

# EDUCATION HORIZON

## TERMS AND CONDITIONS

### BACKGROUND:

- A. The Queensland Government through the Department of Education (“the Department”) has established the [Education Horizon grant scheme](#) (“Grant Scheme”) to provide funding for qualified researchers to undertake high quality evidence-based research in a Queensland university or research institution, on research aligned to the Department’s research priorities.
- B. The objective of the Grant Scheme is to build knowledge in areas of strategic priority for the Department through the delivery of high-quality, well-designed research of varying scale.
- C. The Grant Scheme aims to do this by providing funds for researchers to undertake new research projects in the State of Queensland which targets the research priorities of the Department and addresses existing gaps in the research literature.
- D. The Application (if approved and signed by the Department) and these Education Horizon Terms and Conditions (and, if applicable, the Department Access Research Application (if approved and signed by the Department)) form the Agreement between the Department, the Researcher and the Sponsor, under which:
  - (a) the Department will provide the Funding;
  - (b) the Sponsor will administer the Funding and will review and submit reports; and
  - (c) the Researcher will conduct the research for the Research Project.

### AGREED TERMS:

#### 1. DEFINITIONS & INTERPRETATION

- 1.1 In the Agreement, unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them:

“**Agreement**” means –

- (i) the Application signed by the State of Queensland (acting through the Department), the Sponsor and the Researcher; and
- (ii) these Education Horizon Terms and Conditions; and
- (iii) if applicable, the Department Access Research Application signed by the State of Queensland (acting through the Department), the Sponsor and the Researcher.

“**Application**” means the application form titled “Education Horizon Application”, including all schedules to the application form and any supporting documentation which sets out the

purpose and scope of the intended research study by the Researcher, and which is signed and submitted by the Researcher and the Sponsor to the Department.

**“Business Day”** means any day other than a Saturday, Sunday, or Public Holiday in Queensland.

**“Commencement Date”** means the date that the Department signs the Application.

**“Completion Date”** means the date 6 months from the Commencement Date, or another date as mutually agreed by the Department, the Researcher and the Sponsor.

**“Confidential Information”** of a Party means all information concerning or belonging to that Party and its activities of which another Party becomes aware directly or indirectly as a result of the Agreement or in the course of the Research Project that:

- (i) is by its nature confidential;
- (ii) is communicated by a Party as confidential; or
- (iii) the other Party knows or ought to know is confidential,

but does **not** include information that:

- (iv) has become public knowledge other than by breach of the Agreement;
- (v) was already lawfully disclosed by a Party prior to the Party being required to treat the information as confidential;
- (vi) is lawfully received by a Party from a third party who is not bound by a duty of confidentiality;
- (vii) was independently developed or released by a Party without reference to the Confidential Information.

**“Co-Sponsor”** means an individual or organisation named as a Co-Sponsor in the Application.

**“Co-Sponsor Contribution”** means the amount of a Co-Sponsor’s own funds (if any) to be contributed to the Research Project as set out in the Application.

**“Deliverable”** means the performance requirements set out as “Deliverables” in the Application.

**“Department Access Research Application”** means the application for conducting research involving Departmental staff, sites and/ or data, submitted through the QERI website (<https://research.det.qld.gov.au/>), and any supporting documentation which sets out the purpose and scope of the intended research by the Researcher, and which is signed and submitted by the Researcher and the Sponsor to the Department.

**“Department’s Purposes”** means any purpose of the Department or the State of Queensland, including the purposes of publication on QERI and for the Department’s internal assessment and record keeping purposes.

**“Discloser”** means the Party to the Agreement who discloses, directly or indirectly, Confidential Information to another Party to the Agreement.

**“Education Horizon Terms and Conditions”** means the terms and conditions set out in this document, including the schedules annexed to these Education Horizon Terms and Conditions.

**“Final Report”** means a report titled “Final Report” referred to in the Milestone Table, which the Researcher is required to prepare and the Sponsor is required to endorse and submit to the Department in accordance with clause 6 and the Milestone Table.

**“Force Majeure”** means any occurrence or non-occurrence as a direct or indirect result of which a Party is prevented from or delayed in performing any of its obligations under the Agreement and that is beyond the reasonable control of that Party, including forces of nature, industrial action, act of war or embargo

**“Funding”** means the funding, exclusive of GST, to be provided by the Department to the Sponsor for the benefit of the Researcher, as set out in Schedule 1 of the Application.

**“GST Law”** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition Acts and any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts.

**“Guidelines”** means the Education Horizon Guidelines for Applicants attached as Schedule 2 to the Application.

**“Intellectual Property Rights”** includes all copyright, patents, trade mark, designs, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights and any rights to registration of such rights existing anywhere in the world, whether created before, on or after the Commencement Date, but excludes Moral Rights.

**“Jurisdiction”** – means the geographic territories defined by State and Territory governments, comprising Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia.

**“Law”** means a statute, regulation, local law or ordinance.

**“Milestone Table”** means the table set out in Schedule 1.

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)* and the rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date.

**“Party”** means a signatory to the Agreement, or the entity on whose behalf the Agreement has been made.

**“Parties”** means collectively each of the parties to the Agreement.

**“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 material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**“Program”** means the Department of Education’s Education Horizon (Grants Scheme).

**“Progress Report”** means a report titled “Progress Report” referred to in the Milestone Table, which the Researcher is required to prepare and the Sponsor is required to endorse and submit to the Department in accordance with clause 6 and the Milestone Table;

**“Project Material”** means all material including documents and data which is created or developed by the Researcher in the course of undertaking the Research Project and includes material provided in the Application (and, if applicable, the Department Access Research Application) about the Research Project. The Project Material includes, but is not limited to, reports provided to the Department pursuant to this Agreement, the Research Findings and Publications.

**“Publication”** – means a document intended for public dissemination, in the form of academic papers, theses, reports, conference presentations, webinars or findings that will be made available online, in a library or in the media. Documents intended for Departmental access only are deemed not to be publications.

**“Publicity”** – includes any media release (including, without limitation, releases to radio, television, journalists, print and online media and social media), public statement, public announcement or similar.

**“Queensland Education Research Inventory (QERI)”** – means an online portal with tools for making an application for conducting research involving Departmental staff, sites and/ or data, and a searchable inventory of that Research or any similar portal/ tool which replace QERI (<https://research.det.qld.gov.au/>).

**“Recipient”** means a Party who receives Confidential Information from the Discloser.

**“Researcher”** means the person named as the Researcher/ Applicant in the Application.

**“Research Findings”** – means information on: the title of the research; content keywords; the location of the research, research questions, research methodology; a summary of major findings; research limitations; relationship with other research; additional research needed; practical implications; end-users likely to benefit from the research findings; value of the research; list of relevant publications; and Researcher’s contact information.

**“Research Plan”** means the Researcher’s proposed method and timing of undertaking the Research Project as set out in the Application and the Milestone Table.

**“Research Principles”** means the principles that inform the Department’s research activity and investment and ensure that anticipated benefits of Research are achieved and communicated, namely that the Research should be:

1. *Accessible* – Research outcomes and findings are available and disseminated widely. New knowledge is embedded in policy and replicated on a larger scale.

2. *Ethical* – Research is highly ethical and appropriate, and presents minimal risk and intrusiveness to participants or the department.
3. *Integrated and aligned* – Research addresses gaps in knowledge, aligns with priorities, and is of clear benefit to participants, schools, the department or broader Queensland population.
4. *Open and Collaborative* – Research is collaborative and involves an open, respectful relationship between all participants, researchers, and partners.
5. *Quality* – Research is well designed, purposeful and capable of producing sound results that are relevant to the research goals.

**“Research Project”** means the research project and/or activities set out in the Application (and, if applicable, the Department Access Research Application).

**“Schedule 1”** means Schedule 1 of the Application.

**“Sector”** means one of three administrative spheres of organisation providing primary and secondary education in Queensland, comprising State schools, independent schools and Catholic schools.

**“Sponsor”** means the Researcher’s university named as the Sponsor in the Application.

**“Sponsor Contribution”** means the amount of the Sponsor’s own funds (if any) to be contributed to the Research Project as set out in the Application.

1.2 In the Agreement, except where the context otherwise requires, or a contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) a reference to a document or instrument includes the document or instrument as novated, amended, supplemented or replaced from time to time;
- (c) a reference to any monetary amount is to Australian currency;
- (d) a reference to time is to Brisbane, Australia time;
- (e) a reference to a Party is to a Party to the Agreement, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a Law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing the Law;
- (h) any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (i) any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (j) the headings have been inserted for ease of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms of the Agreement;
- (k) a reference to a government entity (as that term is defined in the *Public Service Act 2008*) in the event that entity is reconstituted or replaced, will be a reference to the entity then carrying out its powers and functions;
- (l) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Agreement or any part of it;
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (n) in the case of any inconsistency in the Agreement, the following order will prevail as the order of precedence of the documents:
  - (i) the Education Horizon Terms and Conditions;
  - (ii) the schedules or annexures to the Education Horizon Terms and Conditions (if any);
  - (iii) the Application;
  - (iv) Schedule 1 to the Application;
  - (v) Schedule 2 to the Application; and
  - (vi) any other schedules to the Application.

## **2. THE AGREEMENT AND TERM OF THE AGREEMENT**

- 2.1 The Agreement expresses all of the terms and conditions applicable to the Funding and the Research Project.
- 2.2 For the avoidance of doubt, if the Researcher is required to submit a Department Access Research Application, the Terms and Conditions for Conducting Research referenced in that application do not form part of the Agreement and shall be of no force or effect with respect to the subject matter of the Agreement.
- 2.3 The Agreement will commence on the Commencement Date and continue unless and until the earlier to occur of the following:
  - (a) termination in accordance with clause 16 of these Education Horizon Terms and Conditions;

- (b) written agreement between the Parties amending the terms of this Agreement; or
- (c) the Completion Date.

### **3. OBLIGATIONS OF THE DEPARTMENT**

Subject to the Researcher and Sponsor complying with the terms of the Agreement, the Department will provide the Funding to the Sponsor for the benefit of the Researcher in instalments, the amounts and timing of which are set out in Schedule 1 of the Application.

### **4. OBLIGATIONS OF THE SPONSOR**

4.1 The Sponsor must:

- (a) administer the Funding and, in doing so:
  - (i) ensure that the Funding is used only for the purposes of the Research Project and for eligible project activities as outlined in the Guidelines; and
  - (ii) exercise reasonable diligence, care and skill;
- (b) make the Sponsor Contributions to the Research Project in accordance with Section 5.6 of the Application;
- (c) submit a valid tax invoice to the Department –
  - (i) in accordance with the Milestone Table; and
  - (ii) when requested by the Department;
- (d) provide financial acquittal statements outlining the Research Project expenditure to the Department on the Completion Date;
- (e) receive and administer the Co-Sponsor Contributions (if applicable), for the purposes of the Research Project;
- (f) enter into a written agreement with each Co-Sponsor, if applicable, on terms satisfactory to the Department, pursuant to which the Co-Sponsor agrees to provide the Co-Sponsor Contribution for the term of the Agreement; and
- (g) provide the Department with a signed copy of the agreements referred to in sub-clause 4.1(f) within three months of the Commencement Date.

4.2 Without limiting any other provision of the Agreement, the Sponsor must immediately notify the Department on becoming aware of:

- (a) any breach of the Agreement by the Researcher or the Sponsor;
- (b) any actual or proposed material change to the Research Project or Research Plan; or

- (c) the failure of a Co-Sponsor to make a Co-Sponsor Contribution.
- 4.3 The Sponsor undertakes that it will not be involved in any Publicity concerning the Research Project without first contacting the Department and obtaining the Department's consent to such involvement.
- 4.4 Without derogating from the Sponsor's other obligations under the Agreement, the Sponsor must monitor the delivery of the Research Project in accordance with its usual administrative procedures and as necessary to discharge the obligations of the Researcher and the Sponsor under this Agreement.

## **5. OBLIGATIONS OF THE RESEARCHER**

The Researcher must:

- (a) achieve the milestones and Deliverables as set out in the Milestone Table and Application by the specified due dates;
- (b) provide the required information and reporting specified in Schedule 1 of the Application;
- (c) use all reasonable endeavours to carry out the Research Project substantially in accordance with the Research Plan;
- (d) apply himself or herself diligently to the Research Project;
- (e) promptly notify the Department of any actual or proposed material change to the Research Project or Research Plan and obtain the Department's written consent to the material changes;
- (f) immediately notify the Department of any matter that may affect the Researcher's eligibility for Funding under the Guidelines, including:
  - (i) the cessation of enrolment or employment with the Sponsor; or
  - (ii) the Researcher moving residence to outside of the State of Queensland;
- (g) be available for media opportunities organised by the Department, including discussions with Department officers to gather information and attending special promotional opportunities or events associated with the Funding;
- (h) obtain the written consent of the Department in relation to any Research Project related travel;
- (i) ensure that, where relevant, each individual who will be participating in the Research Project has given written consent to their participation (consent must be specific, informed, current and voluntary); and
- (j) ensure that, where relevant, the Research Project:



- (i) complies with the National Statement on Ethical Conduct in Human Research (<https://www.nhmrc.gov.au/guidelines-publications/e72>);
- (ii) complies with the Code of Ethics for Aboriginal and Torres Strait Islander Research (<https://aiatsis.gov.au/research/ethical-research/code-ethics>);
- (iii) complies with the Guidelines for Conducting Research (<https://education.qld.gov.au/about-us/reporting-data-research/research/research-guidelines>);
- (iv) adheres to the Standards for Ethical Research Practice (<https://qed.qld.gov.au/publications/management-and-frameworks/evidence-framework/foundations-evidence/ethical-research-practice>);
- (v) adheres to the Research Principles;
- (vi) accords with the Code of Conduct for the Queensland Public Service and the Department's Standard of Practice (located at <https://qed.qld.gov.au/working-with-us/det-induction/det/induction-programs-and-resources/code-of-conduct>);
- (vii) if the Research Project requires access to Departmental data, sites, or staff, the Department has approved a Department Access Research Application for the Research Project;
- (viii) is cleared by all relevant ethical committees prescribed by the Sponsor's research rules; and
- (ix) complies with all relevant Law.

## 6. REPORTING AND RECORDS

- 6.1 The Researcher must prepare the reports referred to in the Milestone Table, including a Progress Report and Final Report, on a reporting pro-forma provided by the Department. The reporting pro-forma will be distributed to the Researcher by the Department prior to the reporting deadlines.
- 6.2 The Sponsor must endorse and submit the reports referred to in clause 6.1 to the Department at the times specified in the Milestone Table. The submitted reports must be to the satisfaction of the Department.
- 6.3 If the Department asks the Sponsor and/or the Researcher to provide further information about any matter in a report, the Sponsor must provide or must ensure that the Researcher provides that information within 20 Business Days after the request.
- 6.4 The Researcher must, if requested by the Department, provide information to the Department regarding outcomes from the Research Project up to 24 months after submitting the Final Report.
- 6.5 The Sponsor must keep proper and adequate books of account and records of expenditure in relation to the Funding and the Research Project, separate from all other income and

expenditure of the Sponsor, with such records to be retained for a minimum of 5 years after the Completion Date.

## **7. ACCESS TO PREMISES**

The Sponsor agrees to permit the employees, servants and agents of the Department access to its premises at all reasonable times to:

- (a) inspect any records, books of account or documentation relating to the performance of the Agreement; or
- (b) conduct an audit or inspection of the performance of the Agreement at a mutually agreeable time (but not later than 15 Business Days after receiving written notice from the Department that such access is required).

## **8. CONFIDENTIALITY**

8.1 A Recipient of Confidential Information:

- (a) must not, without the prior written approval of the Discloser, use, make public or disclose to any person any Confidential Information;
- (b) must immediately notify the Discloser if it becomes aware of any unauthorised use or disclosure of the Confidential Information;
- (c) must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it;
- (d) may disclose Confidential Information only:
  - (i) to its personnel who are aware that the Confidential Information is confidential and are subject to the same obligations of confidentiality as the Recipient and only to the extent necessary to exercise its rights and perform its obligations under the Agreement;
  - (ii) to the extent required by Law, provided that the Recipient must use its best endeavors to notify the Discloser prior to the information being disclosed;
  - (iii) to the Recipient's professional advisors; and
  - (iv) to any other persons only to the extent necessary for the Recipient to exercise its rights and perform its obligations under the Agreement;
- (e) must ensure that its personnel comply with any obligations of confidentiality in relation to the Confidential Information and must enforce those obligations in case of breach;
- (f) acknowledges that unauthorised use or disclosure of Confidential Information will cause the Discloser harm that cannot be adequately compensated by damages and that the

Discloser may obtain interlocutory injunctions and any other orders necessary to restrain the disclosure of any Confidential Information; and

- (g) must immediately notify the Discloser that it or any other person is doing or has done anything inconsistent with or in contravention of this clause 8.1 and must provide to the Discloser all relevant assistance and information it requests.

8.2 The Sponsor and the Researcher agree that the Department may disclose publicly the fact that the Funding has been made available to the Researcher through the Sponsor, the amount of the Funding, and general details of the Research Project and the Agreement.

8.3 The Department is not in default of clause 8.1 if the Confidential Information:

- (a) is disclosed by the responsible Minister administering the Department from time to time; or
- (b) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the State; or
- (c) is shared by the Department within the Department or with another agency, where this serves the State's legitimate interests; or
- (d) is disclosed pursuant to the *Right to Information Act 2009* or another Law or a publication scheme made under a Law.

## 9. PRIVACY

9.1 If the Researcher or the Sponsor collects, holds or has access to Personal Information for the purposes of the Agreement or the Research Project, they must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under the Agreement as if it were the Department;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (c) not use Personal Information other than for the purposes of the Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written agreement of the Department, unless required or authorised by Law;
- (e) not transfer Personal Information outside of Australia without the prior written agreement of the Department;
- (f) ensure that access to Personal Information is restricted to its employees, officers and volunteer workers who require access in order to perform their duties;

- (g) immediately notify the Department if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by Law;
- (h) make its employees, agents and subcontractors aware of its obligations under this clause 9;
- (i) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (j) comply with such other privacy and security measures as the Department reasonably advises the Researcher or the Sponsor about in writing from time to time.

## **10. INTELLECTUAL PROPERTY AND MORAL RIGHTS**

10.1 This Agreement does not operate to transfer ownership of any Intellectual Property Rights in the Project Material from the Researcher or Sponsor to the Department.

10.2 Where the Sponsor holds the Intellectual Property Rights in the Project Material (and this will be indicated in the Application), the Sponsor:

- (a) warrants that the Sponsor is entitled to deal with the Intellectual Property Rights in the Project Material in the manner provided for in this clause 10;
- (b) will ensure the Project Material and the provision of the licence to the Department under this clause does not infringe any person or entity's Intellectual Property Rights;
- (c) grants the Department a worldwide, paid up, perpetual, irrevocable, royalty free, non-exclusive licence (including a right to sub-licence as outlined in clause 10.4 below) to use, communicate, reproduce, publish, adapt and modify the Project Material for the Department's Purposes.

10.3 Where the Researcher holds the Intellectual Property Rights in the Project Material (and this will be indicated in the Application), the Researcher:

- (a) warrants that the Researcher is entitled to deal with the Intellectual Property Rights in the Project Material in the manner provided for in this clause 10;
- (b) will ensure the Project Material and the provision of the licence to the Department under this clause does not infringe any person or entity's Intellectual Property Rights;
- (c) grants the Department a worldwide, paid up, perpetual, irrevocable, royalty free, non-exclusive licence (including a right to sub-licence as outlined in clause 10.4 below) to use communicate, reproduce, publish adapt and modify the Project Material for the Department's Purposes.

10.4 The Department's right to sub-licence the Project Material (outlined in clauses 10.2(c) and 10.3(c) above) is limited to sub-licensing to the Department's contractors, agents and other government agencies where these other persons and entities are working for or with the Department in relation to the Department's Purposes.

- 10.5 The Researcher consents to the Department fully exercising the rights granted to the Department under this clause 10 and doing any act or omission in that regard that would otherwise infringe the Moral Rights of the Researcher and agrees not to assert any Moral Rights to the contrary.
- 10.6 The Researcher and the Sponsor will use their best endeavours to obtain a consent regarding Moral Rights from all other individual authors of any part of the Project Material on terms similar to the consent and agreement granted by the Researcher under clause 10.5. If this consent cannot be obtained, the Researcher and the Sponsor must advise the Department of this and in this notice clearly identify all parts of the Project Material that has Moral Rights owned by the relevant individual author associated with it.
- 10.7 If requested by the Department, the Researcher and sponsor will sign or complete any document that may be necessary or desirable to give effect to this clause 10.
- 10.8 The parties agree that the licence rights granted to the Department under this clause 10 do not replace or override any rights that may exist at law under the *Copyright Act 1968* (Cth) or statutory licences that permit the Queensland Government, the Department and Queensland state schools to lawfully exercise copyrights in the Project Material.

## **11. RESEARCH FINDINGS**

- 11.1 The Researcher must provide the Research Findings to the Department, using the template provided by the Department, for consideration and comment.
- 11.2 The Researcher must, if relevant, provide a summary of the Research Findings, using a format (electronic format is acceptable), language and concepts that are non-technical to all participants and Departmental sites that participated in the Research Project.
- 11.3 The Department may publish the Research Findings on QERI where the Researcher has provided its consent in QERI.
- 11.4 The Department reserves the right not to publish the Research Findings on QERI.

## **12. PUBLICATIONS**

- 12.1 The Researcher and Sponsor must provide the Department with a draft copy of any Publication relating to the Research Project, for comment and consideration, at least three weeks prior to publication.
- 12.2 The Department retains the right to request reasonable amendments or alterations be made to a Publication prior to publication, and the Researcher and Sponsor agree to make those amendments or alterations.
- 12.3 The Department also reserves the right to require that a Publication is not published, made public, or advertised in any way and the Researcher and Sponsor must comply with such a request.

12.4 The Researcher and Sponsor must acknowledge the Funding received from the Department in any Publication relating to the Research Project. The Department will provide the wording for such acknowledgement upon request.

12.5 The Researcher and Sponsor must ensure that any Publication relating to the Research Project that identifies the Department, carries a disclaimer to the effect that it does not necessarily represent the views of the Department.

### **13. PUBLICITY**

13.1 The Researcher and Sponsor each must inform the Department if they intend to issue or participate in Publicity relating to the Research Project, and provide the Department with a copy of the proposed Publicity for review, at least one week prior to its release.

13.2 The Department retains the right to request reasonable amendments or alterations be made to proposed Publicity prior to its release and the Researcher and Sponsor agrees to make those amendments or alterations.

13.3 The Department also reserves the right to require that that proposed Publicity is not published, made public or advertised in any way and the Researcher and Sponsor must comply with such a request.

13.4 Where Publicity is proposed to occur at Department sites, the Researcher and Sponsor must obtain permission from the Department's media team (at [media@qed.qld.gov.au](mailto:media@qed.qld.gov.au)), Research Services and the relevant site manager.

13.5 The Researcher and Sponsor must acknowledge the Funding received from the Department in any Publicity relating to the Research Project. The Department will provide the wording for such acknowledgement upon request.

13.6 The Researcher and Sponsor must ensure that any Publicity relating to the Research Project that identifies the Department, carries a disclaimer to the effect that it does not necessarily represent the views of the Department.

13.7 The Researcher and Sponsor authorise the Department to, in its discretion, promote the Researcher and Sponsor in relation to the Research Project and Project Material for the purpose of advancing the status of education and research in Queensland.

13.8 The Sponsor will use its best endeavours to ensure that the Co-Sponsors (if relevant) authorise the Department to, in its discretion, promote the Co-Sponsors in relation to the Research Project and Project material for the purpose of advancing the status of education and research in Queensland.

### **14. COMPARATIVE STATEMENTS**

14.1 The Researcher and Sponsor must ensure that comparative statements regarding Departmental sites (including the Department's policies, programs, and data) and other Sectors, home schooling or Jurisdictions (both Australian and overseas) are not included in

Publications and Publicity arising from the Research Project, unless prior written agreement has been obtained from the Department.

## **15. QUEENSLAND GOVERNMENT LOGO**

15.1 The Researcher and Sponsor must obtain written consent from the Department for any use of the Department or Queensland Government logo.

## **16. BREACH OF AGREEMENT AND TERMINATION**

16.1 A breach of the Agreement occurs if any of the following events occur:

- (a) the Researcher fails to comply with any of their obligations under the Agreement; or
- (b) the Sponsor fails to comply with any of its obligations under the Agreement; or
- (c) the Researcher ceases to be eligible for Funding under the Guidelines; or
- (d) the submitted Application is found to have been misleading or deceptive in a material particular which, in the reasonable opinion of the Department, would have caused the Application to be rejected if known at the time of assessment; or
- (e) in the reasonable opinion of the Department, the Researcher fails to maintain satisfactory progress towards the completion of the Research Project; or
- (f) the Researcher withdraws from the Research Project without sufficient justification (in the reasonable opinion of the Department); or
- (g) in the Department's opinion, the Researcher brings the Department or the Queensland Government into disrepute.

16.2 Where the Department is made aware of, or reasonably suspects, a breach of the Agreement under clause 16.1, the Department may suspend or vary the Research Project or the Agreement in order to conduct an investigation of this matter.

16.3 The Department will inform the Researcher and Sponsor in writing of any decision to suspend or vary the Research Project or the Agreement under clause 16.2. The Researcher must immediately comply with any requirement to suspend the Research Project.

16.4 The Department may immediately terminate the Agreement by notice in writing if:

- (a) in the reasonable opinion of the Department, the Researcher has failed to remedy a breach of the Agreement outlined in clause 16.1 (a), (c), (d), (e), (f) or (g) (or any combination of them) within 20 Business Days after a notice to remedy from the Department specifying the breach; or
- (b) in the reasonable opinion of the Department, the Sponsor has failed to remedy a breach of the Agreement outlined in clause 16.1 (b) within 20 Business Days after a notice to remedy from the Department specifying the breach; or

- (c) in the reasonable opinion of the Department, the breach of the Agreement outlined in clause 16.1 (a), (b), (c), (d), (e), (f) or (g) (or any combination of them) is not capable of remedy.
- 16.5 If, in the reasonable opinion of the Department, the Researcher or Sponsor breach the Agreement under clause 16.1, the Department also:
- (a) reserves the right to refuse any future research application to the Department or request to advertise a research project in State schools from the Researcher or Sponsor;
  - (b) may inform the Researcher's employer or institution, Human Research Ethics Committee, or other relevant body of the breach of the Agreement; and
  - (c) may inform comparable departmental research units in other states or territories of Australia and research units in other education Sectors of the Researcher's or Sponsor's actions.
- 16.6 Termination for convenience:
- (a) The Department may, at any time, by reasonable written notice, terminate the Agreement for convenience, including for a machinery of government change.
  - (b) If the Agreement is terminated by the Department under clause 16.6 (a), then:
    - (i) the Sponsor will be entitled to the reasonable costs (if any) that have been or will be incurred by the Sponsor as a direct result of the termination of the Agreement and which the Sponsor cannot recoup or avoid and which would not otherwise have been incurred by the Sponsor if the Agreement had continued until its expiry; and
    - (ii) the Researcher will be entitled to the reasonable costs (if any) that have been or will be incurred by the Researcher as a direct result of the termination of the Agreement and which the Researcher cannot recoup or avoid and which would not otherwise have been incurred by the Researcher if the Agreement had continued until its expiry.
  - (c) For the avoidance of doubt, the Funding amount is the maximum amount payable by the Department pursuant to this clause 16.6.

## **17. REPAYMENT OF FUNDING**

- 17.1 If, on the expiry or earlier termination under clause 16.4 or 16.6 of the Agreement, any amount of Funding:
- (a) remains unspent or uncommitted; or
  - (b) cannot, by reconciliation between the accounts and records kept by the Sponsor, as reported under clause 6, be shown to the reasonable satisfaction of the Department to have been spent or committed over the term of the Agreement,



the Department may by written notice to the Sponsor require the Sponsor to repay that part of the Funding and the Sponsor must repay to the Department the amount set out in the notice within 20 Business Days of receipt of the notice.

17.2 If the Agreement is terminated under clause 16.4 for breaches under clause 16.1 (d) or (f), the Department may by written notice to the Sponsor require the Sponsor to repay all of the Funding paid up to the date of termination, within 20 Business Days of receipt of the notice.

17.3 The Sponsor acknowledges that any amount required to be repaid under clause 17.1 or 17.2 will be a debt due and owing to and recoverable by the Department.

## 18. INSURANCE

18.1 The Sponsor must effect and maintain the following insurances:

- (a) public liability insurance for an amount of not less than \$10,000,000 per occurrence;
- (b) workers' compensation insurance for the Sponsor's employees in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld); and
- (c) professional indemnity insurance for an amount of not less than \$10,000,000 covering the Researcher and the Sponsor's employees; and
- (d) if volunteers are to be utilised in connection with the Research Project, such other insurances to extend the coverage of the insurance types specified in 15.1(a), (b) and (c) above, including without limitation appropriate coverage extensions to public liability and professional indemnity insurances and Volunteer Workers Personal Accident insurance.

18.2 Upon receipt of a written request from the Department, the Sponsor must produce evidence (by way of certificates of currency) to the Department that the insurances required by this clause have been effected and maintained.

## 19. INDEMNITY

19.1 The Researcher and Sponsor carry out the Research Project entirely at their own risk and the Department, including its employees, officers and agents, will not be liable for any claim, suit, demand, action or proceeding brought against the Researcher or the Sponsor as a result of carrying out the Research Project.

19.2 The Researcher and Sponsor each release and indemnify (and keep indemnified) the Department, including its employees, officers and agents, (to the full extent permitted by any law) against any claim, suit, demand, action or proceeding and associated legal costs (including solicitor/client costs) which may be brought against the Department which arises directly or indirectly as a result of:

- (a) any breach of the Agreement by the Sponsor (including by its employees, officers and agents) or the Researcher; or

- (b) any negligent or unlawful act or omission by the Sponsor (including by its employees, officers and agents) or the Researcher in relation to the Sponsor's or Researcher's performance of the Research Project; or
- (c) the Researcher's or Sponsor's (including its employees, officers and agents) performance of the Agreement or any other agreement contemplated by the Agreement relating to the Research Project; or
- (d) any infringement (or alleged infringement) of Intellectual Property Rights by the Researcher, Sponsor (including by its employees, officers and agents) or Co-Sponsor (including by its employees, officers and agents) in the course of, or incidental to, performing the Research Project; or
- (e) any infringement (or alleged infringement) of a third party's Intellectual Property Rights by the Department (including its employees, officers and agents) as a result of the Department exercising the rights granted to it under the Agreement.

## **20. GOODS AND SERVICES TAX (GST)**

- 20.1 In this clause 20, words and expressions which are not defined in the Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- 20.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- 20.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with the Agreement, the consideration for the supply but for the application of this clause 20.3 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 20.4 Subject to clause 20.5 the recipient of a supply must pay the amount referred to in clause 20.3 in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.
- 20.5 A Party need not make a payment for a taxable supply made under or in connection with the Agreement until it receives a tax invoice for the supply to which the payment relates.
- 20.6 If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount payable by the recipient of the supply under clause 20.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 20.7 Where a Party is required under the Agreement to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party, or to which the representative member for a GST group of which the other Party is a member, is entitled; and

- (b) if the payment or reimbursement is subject to GST, an amount payable in accordance with clause 20.3.

## **21. DISPUTE RESOLUTION**

21.1 Subject to clause 21.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under the Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 18 has been used.

21.2 The Parties agree that any dispute arising during the term of the Agreement is dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other Parties a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation by persons whom they have given the authority to resolve the dispute;
- (c) the Parties have 20 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure,

and if:

- (d) there is no resolution of the dispute;
- (e) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (f) there is a submission to mediation or some alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or extended time as the Parties may agree in writing before the expiration of the 20 Business Days;

then, the Party may commence legal proceedings.

21.3 This clause 21 does not apply if:

- (a) a Party commences legal proceedings for urgent interlocutory relief; or
- (b) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Researcher or the Sponsor.

## **22. NOTICES**

22.1 Any notice or other communication to be given under the Agreement must be in writing and may be delivered by hand, or sent by pre-paid post, or electronic mail to the respective addresses (or any substitute address a Party may notify to the others for the purposes of this clause) as follows:

- (a) for the Researcher, to the address set out in the Application;

- (b) for the Sponsor, to the address set out in the Application; and
- (c) for the Department, to the following address:

Director, Research Services  
Department of Education  
Education House, Level 21, 30 Mary Street  
BRISBANE QLD 4002

Or addressed to the Director via email: [education.horizon@qed.qld.gov.au](mailto:education.horizon@qed.qld.gov.au)

22.2 Notices will be deemed to be received:

- (a) 4 Business Days after deposit in the mail with the postage prepaid;
- (b) the day it is delivered by hand;
- (c) if sent by email to a Party's email address, instantaneously (unless the recipient can evidence that the email never entered the recipient's information system or entered it at a later time);

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

## 23. GENERAL PROVISIONS

- 23.1 **No assignment** – Neither the Sponsor nor the Researcher may assign the Agreement or any of the benefits or obligations under the Agreement.
- 23.2 **Relationship** – Neither the Sponsor nor the Researcher will by reason of the Agreement be deemed to be an employee, agent or partner of the Department.
- 23.3 **Variation** – The Agreement may only be varied by agreement in writing signed by all Parties.
- 23.4 **Costs** – Each Party must pay its own costs and expenses of and in relation to the negotiation, preparation, signing and performance of the Agreement.
- 23.5 **Entire Agreement** – This Agreement constitutes the entire Agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements (either oral or written) between the Parties in relation to the subject matter of the Agreement.
- 23.6 **Severability** – The invalidity or unenforceability of any one or more of the provisions of the Agreement will not invalidate or render unenforceable the remaining provisions of the Agreement. Any illegal or invalid provision of the Agreement will be severable and all other provisions will remain in full force and effect.
- 23.7 **Governing law** – The Agreement is governed by the law of the State of Queensland and the Parties agree to submit to the jurisdiction of the courts of the State of Queensland.

- 23.8 **Waiver** – No right under the Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce at any time any provision of the Agreement will not constitute a waiver of the Party's rights in respect of the provision.
- 23.9 **Reasonableness and good faith** – The Parties must, in fulfilling their obligations and exercising their powers under the Agreement, act reasonably and in good faith.
- 23.10 **Force Majeure** – If any Party is unable by reason of Force Majeure to carry out any of its obligations whether wholly or in part under the Agreement, the Party so affected will immediately give notice to the other Party in writing of the Force Majeure specifying full particulars thereof whereupon its obligations will, to the extent to which they are affected by the Force Majeure, be suspended and the time prescribed under the Agreement for performing its obligations be suspended or extended, but for no longer than the continuance of the Force Majeure. The Party so claiming Force Majeure will use all reasonable diligence to remove or overcome the conditions constituting Force Majeure and minimise the impact as quickly as possible.
- 23.11 **Survival** – Clauses 6.3, 6.4, 6.5, 8, 9, 10, 12, 13, 16, 17, 19, 20 and 23 survive termination or expiry of the Agreement.