

# **(Short Form)**

## **Terms and Conditions**

**Version 1.2 – dated 17 February 2015**

**Please note:**

The Agreement comprises two parts:

- Particulars
- Terms and Conditions

# Terms and Conditions

## 1. Terminology

- 1.1 Except where specifically defined in these Terms and Conditions, capitalised terms (like 'Funding') correspond to items in the Particulars.
- 1.2 References to:
- (a) **We**, **Us** or **Our** mean the State of Queensland acting through the Department or other body, agency or person giving the Funding (including its Chief Executive), as specified in the Particulars or any other department or agency of the Queensland Government responsible for the administration of the Agreement; and
  - (b) **You** and related parts of speech mean the Funded Organisation.

## 2. Agreement

- 2.1 An Agreement ('**Agreement**') will come into existence between You and Us, comprised of the Particulars and these Terms and Conditions (and including any Departures from these Terms and Conditions identified in the Particulars), when:
- (a) You accept the Funding provided by Us; or
  - (b) if the Particulars make provision for the parties to sign, when both parties have signed the Particulars.
- 2.2 If the Agreement requires You to comply with, meet or have regard to a document, specification, guideline, policy, standard, framework or scheme:
- (a) We may, from time to time, issue or approve a new version of it;
  - (b) We will notify You about any new version and the date that it is to take effect from;
  - (c) the new version will apply for the purposes of the Agreement from that date, provided that this will not limit or affect any right of action or remedy that has accrued as at that date.

## 3. Funding

- 3.1 We will provide the Funding to You in the instalments and manner specified in the Particulars.
- 3.2 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.
- 3.3 We may withhold the Funding until You:
- (a) submit any outstanding reports or provide any outstanding information required under the Reporting Requirements; and
  - (b) perform any obligations due to be performed before the payment is to be made.
- 3.4 You must use the Funding only for the Funded Purpose, unless otherwise approved by Us in writing.

- 3.5 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 Purpose.
- 3.6 Our obligation to provide the Funding to You will stop at the Agreement Expiry Date or earlier termination of the Agreement.
- 3.7 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 refund the unspent Funding, which will constitute a debt due and owing to Us.
- 3.8 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 Purpose. Any acknowledgement in promotional material about the Funded Purpose must use an acknowledgement logo which You must obtain from Us.

## 4. Funded Purpose

- 4.1 If the Funded Purpose 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 accordance with the Quality Standards; and
  - (e) achieve and maintain any Certification.
- 4.2 If the Funded Purpose is, or includes, purchasing assets, You must:
- (a) purchase the specified assets;
  - (b) be the legal owner of those assets at all time;
  - (c) keep and, if requested by Us, provide evidence of the purchase, including receipts; and
  - (d) without limiting clause 7.1, effect and maintain insurance covering the asset for its full replacement value.
- 4.3 You must comply with any Special Conditions.
- 4.4 In undertaking the Funded Purpose, 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.

## 5. Reporting

- 5.1 You must comply with the Reporting Requirements.

## 6. Intellectual property

- 6.1 Intellectual property rights in material that You create in undertaking the Funded Purpose (**'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.

## 7. Insurance and indemnity

- 7.1 You must effect and maintain:
- (a) public liability insurance for a sum of not less than \$10 million for any one event 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 Purpose; and
  - (b) any Other Insurance.
- 7.2 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.

## 8. GST

- 8.1 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.
- 8.2 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.
- 8.3 You must remit any GST amount(s) that We pay to You to the Australian Taxation Office as required by the GST legislation.
- 8.4 If You are not registered for GST, We will issue You with an advice for payment for each payment of the Funding.

- 8.5 For clauses 8.1 to 8.4, '**GST**' has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

## 9. Privacy and confidentiality

- 9.1 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 or, if We are a health agency, Parts 2 and 3, of Chapter 2 of that Act as if You were Us.
- 9.2 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.
- 9.3 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.

## 10. Suspending or stopping Funding

- 10.1 We can, by giving You notice, suspend the Funding or 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) an unacceptable actual or potential conflict of interest arises in relation to You, Your use of the Funding or Your undertaking of the Funded Purpose.

We will only suspend the Funding or terminate the Agreement under this clause 10.1 after following a show cause process substantially the same as that described in clause 14 of the '*Service Agreement – Standard Terms*', available from the For Government website's Social services—templates page or such other website as We may from time to time notify You ('**Show Cause Process**').

- 10.2 We can, by giving You notice, immediately suspend the Funding or terminate the Agreement without following the Show Cause Process if:
- (a) We have terminated any other service agreement with You because of an event or occurrence of the same type as specified in clause 10.1; or
  - (b) 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.
- 10.3 We can take action under clauses 10.1 or 10.2 without having to give a compliance notice or take any other compliance or enforcement action under a Governing Act, except if expressly required by a Governing Act.
- 10.4 We can reduce the Funding or terminate the Agreement, without following the Show Cause Process but by giving You at least 6 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 Purpose is, or includes, provision of services, it is appropriate for Us to re-test the market for the provision of those services.

10.5 If, We:

- (a) reduce the Funding under clause 10.4, Our notice will also specify the changed scope of the Funded Purpose (if any) and the Agreement will be deemed to be varied in accordance with the notice; and
- (b) reduce the Funding or terminate the Agreement under clause 10.4, 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.

10.6 Our rights under clauses 10.1 to 10.4 are in addition to any other rights or remedies available to Us, including under any Governing Act.

10.7 You can terminate the Agreement by giving Us at least 3 months notice.

## 11. Publication of information

11.1 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 Purpose under the Agreement;
- (c) the commencement of the Agreement or the Agreement Expiry Date;
- (d) the amount of the Funding; and
- (e) the procurement method used to award the Funding to You.

## 12. Notices

12.1 Any notice to be given under the Agreement must be in writing and addressed and forwarded to the relevant address and contact officer set out in the Particulars, or as otherwise notified by a party to the other.

12.2 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, two 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.

## 13. General

13.1 Nothing in the Agreement limits Our rights or Your obligations under a Governing Act.

- 13.2 The Agreement can only be varied by an agreement in writing signed by both You and Us.
- 13.3 You must not assign any of Your rights or obligations under the Agreement without Our prior written consent.
- 13.4 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.
- 13.5 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.
- 13.6 Clauses 3.6, 3.7, 3.8, 6, 7.2, 9 and 13.6 will survive expiration or termination of the Agreement.
- 13.7 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.
- 13.8 A failure by Us to exercise, or a delay by Us in exercising, any right, power or remedy will not operate as a waiver.
- 13.9 Both parties will bear their own costs arising out of the preparation of the Agreement.
- 13.10 If, under clause 2.1(b), The Particulars are to be signed by the parties, the Particulars may be signed in one of more counterparts which, taken together, will constitute one instrument.
- 13.11 The Agreement will be governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland.