

# Business Growth Fund

## Round 6 Terms and Conditions

1. The Business Growth Fund program (**Program**) is conducted by the State of Queensland acting through the Department of Employment, Small Business and Training (**DESBT**) under the Business Growth Fund Round 6 Guidelines (**Guidelines**) and under these terms and conditions.
2. DESBT reserves the right to modify or withdraw the Program at its discretion. Any changes to the Program will be publicly announced on Business Queensland website at <https://www.business.qld.gov.au/growth-fund>.

### Definitions

3. In these Terms and Conditions, the following definitions apply:
  - a) **Acquittal Report** means the report, in the form required by DESBT, used by the Grantee to describe how the grant funds were spent.
  - b) **Agreement Acceptance Form** is the form a successful Applicant must submit to certify they accept the Funding Agreement.
  - c) **Agreement Date** means the date the Funding Agreement is formed by the submission of the Agreement Acceptance Form to DESBT.
  - d) **Applicant** means the legal entity applying for financial assistance under the Program.
  - e) **Application** means the formal or official application submitted by the Applicant, including any supporting documentation required by the Guidelines for the Program or otherwise requested by DESBT.
  - f) **Authorised Party** means an individual or individuals who are either formally registered with the Australian Business Register as associated with the Applicant or have provided acceptable evidence of authorisation to act on behalf of the Applicant.
  - g) **Business Days** are weekdays from Monday to Friday, excluding public holidays in Brisbane, Queensland.
  - h) **Confidential Information** means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Receiver) that:
    - a. is by its nature confidential;
    - b. is designated or marked by the Discloser as confidential; or
    - c. the Receiver knows or ought to know is confidential,but does not include information which:
    - d. is or becomes public knowledge other than by breach of this Funding 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.
  - i) **Contribution** is the Grantee's financial contribution to the Total Project Costs stated in the Funding Agreement Letter or as varied under the Funding Agreement.
  - j) **DESBT** means the Department of Employment, Small Business and Training.
  - k) **Duration** means the period from the Agreement Date to the Project End Date.

- l) **Eligibility Criteria** means the criteria defined in the Guidelines that must be met by the Applicant to be deemed eligible for the Program.
- m) **Funding Agreement** means DESBT's written notice to the Applicant approving financial assistance under the Program, and the agreement formed between DESBT and the Applicant, comprised of:
  - a. the Funding Agreement Letter and Agreement Acceptance Form;
  - b. confirmation of ineligible items or expenditure meaning the items and expenditures determined ineligible per the Guidelines and any items not aligned with the approved activities;
  - c. any other terms agreed in writing between parties;
  - d. these terms and conditions;
  - e. the Guidelines; and
  - f. the Application.
- n) **Funding Agreement Letter** is the letter sent by DESBT to a successful Applicant inviting the Applicant to accept the Funding Agreement.
- o) **Grant** means the funding amount for the Project under the Program approved for payment by DESBT.
- p) **Grantee** means the legal entity receiving financial assistance or support per the Funding Agreement.
- q) **Guidelines** are the applicable Program Guidelines as published on the Business Queensland website.
- r) **Milestone Payment** means the payment of an instalment amount of the Grant via electronic funds transfer to the bank account nominated by the Applicant.
- s) **Minister** means the Minister for Employment and Small Business.
- t) **Personal Information** has the same meaning as in the *Information Privacy Act 2009* (QLD).
- u) **Program** means the Business Growth Fund program.
- v) **Project** means the project or activity approved by DESBT for the Funding including any variation approved by DESBT under clause 27.
- w) **Project End Date** means the end date of the Project set out in the Funding Agreement Letter or as varied under the Funding Agreement via an approved Variation Request.
- x) **Project Report** is the report on the progress of the Project in the form required by DESBT under clause 18 c).
- y) **Variation Request** is a written request submitted to DESBT seeking approval to modify the Project.
- z) **Total Project Costs** are the Grantee costs included in expending the Project, that have been approved by DESBT.

## Applications

4. An Applicant can only lodge one Application under this Program.
5. The Applicant must lodge their Application electronically as described in the Guidelines.
6. DESBT may request additional information and documentation from the Applicant to help determine whether the Eligibility Criteria have been met.
7. If the Applicant does not provide DESBT with the requested information and documentation within the specified period, the Application may not be approved.
8. The conduct of inviting Applications does not create a binding agreement or relationship between an Applicant and DESBT.
9. The submission of an Application does not guarantee that the Applicant will be deemed eligible to receive funding.
10. For the avoidance of doubt, an Applicant is not entitled to any damages or compensation arising out of the Application process.



## Assessment

11. An Application may be refused if Program funding has been exhausted or if the Program has been discontinued. Business Queensland will publish information on its website if funding for the Program is no longer available or has been discontinued.
12. An Application may be declined if:
  - a) the Application has not been submitted by an Authorised Party.
  - b) the Application does not meet all of the Eligibility Criteria.
  - c) the Applicant has submitted more than one Application for assessment under this Program at any one time;
  - d) the Applicant is not an eligible business as defined in the Guidelines;
  - e) the Applicant has not submitted all required evidentiary documentation as defined in the Guidelines or otherwise requested;
  - f) the Applicant (and if the Applicant is not an individual, its owners) and the Applicant's management staff have not complied with local, State and Australian laws and regulations; or
  - g) there are public interest issues indicating the Application should not be approved.
13. Information regarding the procedure for an Applicant to request a review of a decision made under clause 12 can be found on the Business Queensland website under 'Decision review process for grant applications'.
14. The Applicant may withdraw their Application or Funding Agreement by submitting a formal request to withdraw. If the Grant has been paid prior to withdrawal by the Applicant, the Applicant must repay the entire Grant to DESBT.
15. DESBT may request additional information from the Applicant for ongoing monitoring, evaluation, reporting and compliance purposes and to support the delivery of other program funding and support services. If the Applicant receives a request for additional information under this clause, the Applicant will provide that information DESBT within 5 business days from the date of the request.
16. The Grantee must:
  - a) complete the grant funded Project within the specified timeframe, unless otherwise agreed in writing by DESBT;
  - b) immediately advise DESBT of any changes to the grant funded Project;
  - c) submit a Project Report after three months or as required by DESBT;
  - d) submit an Acquittal Report between six and twelve months or as required by DESBT;
  - e) refund to DESBT any of the funds paid under clause 21 that are unspent or uncommitted on completion of the grant or termination of the Funding Agreement;
  - f) notify DESBT if Your contact details or business details change; and
17. The Applicant acknowledges that all Queensland Government programs are subject to audit. All records related to the Funding Agreement must be kept for by the Applicant for seven (7) years after lodging the Application and be kept in a way that can be readily produced if required. Relevant records must be provided to the Queensland Government within 5 Business days of the request.

## Application Approval

14. If an Application is approved, the Applicant will receive a Funding Agreement Letter.
15. To formalise the Funding Agreement, the Applicant must submit an Agreement Acceptance Form.

## Payment and GST

20. The Grant is not subject to GST. The Grant is GST-exclusive. The Grantee cannot use any part of the Grant to pay GST.
21. If the Agreement Acceptance Form is submitted, in accordance with clause 15, DESBT will pay the Grant by Milestone Payment, as follows:
  - a) where possible after the Grantee submits an Agreement Acceptance Form – 20% of the Grant;
  - b) 10 business days following a compliant Project Report – 40% of the Grant;
  - c) 20 business days following a compliant Acquittal Report – the balance of the Grant, adjusted if necessary, in line with the Guidelines and Grantee Contribution.
22. If, following payment of a Grant to an Grantee, DESBT:
  - a) becomes aware of any matter; and
  - b) as a result of becoming aware, reasonably determines the Eligibility Criteria were not met for that Grant,DESBT may:
  - c) give written notice to the Grantee of that determination; and
  - d) require the Grantee to repay the Grant.
23. If the Grantee receives a notice under clause 22, the Grantee agrees to repay the payment amount to the Queensland Government within 10 calendar days.
24. To the extent permitted by law, the Grantee releases and indemnifies DESBT and its employees and contractors against any claim of loss or damage brought against them arising directly or indirectly from business activity funded by the Grant.

## Variation to Project

25. A Project may only be varied in accordance with clauses 26 and 27.

26. Before implementing any proposed changes to the Project, the Grantee must submit a Variation Request detailing the proposed changes to the Project.
27. DESBT will consider the Variation Request and notify the Grantee if the Request is approved or not approved. Approval is at the absolute discretion of DESBT and may be subject to conditions. If approved, an Amendment Letter will be issued via email outline the approved change(s).
28. If the Grantee makes changes to the Project without approval from DESBT, DESBT may, at their discretion, terminate the funding agreement.

## Termination and Expiry

29. Either party may terminate the Funding Agreement by written notice with immediate effect if the other party:
  - a) breaches a material term of the Funding Agreement which is not capable of being remedied; or
  - b) breaches a material term of the Funding Agreement which is capable of being remedied and does not remedy that breach within 10 calendar days after receiving notice requiring it to do so.
30. Where the Funding Agreement has been terminated under clause 29, within 20 calendar days of the date of termination, the Grantee must:
  - a) give DESBT a compliant Acquittal Report, including evidence of Grant expenditure or commitment, and
  - b) refund the Grant paid to the Grantee by DESBT under clause 21 less any amount legitimately spent on or committed to the Project prior to the date of termination;
31. Unless terminated under clause 29, this Funding Agreement will expire when each party has completed all its obligations.



## Disputes

32. A party may notify the other party in writing of the occurrence of a dispute (Dispute Notice) and the parties will try to resolve the dispute through negotiation.
33. If a dispute arises and the parties are unable to resolve the dispute within 15 business days from the receipt of the Dispute Notice, the dispute is to be referred to the parties' authorised officers for resolution. Each party will continue to perform its obligations under the Funding Agreement.
34. Clauses 31 and 32 do not apply to action taken by the Applicant under clause 13 or the Department under clauses 22 or 29.

## Acknowledgements

35. If the Application is successful, the Grantee acknowledges that:
  - a) DESBT makes no representations or warranties about the information sources contained in the Guidelines. The Grantee will make their own enquiries before deciding whether the supplier or service provider chosen is suitable for the Grantees needs;
  - b) any products, information, opinions or other assistance provided by the supplier or service provider is in response to the information or material that the Grantee has provided, and that DESBT is not responsible for the accuracy or completeness of this information or material;
  - c) any reliance or other use of the products, information, opinions or other assistance provided by a supplier or service provider shall be entirely at Grantee's own risk;

- d) should the Grantee need products or services in addition (Additional Products or Services) to the products or services forming part of the Project, the Grantee shall be required to negotiate a separate agreement directly with the supplier or service provider. Any arrangement between the Grantee and the supplier or service provider for the provision of Additional Services is not part of the Project and DESBT accepts no responsibility for any such arrangement;
- e) the provision of information or other help by DESBT, the supplier or service provider in relation to the Project does not guarantee the Grantee's success in any business activity; and
- f) the Grantee retains sole responsibility for their actions and decisions (regardless of whether they are based on options or suggestions provided by the supplier or service provider) and will not bring any claim or action against DESBT, should the business activity not achieve its intended goals.

36. DESBT and the Grantee agree that this Funding Agreement does not operate to transfer any intellectual property rights created in the Project to DESBT.

## Other

37. Each party must not disclose the other party's Confidential Information to a third party without the other party's prior written consent, except:
  - a) to its representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
  - b) to its professional advisers who must keep the information confidential;
  - c) as required or permitted by law; or





d) where that party is DESBT, to any relevant Minister (including his/her advisers), the Parliament of the State of Queensland (including Parliamentary Committees), any Australian Government department, Queensland Government department, agency or authority or where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

38. The following clauses survive expiry or termination of the Funding Agreement:

- a) 18 d) (Acquittal Report)
- b) 19 (audits)
- c) 19 (records)
- d) 22 and 23 (Repayment of Funding)
- e) 24 (indemnity);
- f) 24 (liability);
- g) 30 b) (refund)
- h) 31 (obligations after termination);
- i) 35 a) (no representation);
- j) 35 f) (no claim);
- k) 36 (intellectual property);
- l) 37 (confidential information).

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