaking the Project;
 - (b) for eligible expenses under the Grant Guidelines;
 - (c) in accordance with the Budget; and
 - (d) otherwise in accordance with this Agreement.

8. Assets

The Recipient must:

- (a) not use the Funding to purchase assets unless authorised in the Budget.
- (b) be the legal and beneficial owner of any Asset purchased either in whole or part using the Funding.
- (c) only use the Asset in accordance with this Agreement and consistent with the purposes of the Project; and
- (d) maintain, at its expenses:
 - (i) all Assets in good working order; and
 - (ii) all applicable registration and licensing of the Assets.

9. Repayment

- 9.1 If any of the Funding:
- (a) has been spent other than in accordance with this Agreement; or
 - (b) is unspent or additional to the requirements of the Project,
- the Recipient agrees to repay the relevant amount to HWQld, within 10 Business Days of a request by HWQld.
- 9.2 The amount to be repaid under clause 9.1 may be deducted by HWQld from subsequent payments of the Funding.

10. Reporting, Record keeping, access and audit

- 10.1 The Recipient agrees to:
- (a) hold the Funding in an account in the Recipient's name and in the Recipient's sole control;

- (b) maintain records of the expenditure of the Funding;
- (c) provide each Report in Item 12 of the Details by the due date;
- (d) provide any other information reasonably requested by HWQld; and
- (e) allow HWQld's employees, contractors and agents to access the Recipient's premises and inspect records and Project documentation and/or audit the performance of the Agreement, upon reasonable notice.

11. Intellectual Property

- 11.1 Nothing in this Agreement affects ownership of Intellectual Property Rights in Background Material.
- 11.2 Intellectual Property Rights in Project Material vest in or are assigned to the Recipient.
- 11.3 The Recipient grants HWQld an irrevocable, non-exclusive, royalty-free, worldwide, perpetual licence (including a right of sublicense) to exercise Intellectual Property Rights in:
- (a) the Project Material; and
 - (b) Background Material, including as part of Project Material (including any future development of it)
- for HWQld's non-commercial purposes.

12. Privacy

- 12.1 If the Recipient collects or has access to Personal Information in performing the Project, the Recipient must:
- (a) comply with those parts of Chapter 2 of the Information Privacy Act 2009 (Qld) that are applicable to HWQld in relation to the discharge of its obligations under this Agreement (including its obligations regarding reports), as if the Recipient was HWQld; and
 - (b) not transfer Personal Information outside of Australia without HWQld's prior written consent.
- 12.2 The Recipient must immediately notify HWQld if the Recipient becomes aware of any actual or suspected unauthorised access to, or unauthorised disclosure of, Personal Information or if any Personal Information is lost.

13. Confidentiality

- 13.1 The Parties agree not to disclose each other's Confidential Information without prior written consent, unless required or authorised by law or Parliament, or to exercise rights under this Agreement.
- 13.2 Clause 13.1 does not prevent HWQld disclosing the Recipient's Confidential Information to:
- (a) its Personnel;
 - (b) any department, agency, authority, or Minister (including their personal and departmental advisers) of the

- Queensland or Commonwealth governments; or
- (c) any person, where disclosure is consistent with established governmental policies, procedures or protocols or for public accountability purposes.

13.3 HWQld may use Confidential Information for the purposes of this Agreement and its internal non-commercial purposes.

14. Insurance

The Recipient agrees to maintain adequate insurance (including public liability insurance, and workers compensation insurance) for the Term and provide HWQld with proof when requested.

15. Indemnities

15.1 HWQld's liability in connection with this Agreement is limited in aggregate to the Funding amount.

15.2 The Recipient is liable for and indemnifies HWQld and its Personnel against any claim, loss or damage arising out of or in connection with:

- (a) the Project;
- (b) the acts or omissions of the Recipient or its Personnel;
- (c) any breach of the Agreement by the Recipient or its Personnel;
- (d) a claim by any third party that a Deliverable, or HWQld or another person using or performing other acts in connection with a Deliverable in accordance with the Agreement, infringes any Intellectual Property Rights or other rights of that third party.

15.3 The Recipient's obligation to indemnify HWQld and its Personnel will reduce proportionally to the extent any act or omission involving fault on the part of HWQld or its Personnel contributed to the claim, loss or damage.

15.4 HWQld and its Personnel 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.

16. Dispute resolution

16.1 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.

16.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.

16.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

17. Termination for default

17.1 HWQld may terminate this Agreement in whole or in part immediately by notice to the Recipient if the Recipient:

- (a) breaches this Agreement and:
 - (i) the breach is not capable of remedy;
 - (ii) or the breach is capable of being remedied but the Recipient fails to remedy the breach within 10 Business Days after receiving a notice requiring it to do so;
- (b) has submitted information in support of the Grant Application or in the Grant 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;
- (f) fails to notify HWQld of a conflict of interest, or take steps to resolve or otherwise deal with the conflict of interest, or the conflict of interest is not capable of resolution; or
- (g) has become subject to any form of insolvency administration.

18. Termination for convenience

18.1 HWQld may terminate this Agreement in whole or in part for convenience by giving the Recipient at least 30 days written notice.

18.2 In the event of termination under clause 18.1, the Recipient will be entitled to reasonable stranded costs (if any) incurred by the Recipient that are directly attributable to the termination and cannot be mitigated or avoided by the Recipient.

18.3 HWQld's liability to pay any amount under clause 18.2 is subject to:

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

19. Consequences of termination

19.1 The Recipient agrees on receipt of a notice of termination, to stop the performance of its obligations in relation to the part of the Agreement being terminated, and take all available steps to minimise loss resulting from that termination.

19.2 Within 3 months after the termination of the Agreement, the Recipient must deliver all reports to HWQld that are due under this Agreement at the date of termination.

20. Pre-existing rights and survival

20.1 Termination of this Agreement does not affect any accrued rights or remedies of a Party.

20.2 Clauses 3, 9, 10, 11, 12, 13, 15, 19, 20, 21 and 24 survive termination or expiry of this Agreement.

21. Transition

The Recipient must, on request, provide all assistance requested by HWQld to facilitate

the smooth transition of any relevant information, knowledge, systems or Assets from the Recipient to HWQld or to a third party nominated by HWQld, including (if requested by HWQld) development of and compliance with a transitional plan.

22. GST

22.1 Where GST is payable by an entity in relation to a supply that it makes under or in connection with this Agreement, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.

22.2 Except as provided by this clause 21, the Recipient must pay all taxes, duties and charges imposed or levied in connection with the performance of this Agreement.

23. Notices

A notice under this Agreement must be in writing and sent to the Party at their address specified in Item 1 or Item 2 (as relevant) of the Details.

24. General

24.1 **Assignment and novation** - The Recipient must not novate, assign, transfer or subcontract its obligations without the prior written consent of HWQld.

24.2 **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.

24.3 **Entire Agreement** – The Agreement constitutes the entire agreement between the Parties in connection with the subject matter and supersedes all agreements or understandings between the Parties in connection with its subject matter.

24.4 **Waiver** – No right under the Agreement will 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.

24.5 **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.

24.6 **Variation** - Except as provided otherwise by this Agreement, this Agreement may only be varied by written agreement signed by both Parties.

24.7 Counterparts –

(a) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

- (b) In addition to any other valid method, signed counterparts may be exchanged by electronic transmission.
- (c) The parties consent to the use of electronic signatures in the execution of this agreement.

25. Definitions

25.1 In this Agreement, unless the contrary appears:

- **Agreement** means the Community Grant Agreement.
- **Agreement Start Date** means the date the Details are signed by the last Party to sign the Details.
- **Asset** means the items of property (if any) specified in the Budget.
- **Background Material** means Material, other than Project Material, that is disclosed, provided or made available by or on behalf of a Party for the purpose of carrying out the Project, whether before or after the date of this Agreement.
- **Budget** means the budget for the Project in item 10 of the Details or, if no details are provided in that item, means the budget set out in the Grant Application.
- **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane, Queensland.
- **Collaborator** means each person identified in item 5 of the Details.
- **Confidential Information** of a Party (**Discloser**) means information in any form that is disclosed by or on behalf of the Discloser directly or indirectly to the other Party or its Personnel (**Disclosee**) that by its nature is confidential, or the recipient knows or ought to know is confidential; and excludes information which is or becomes public knowledge, other than by breach of this Agreement or another confidentiality obligation, the Disclosee can demonstrate was independently developed by the Discloser or the Disclosee receives from a third party, except through breach of a confidentiality obligation.
- **Contributions** means those cash and non-cash/in-kind contributions made, or to be made to the Project by the Recipient and each Collaborator (if applicable) in accordance with item 6 of the Details.
- **Deliverable** means:
 - (a) anything supplied or required to be supplied or achieved by the Recipient under this Agreement;
 - (b) Project Material; or
 - (c) an Asset.
- **Details** means the Community Grant Details.

- **Financial Acquittal Statement** means a report regarding the Recipient's expenditure of the Funding in performing the Project.
 - **Funding** means the money, or any part of it, payable by HWQld to the Recipient as specified in Item 9 of the Details.
 - **Grant Application** means grant application submitted by the Recipient to HWQld and as approved by HWQld attached to the Details.
 - **Grant Guidelines** means the guidelines for the GenQ Health and Wellbeing Community Grants Scheme as published or otherwise made available by HWQld.
 - **infringement** of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.
 - **Intellectual Property Rights** means all intellectual property rights including:
 - (a) copyright, patents, registered and unregistered trade marks (including service marks), registered designs;
 - (b) any application or right to apply for registration of the rights referred to in paragraph (a); and
 - (c) all rights of a similar nature to the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
 - **Material** means any thing in any form including 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 HWQld, as the context requires, and Parties means both of them.
 - **Personal Information** has the same meaning as in the Information Privacy Act 2009 (Qld).
 - **Personnel** means an employee, agent, officer, director, volunteer, contractor, subcontractor or other authorised representative of a Party.
 - **Project** means the project activities described in the Grant Application and items 3 and 4 of the Details, and includes the supply of the Deliverables.
 - **Project Commencement Date:** means the date specified in Item 7 of the Details.
 - **Project Completion Deadline:** means the date specified in Item 8 of the Details.
 - **Project Material** means any Material created or developed by or on behalf of the Recipient or a Collaborator in performing the Project.
 - **Term** has the meaning in clause 1.
- 25.2 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) a reference to a government entity includes any successor or replacement government entity;
 - (c) a reference to this Agreement includes the Details (including the Schedule);
 - (d) a reference to a document (including this Agreement) includes the document as altered, amended or replaced from time to time;
 - (e) a reference to a statute includes consolidations, amendments, re enactments and replacements;
 - (f) a reference to "\$" or "dollar" is to Australian currency;
 - (g) a rule of construction does not apply to the disadvantage of a Party because that Party drafted the Agreement provision;
 - (h) 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.
- 25.3 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence to the extent of the inconsistency:
- (a) the Details;
 - (b) these Community Grant Terms;
 - (c) the Grant Guidelines; and
 - (d) the Grant Application.