



FUNDING DEED OF AGREEMENT

Between

**THE STATE OF QUEENSLAND
acting through the
Department of Local Government,
Racing and Multicultural Affairs
and**

<Company/Department>

**RELATING TO FINANCIAL ASSISTANCE AVAILABLE UNDER
MULTICULTURAL AFFAIRS QUEENSLAND FUNDING
PROGRAMS**

FUNDING DEED OF AGREEMENT

THIS FUNDING DEED OF AGREEMENT is made on

BETWEEN: The State of Queensland acting through the DEPARTMENT OF LOCAL GOVERNMENT, RACING AND MULTICULTURAL AFFAIRS ("the Department") of Level 12, 1 William Street BRISBANE QLD 4000

AND: <Company/Department> ("the Organisation") of <STREET ADDRESS>
<STREET SUBURB> QLD <POSTCODE>

BACKGROUND:

- A. The Department, through Multicultural Affairs Queensland, administers funding programs which seek to improve outcomes for Queenslanders from culturally diverse backgrounds, including migrants, refugees, asylum seekers as well as established communities, and assist in building safe, caring and connected communities across Queensland.
- B. The Department and the Organisation enter into this Funding Deed of Agreement to provide terms and conditions under which the Department will offer and the Organisation will accept Approved Funding under Multicultural Affairs Queensland funding programs.
- D. As the Department is required by law to ensure accountability of public money and to be accountable for all Approved Funds provided by it to the Organisation, the Organisation agrees to expend and acquit all the Approved Funding it may receive from the Department pursuant to the operation of the Funding Deed of Agreement, Funding Program Guidelines or Funded Activity Particulars and as approved in writing by the Department.

AGREEMENT:

1. TERMINOLOGY

- 1.1. Except where specifically defined in clause 2.1, capitalised terms (like 'Funding') correspond to items in the Funding Program Guidelines or Funded Activity Particulars.
- 1.2. References to:
 - (a) 'We', 'Us' or 'Our' mean the State of Queensland acting through the Department of Local Government, Racing and Multicultural Affairs; and
 - (b) 'You' and related parts of speech mean the Funded Organisation.

2. DEFINITIONS

- 2.1. In this Agreement, unless the context indicates otherwise:

"Acknowledgment Guidelines" means the funding acknowledgment guide as published on the Department's website.

"Approved Funding" or **"Approved Funds"** means the maximum amount of monies specified in a Formal Advice of Funding Approval, to be provided by Us to You during the Funding Period(s) for the Funded Activity.

"Business Day" or **"Business Days"** means a weekday or weekdays on which banks are open for business in Brisbane.

"Confidential Information" includes all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form this information is communicated (whether by electronic means, in an electronic storage device, in writing or orally) and includes the interpretation, analysis and application of general information in the public domain.

"Eligible Expenditure" means the expenditure on items directly related to the delivery of an Approved Funded Activity and as detailed in the relevant Funding Program Guidelines.

"Eligible Organisation" means the Party that is eligible under a Funding Program to receive Approved Funding as defined in Funding Program Guidelines.

"Formal Advice of Funding Approval" means the letter from the Minister (or the person delegated to exercise the power) providing details of the Approved Funds

"Funding Deed of Agreement" means this document and all schedules and attachments to it.

"Funding Period" commences on the date of Formal Advice of Funding Approval and ends on 12 months (or as approved otherwise) from this date.

"Funding Period End Date" is 12 months from date of Formal Advice of Funding Approval or as otherwise advised by the Department

"Funding Program(s)" means Multicultural Affairs Queensland Funding Program(s) under which Approved Funding has been provided.

"Funding Program Guidelines" means the guidelines for a Funding Program, as advised by Us from time to time.

“Goods and Services Tax” or “GST” means an amount of GST payable under the *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax Imposition – General) Act 1999* or otherwise imposed by the Commonwealth Government.

“GST Amount” means the amount calculated by multiplying the GST exclusive amount of the financial assistance as a taxable supply, payable under the terms of this Agreement, by the rate of GST applicable from time to time.

“Ineligible Expenditure” means the expenditure on items that are not directly related to the delivery of an Approved Funded Activity or are defined as ineligible in the relevant Funding Program Guidelines.

“Intellectual Property” includes all copyright (including any future copyright), moral rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as a result of the use of the Approved Funding in an Approved Funded Activity.

“Moral Rights” has the meaning given to that term in the *Copyright Act 1968 (Commonwealth)*.

“Organisation” means the Party in receipt of Approved Funding.

“Party” or “Parties” means a Party or parties to this Funding Deed of Agreement.

“Payment” means the first and subsequent payments of Approved Funding as advised in writing by Us.

“Payment Schedule” means the schedule of payments in accordance with nominated timeframes as detailed in the Funding Program Guidelines or as advised in writing by Us.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Recipient Created Tax Invoice” means a tax invoice that may be issued by Us as the recipient of a taxable supply.

“Special Conditions” means any special conditions relevant to the Approved Funded Activity as advised in writing by the Department (if applicable).

“Tax Invoice or Invoice” means a document requesting payment for goods or services and detailing the supplier's name, the goods and services provided, the date these were provided, the amount due, the goods and services tax amount due, the terms of trade and the date of the invoice.

3. INTERPRETATION

3.1. In this Funding Deed of Agreement:

- (a) a reference to this Funding Deed of Agreement or other instrument includes any variation or replacement of the Funding Deed of Agreement or instrument;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of the statute, ordinance, code or law;
- (c) the singular includes the plural and vice versa;
- (d) the word “person” includes a firm, body corporate, unincorporated association or authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the *Corporations Act 2001* and, where not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by an incorporated body or as between incorporated bodies and over time;
- (g) a reference to anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two (2) or more of them collectively and to each of them individually;
- (h) a reference to the Department or any other government department or entity (“Existing Entity”) includes a reference to any department or other government entity (“New Entity”) established or constituted in lieu of the Existing Entity, and with (as nearly as possible) the powers and responsibilities of the Existing Entity;
- (i) if an act prescribed under this Funding Deed of Agreement, to be done by a Party on or by a given day, is done after 5.00pm on that day, the act is deemed to be done on the following day;
- (j) the monetary amounts stated in this Funding Deed of Agreement are exclusive of GST;
- (k) reference to “\$” or “dollars” means Australian dollars;
- (l) headings do not affect the interpretation of this Funding Deed of Agreement; and
- (m) a reference to a website by address or location is a reference to a website located at a replacement address or location.

4. SCOPE OF FUNDING DEED OF AGREEMENT

4.1. This Funding Deed of Agreement records the terms and conditions under which You will accept the Approved Funding.

4.2. You acknowledge that the agreement between You and Us consists only of this Funding Deed of Agreement, the relevant Funding Program Guidelines or Funded Activity Particulars, the Formal Advice of Funding Approval, written approvals and requirements of Us and the applications from You for Approved Funding (if applicable), but in the event of any inconsistencies, the documents shall be interpreted in the following order of preference:

- (a) this Funding Deed of Agreement;
- (b) the relevant Funding Program Guidelines or Funded Activity Particulars;

- (c) Formal Advice of Funding Approval;
- (d) written approvals and requirements from Us as notified formally to You in writing;
- (e) your application(s) for Approved Funding (where applicable).

5. TERM OF FUNDING DEED OF AGREEMENT

- 5.1. This Funding Deed of Agreement commences on the date the last Party signs this Funding Deed of Agreement, and will remain in place for all other current or future Approved Funding subject to valid termination of the entire Funding Deed of Agreement by either Us or You.

6. NO ASSURANCE OF FUNDING

- 6.1. This Funding Deed of Agreement does not warrant We will offer You Approved Funding under any Funding Program(s).
- 6.2. You acknowledge that receipt and retention of the Approved Funds is conditional upon You:
- (a) expending the Approved Funds on the Funded Activity only;
 - (b) using the Approved Funding only for Eligible Expenditure and not for Ineligible Expenditure (where applicable);
 - (c) not being in breach of any other funding arrangement with Us; and
 - (d) not having any overdue reports for other initiatives funded by the Department
 - (e) complying with all clauses of this Funding Deed of Agreement subject to the operation of any competing relevant legislative obligations.

7. FUNDING

- 7.1. We will provide the Funding to You in the instalments and manner specified in the Funding Program Guidelines or Funded Activity Particulars.
- 7.2. The Funding is subject to the terms of any Act under which it is provided or to which it is, or becomes, subject ('Governing Act'), including any regulation made under a Governing Act.
- 7.3. We may withhold the Funding until You:
- (a) submit any overdue reports or provide any overdue information required under the Reporting Requirements; and
 - (b) perform any obligations due to be performed before the payment is to be made.
- 7.4. You must use the Funding only for the Funded Activity, unless otherwise approved by Us in writing.
- 7.5. We may, at Our discretion, increase the Funding from time to time without a variation to the Agreement, provided that a variation to the Agreement will be required where the Funding is provided for a new or expanded Funded Activity.
- 7.6. We can reduce the Funding by giving You at least 3 months' notice, if We determine that:
- (a) changes to the State budget or any guidelines or policies of the State or Commonwealth government adversely impact on the continued provision of the Funding to You or recipients of similar funding generally;
 - (b) the needs of any Service Users no longer justify the Funding or other persons are in greater need than the Service Users; or

- (c) where the Funded Activity is, or includes, provision of services, it is appropriate for Us to re-test the market for the provision of those services.

7.7. If, We:

- (a) reduce the Funding under clause 7.6, Our notice will also specify the changed scope of the Funded Activity (if any) and the Agreement will be deemed to be varied in accordance with the notice; and
- (b) reduce the Funding under clause 7.6, We will consider paying You reasonable costs, including transitional arrangement costs for any affected Service Users, that You incur as a direct result of Funding being reduced or stopped, subject to You providing Us with written evidence of the costs claimed and Us approving those costs.

7.8. Our obligation to provide the Funding to You will stop at the Agreement Expiry Date or earlier termination of the Agreement.

7.9. If, at the Agreement Expiry Date or earlier termination of the Agreement, there is any unspent Funding, We may:

- (a) authorise You to retain the unspent Funding and, if We so authorise, to expend some or all of that Funding for an approved purpose; or
- (b) require You to return the unspent Funding, which will constitute a debt due and owing to Us.

7.10. You must ensure that the Funding is acknowledged in Your annual report (if You produce an annual report) and promotional materials relating to the Funded Activity in accordance with the Acknowledgment Guidelines. Any acknowledgement in promotional material about the Funded Activity must use an acknowledgement logo which You must obtain from Us.

8. FUNDED ACTIVITY

8.1. In undertaking the Funded Activity, You must comply with all relevant:

- (a) laws and regulations, including any Governing Act; and
- (b) any policies or guidelines, as notified by Us to You from time to time.

8.2. If the Funded Activity is, or includes, delivery of services, You must:

- (a) start delivering the services to the Service Users from the start of the Agreement, or such later date as may be specified in the Special Conditions and continue delivering the services to Service Users for the term of the Agreement;
- (b) comply with the Service Delivery Requirements;
- (c) deliver or achieve the Deliverables;
- (d) ensure that the services are delivered in compliance with the Human Services Quality Standards unless We notify You otherwise.

8.3. The relevant Funding Program Guidelines or Funded Activity Particulars, may also specify standards that You must comply with, meet or have regard to in relation to the Funded Activity.

9. REPORTING

9.1. You must comply with the Reporting Requirements specified in the relevant Funding Program Guidelines or Funded Activity Particulars.

10. INTELLECTUAL PROPERTY

- 10.1. Intellectual property rights in material that You create in undertaking the Funded Activity ('New Material') will vest in You, but You grant Us a perpetual, irrevocable, royalty-free, world-wide and non-exclusive licence, including a right to sub-licence to use, communicate, reproduce, publish, adapt and modify:
- (a) the New Material; and
 - (b) Your existing material, but only as part of the New Material and any future use or development of the New Material.

11. INSURANCE AND INDEMNITY

- 11.1. You must effect and maintain:
- (a) public liability insurance for a sum of not less than \$10 million for any one incident in respect of accidental death or of accidental bodily injury to persons, or accidental damage to property, arising out of, or in the course of, undertaking the Funded Activity; and
 - (b) any Other Insurance.
- 11.2. You release, discharge, indemnify and keep indemnified Us, Our officers, employees and agents from and against any claim, action, proceeding, demand, liability, obligation, cost, loss, damage or expense that may be made or brought by any person against Us in connection with:
- (a) You breaching any term of the Agreement; or
 - (b) any negligent or unlawful act or omission of You, Your officers, employees, volunteer workers or subcontractors.

12. GST

- 12.1. The Funding is exclusive of GST. If the supply by You under the Agreement is a taxable supply and You are registered for GST, We will pay You the GST on the taxable supply at the same time as We pay the Funding.
- 12.2. You agree that:
- (a) We may issue You with a Recipient Created Tax Invoice ('RCTI') in respect of GST applicable to any payments of the Funding;
 - (b) You will not issue tax invoices in respect of the taxable supplies for which We issue RCTIs;
 - (c) You acknowledge that You are registered for GST when You enter into the Agreement. You will notify Us immediately if You cease to be registered for GST or if You cease to satisfy any of the requirements relating to RCTIs; and
 - (d) We acknowledge that We are registered for GST. We must notify You if We cease to be registered for GST.

- 12.3. You must remit any GST amount(s) that We pay to You to the Australian Taxation Office as required by the GST legislation.
- 12.4. If You are not registered for GST, We will issue You with an advice for payment for each payment of the Funding.
- 12.5. For clauses 10.1 to 10.4, 'GST' has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

13. PRIVACY AND CONFIDENTIALITY

- 13.1. If You collect or have access to 'personal information', as defined in the *Information Privacy Act 2009*, for the purposes of the Agreement, You must comply with Parts 1 and 3 as if You were Us.
- 13.2. You must notify Us immediately in the event that You become aware that disclosure of personal information, in relation to any child subject to the *Child Protection Act 1999* or the *Youth Justice Act 1992*, is made or may be required by law.
- 13.3. You must not disclose confidential information belonging to Us except where You have obtained Our prior written approval (which may be subject to conditions) or where required by law.
- 13.4. We reserve the right, in its absolute discretion and without any liability to account to You or any third person, to make available, disclose and allow the disclosure of any information received from You or otherwise relating to this Funding Deed of Agreement to:
 - (a) any Commonwealth department, Queensland Government department, agency, authority or Minister;
 - (b) any third person, including any court, tribunal, governmental committee or other person within government, where such disclosure would be permitted or required by law, or otherwise would be consistent with established government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances;
 - (c) members of the Queensland public in order to publicise the benefits of Funding Program(s) and the Approved Funding provided to You, including creating case studies and promotional materials.

14. TERMINATION

- 14.1. We can terminate the Agreement, if:
 - (a) You breach any term of the Agreement;
 - (b) You cease to be eligible for the Funding;
 - (c) You become insolvent; or
 - (d) Any steps or proceedings are commenced (and not withdrawn or dismissed within 5 business days) or order made in relation to Your winding up, voluntarily or involuntarily
 - (e) An unacceptable actual or potential conflict of interest arises in relation to You, Your use of the Funding or Your undertaking of the Funded Activity.

- 14.2. We will only terminate the Agreement under clause 14.1(a) after giving You a notice of default requiring the default to be rectified within a reasonable period nominated in the notice, or if no such period is nominated then, fourteen (14) days.
- 14.3. If the default is not remedied within the period specified in Clause 14.2, the non-defaulting Party may terminate this Agreement as far as it applies to the Approved Funding immediately by written notice to the other Party.
- 14.4. We can take action under clause 14.1 without having to give a default notice or take any other compliance or enforcement action under a Governing Act, except if expressly required by a Governing Act.
- 14.5. We can terminate the Agreement, without issuing a default notice but by giving You at least 3 months' notice, if We determine that:
- (d) changes to the State budget or any guidelines or policies of the State or Commonwealth government adversely impact on the continued provision of the Funding to You or recipients of similar funding generally;
 - (e) the needs of any Service Users no longer justify the Funding or other persons are in greater need than the Service Users; or
 - (f) where the Funded Activity is, or includes, provision of services, it is appropriate for Us to re-test the market for the provision of those services.
- 14.6. If, We terminate the Agreement under clause 14.5, We may consider paying You reasonable costs, including transitional arrangement costs for any affected Service Users, that You incur as a direct result of Funding being reduced or stopped, subject to You providing Us with written evidence of the costs claimed and Us approving those costs.
- 14.7. Our rights under clauses 14.1 to 14.5 are in addition to any other rights or remedies available to Us, including under any Governing Act.

15. CONSEQUENCES OF TERMINATION

- 15.1. In the event of termination of this Funding Deed of Agreement as it applies to particular Approved Funding:
- a) all Approved Funding under the Funding Programs shall be deemed to have been terminated as at the date of termination of this Funding Deed of Agreement;
 - b) We shall have no further obligation to pay Approved Funds to You as at the date of termination of this Funding Deed of Agreement;
 - c) You must take all action necessary to minimise further expenditure of all Approved Funding;
 - d) We may in the notice of termination or a further notice, require You to repay unspent Approved Funding, or such part of the unspent Approved Funding as is stated in the notice, within the time specified in the notice;
 - e) any Approved Funds which have not been expended by You, as at the date of termination will be applied in the following order:
 - i) first, in payment of any Eligible Expenditure items, including any debts or liabilities incurred by You in relation to the Approved Project(s) prior to the date of termination of this Funding Deed of Agreement; and
 - ii) second, We may recover any Approved Funds which have not been expended by You as at the date of termination.
 - f) You will return, or upon request of Us, destroy all or any documents containing Confidential Information supplied by Us.

- g) We may offset the spent Approved Funding or such part of the spent Approved Funding as is stated in the notice of termination or a further notice, against any other Approved Funding You may be entitled to receive under another existing Funding Program(s);

16. DISPUTE RESOLUTION PROCESS

16.1. Both parties agree that any dispute arising during the course of this Funding Deed of Agreement will be dealt with as follows:

- (a) firstly, the Party claiming that there is a dispute will serve notice to the other Party setting out the nature of the dispute;
- (b) secondly, the parties will try to resolve the dispute by direct negotiation;
- (c) thirdly, the Parties have ten (10) business days from the service of the notice (or such extended time as the Parties may agree in writing before the expiration of the ten (10) business days) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure with the costs and expenses of any mediation or alternative dispute resolution procedure being borne equally between the parties; and
- (d) lastly, if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within ten (10) business days of the submission, or such extended time as the parties may agree in writing before the expiration of the ten (10) business days,

then any Party may commence legal proceedings.

16.2. Each Party shall, as far as reasonably possible, continue to perform its obligations under this Funding Deed of Agreement notwithstanding the existence of any dispute or any proceeding under this clause 16.

17. PUBLICATION OF INFORMATION

17.1. We can publish or require You to publish any or all of the following details:

- (a) Your name and address, including Your head office, service outlets and other business premises;
- (b) a description of the Funded Activity under the Agreement;
- (c) the commencement of the Agreement or the Agreement Expiry Date;
- (d) the amount of the Funding; and
- (e) the funding process or procurement method used to award the Funding to You.

18. NOTICES

18.1. Any notice to be given under the Agreement must be in writing and addressed and forwarded to the relevant address and contact officer as per the contact details provided in Schedule A.

18.2. A notice may be delivered by hand, sent by post, facsimile or electronic mail to the address of the Party to which it is sent and will be deemed to be received:

- (a) if delivered by hand, on the date of delivery;

- (b) if sent by post within Australia, five business days after the date on which it was sent;
- (c) if transmitted by facsimile, upon receipt by the sender of an acknowledgment that the notice has been properly transmitted to the recipient; and
- (d) if transmitted by electronic mail, upon receipt by the sender of an acknowledgment that the notice has been properly transmitted to the recipient.

19. COMPLIANCE WITH LAW

- 19.1. You shall in carrying out the Funded Activity comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any applicable Commonwealth, State, Territory or local authority.

20. GENERAL

- 20.1. Nothing in the Agreement limits Our rights or Your obligations under a Governing Act.
- 20.2. The Agreement can only be varied by an agreement in writing signed by both You and Us.
- 20.3. You must not assign, novate, transfer, encumber or subcontract any or all of Your rights or obligations under the Agreement without Our prior written consent.
- 20.4. You must not subcontract any part of Your obligations under the Agreement without Our prior written consent and You will remain responsible to Us for the acts and omissions of any subcontractors.
- 20.5. You acknowledge that We are subject to the *Right to Information Act 2009* and any documents held by Us may be subject to disclosure under that Act.
- 20.6. Clauses 7.10, 10.1, 11.2, 13, 19 and 20.3 will survive expiration or termination of the Agreement.
- 20.7. If any part of the Agreement is determined to be invalid, unlawful or unenforceable, then, to the extent permitted by law, that part will be severed and the remaining terms will continue to be valid and enforceable.
- 20.8. A failure by Us to exercise, or a delay by Us in exercising, any right, power or remedy will not operate as a waiver.
- 20.9. Both parties will bear their own costs arising out of the preparation of the Agreement.
- 20.10. If circumstances require it, the parties may sign separate copies of this Funding Deed of Agreement and all copies (counterparts) will constitute one instrument.
- 20.11. You must maintain accurate records and accounts of expenditure in relation to the Funding for at least 7 years from the end of this Agreement.
- 20.12. You must provide Us with all financial information We request in relation to the Funding.
- 20.13. We may conduct audits of Your records and financial accounts in relation to the Funding and You must make available all information that We, or Our auditors, request in relation to any such audit.

EXECUTED as a DEED:

SIGNED for and on behalf of)
the **STATE OF QUEENSLAND** acting through the)
Department of Local Government, Racing and)
Multicultural Affairs.)

by _____) _____)
(name)) (signature)

the _____)
(position))

being duly authorised in this behalf,)

this _____ day of _____ 201)

in the presence of)

_____)
(signature of witness))

_____)
(name of witness))

SIGNED for and on behalf)

of)

by _____) _____)
(name)) (signature)

the _____)
(position))

being duly authorised in this behalf,)

this _____ day of _____ 20)

in the presence of)

_____)
(signature of witness))

_____)
(name of witness))

