

# Business Growth Fund

## Round 5 Terms and Conditions

1. The Business Growth Fund grants program (**Program**) is conducted by the State of Queensland acting through the Department of Employment, Small Business and Training (**DESBT**) in accordance with the Business Growth Fund Round 5 Guidelines (**Guidelines**) and on the following terms and conditions.

### Definitions

2. In these terms and conditions:

- a) '**Acquittal Report**' means a report in the form required by DESBT about your financial performance in connection with carrying out the Project.
  - b) '**Applicant**' and/or '**You**' mean/s the entity submitting the Application to DESBT relating to the Project.
  - c) '**Application**' means the official application for a grant submitted by You as part of the Program.
  - d) '**Approval Date**' means the date on the Funding Agreement letter provided by DESBT to You.
  - e) '**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.
  - f) '**Contribution**' is Your financial contribution to the total costs of the Project stated in the Funding Agreement letter.
  - g) '**Duration**' means the period from the Approval Date to the Project End Date.
  - h) '**Eligibility**' means the criteria set out in the Guidelines that the business must meet to be eligible to apply for the Program.
  - i) '**Funding Agreement**' means the funding agreement between DESBT and You which is formed on the Project Start Date and if comprised of:
    - a. the Funding Agreement letter of the Grant from DESBT to You;
    - b. any other terms agreed in writing between the parties;
    - c. these terms and conditions;
    - d. the Guidelines; and
    - e. the Application submitted by You relating to the Project.
- Where any inconsistency exists between these documents, the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.
- j) '**Grant**' means the amount of funding approved by DESBT for the Project set out in the Funding Agreement letter or as varied under this Funding Agreement.
  - k) '**Funding Agreement Letter**' is the letter sent to successful Applicants inviting the Applicant to accept the offer of the Grant.



- l) **'Minister'** means the Minister with responsibility for the Program.
  - m) **'Personal Information'** has the same meaning as in the *Information Privacy Act 2009* (Qld).
  - n) **'Project'** means the project or activity detailed in the Application for which You are seeking a Grant.
  - o) **'Project End Date'** means twelve months from the Approval Date.
  - p) **'Project Report'** is the report on the progress of the Project in the form required by DESBT to be provided by You as required by clause 17.e).
  - q) **'Project Start Date'** means the date one month from the Approval Date.
  - r) **'Recipient'** is an Applicant that has accepted the offer of a Grant as required by clause 16.a)
  - s) **'Round'** is the funding round for the Program.
  - t) **'You'** means the Applicant or Recipient, as the context requires.
- 8. You cannot submit more than one Application under this Program at any one time and until such time that your Application has been assessed by DESBT.
  - 9. DESBT reserves the right not to allocate the total amount of funding available for the Program if, in the opinion of the Application review panel, there are insufficient Applications of suitable merit.
  - 10. All costs associated with the preparation of Applications and any associated costs will be Your sole responsibility.
  - 11. Additional terms and conditions may be included in the Funding Agreement Letter provided to You by DESBT.
  - 12. Recipients cannot apply for funding under future Rounds of the Program, if any.

## Disclosure and publication

- 13. By submitting an Application, You:
  - a) acknowledge that submitting an Application does not guarantee that You will be eligible to receive a Grant. Your selection for a Grant shall be at DESBT's sole and absolute discretion,
  - b) acknowledge that in the event that the Application is approved, You have read and agree to be bound by the Funding Agreement,
  - c) authorise the use and/or publication of Your name and details of the Project, in relation to any promotional or advertising purposes in conjunction with the Program,
  - d) authorise the use and disclosure by DESBT and/or the Minister of Your name, contact details and details of the Project (including the Grant), for any promotional, advertising or accountability reporting purpose in relation to the Program. Disclosure may include to Members of Parliament,

## Applications

- 3. Applications including EOI applications received, including material and documents accompanying the Applications, shall not be returned to You.
- 4. The conduct of inviting applications does not give rise to any legal or equitable relationship.
- 5. DESBT may, by direct notification to You or via its website ([www.business.qld.gov.au](http://www.business.qld.gov.au)), change the Guidelines and these terms and conditions, or cancel or vary the application process at any time.
- 6. No person shall be entitled to claim compensation or loss from DESBT for any matter arising out of the application process, including but not limited to failure by DESBT to comply with the Guidelines or these terms and conditions.
- 7. You may withdraw Your Application at any time prior to **one week after the Approval Date** by notifying DESBT in writing.



- e) acknowledge that DESBT, and its employees may use and disclose any of the information provided with the Application, including Personal Information, to Queensland Government departments or agencies, Queensland Government bodies, non-government organisations and/or the Commonwealth, states or territories for any purpose in connection with the administration of the Program,
- f) acknowledge that the *Right to Information Act 2009* provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies, subject to the exemptions under that Act,
- g) warrant that You are not in breach of any law, constitution or any other requirement You are bound to comply with,
- h) warrant that You are not bankrupt or insolvent, and
- i) warrant that the use of such information or material as above will not infringe the rights of any third party or any law.

## Assessment

- 14. DESBT will assess applications against the assessment criteria and will provide recommendations to the DESBT delegate for approval.
- 15. All decisions and recommendations of DESBT are binding and final. Applicants may request a review of a decision for submitted applications. The application for review must:
  - a) be lodged within 28 days of the decision being provided to the Applicant;
  - b) state in detail the reasons the Applicant relies upon in requesting the review; and
  - c) attach all relevant supporting material.

## Successful applications

- 16. If DESBT sends the Applicant a Funding Agreement Letter, the Applicant must:
  - a) within **one week** of the Approval Date – notify DESBT in the required form that You accept the Grant subject to and conditional upon Your compliance with the Funding Agreement.
- 17. The Recipient must:
  - a) commence the Project by the Project Start Date;
  - b) obtain all appropriate documentation for the Project (e.g. permits, approvals, insurances and any legal requirements) and provide copies to DESBT on request;
  - c) complete the Project by the Project End Date, unless otherwise agreed in writing by DESBT;
  - d) immediately advise DESBT of all changes to the Project;
  - e) within 3 months of the Project Start Date, provide, in the required form and to DESBT's reasonable satisfaction, a Project Report;
  - f) submit an Acquittal Report by the Project End Date or as required by clause 26;
  - g) pay Your Contribution,
  - h) refund to DESBT any of the funds paid under clause 19 that are unspent or uncommitted or is required to achieve Your Contribution on completion of the Project or termination of this Funding Agreement;
  - i) have and maintain appropriate insurances in relation to the business, including the Project, and upon reasonable request, provide evidence of its currency to DESBT;
  - j) maintain Your Eligibility for the Duration;
  - k) notify DESBT if Your contact details or business details change; and
  - l) provide to DESBT in a timely way any information reasonably requested by DESBT.



## Payments and GST

18. The Grant is not subject to GST. The Grant is GST exclusive. No part of the Grant can be used for the payment of GST.

19. DESBT will pay the Recipient via electronic funds transfer to the Recipient's nominated bank account in instalments as follows:

- a) as soon as practicable after the Approval Date and receipt of the Recipient's bank details – 20% of the Grant;
- b) as soon as practicable after the receipt of a compliant Project Report – 40% of the Grant;
- c) as soon as practicable after the receipt of a compliant Acquittal Report – the difference between the Grant and the funds paid to the Recipient under paragraphs (a) and (b).

## Acknowledgements

20. If Your Application is successful, You acknowledge that:

- a) DESBT makes no representations or warranties regarding the information sources contained in the Guidelines. You shall make Your own enquiries before deciding whether the supplier or service provider chosen is suitable for Your 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 You have 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 Your own risk;

- d) should You require products or services in addition (Additional Products or Services) to the products or services forming part of the Project, You shall be required to negotiate a separate agreement directly with the supplier or service provider. Any arrangement between You 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 assistance by DESBT, the supplier or service provider in relation to the Project does not guarantee Your success in any business activity; and
- f) You retain sole responsibility for Your actions and decisions (regardless of whether they are based on options or suggestions provided by the supplier or service provider) and. You will not bring any claim or action against DESBT, should Your business activity not achieve its intended aims.

21. You release (to the full extent permitted by law) and indemnify DESBT from and against any claim which may be brought against or made upon or incurred by DESBT arising directly or indirectly out of any advice provided to You by a supplier or service provider or any agreement You enter into with a supplier or service provider or a third party, or as a result of the advice provided by DESBT.

22. You agree that except for any liability that cannot be excluded by law, DESBT (including its officers, employees, contractors and agents) is excluded from all liability (including negligence) for any loss or damage (including loss of opportunity or personal injury) whether direct, indirect, special or, arising in any way out of the application or the Funding Agreement.

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



## Variations

24. Any proposed variations to the Project must be supplied in writing to DESBT for prior approval. Any approval will be at the absolute discretion of DESBT, and if the variation is approved, You will be notified in writing by DESBT. No variation will be implemented without You first receiving a notice of approval from DESBT.

## Termination and expiry

25. 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 fails to remedy that breach within 10 Business Days after receiving notice requiring it to do so.

26. Where the Funding Agreement has been terminated under clause 25, within 20 Business Days of the date of termination, You must give DESBT a compliant Acquittal Report.

27. Unless terminated under clause 25, this Funding Agreement will expire when each party has completed all of its obligations.

## Disputes

28. 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.

29. In the event of a dispute, if the parties are unable to resolve a 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 in accordance with the Funding Agreement.

## Other

30. 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 are obliged to 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.

31. DESBT may, at its discretion, carry out random audits of Applications to ensure that the information provided is true and correct. Where it is found that false or misleading information has been provided, penalties may apply, including refunding to DESBT some or all of the Grant.

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

- a) 17.f) (Acquittal Report)
- b) 17.h) (Refund)
- c) 17.i) (insurance);
- d) 20.a) (no representation);
- e) 20.f) (no claim);
- f) 21 (indemnity);
- g) 22 (liability);
- h) 23 (intellectual property);
- i) 26 (obligations after termination);
- j) 30 (confidential information);
- k) 31 (audits); and
- l) 32 (survival).



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