

# Advancing Small Business Queensland

## Small Business Digital Grants Program Terms and Conditions

1. The Small Business Digital Grants Program (Program) is conducted by the State of Queensland acting through the Department of Employment, Small Business and Training (DESBT) in accordance with the guidelines and on the following terms and conditions.
2. By lodging an application, you agree to be bound by the funding agreement upon written approval of the application by DESBT.

### Definitions

3. In these terms and conditions:
  - a) 'acquittal report' means a report about the applicant's financial performance in connection with carrying out the project.
  - b) 'applicant' means the entity submitting the application to DESBT relating to the project.
  - c) 'application' means the official application for a grant submitted by the applicant as part of the Small Business Digital Grants Program.
  - d) 'approval date' means the date on which the project and the funding agreement commence and is the date on the letter of approval provided by DESBT to the applicant.
  - e) 'commencement date' means the date on which the project actually commences.
  - f) 'confidential information' means all information, trade secrets and knowledge of or disclosed by a party (Discloser) to another party (Receiver) that:
    - a. is by its nature confidential;
    - b. is designated or marked by the Discloser as confidential; or
    - c. the Receiver knows or ought to know is confidential,
    - d. but does not include information which:
      - i. is or becomes public knowledge other than by breach of this deed or any other confidentiality obligation; or
      - ii. is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.
  - g) 'consultant' means any consultant, advisor, mentor, expert, training provider or third party engaged by the business as part of carrying out the project.
  - h) 'DESBT' means the State of Queensland acting through the Department of Employment, Small Business and Training (ABN 84 375 484 963).

- i) 'eligible expenses' means expenses which are eligible for reimbursement by DESBT under the Program as set out in the guidelines.
- j) 'funding agreement' means the funding agreement between the DESBT and the applicant which is formed when DESBT approves the application in writing, such funding agreement being comprised of:
  - a. these terms and conditions;
  - b. the guidelines;
  - c. the application submitted by the applicant relating to the project;
  - d. the letter of approval of the grant from DESBT to the applicant; and
  - e. any other terms agreed in writing between the parties.
- k) 'grant' means the amount of funding approved by DESBT for the project as set out in the letter of approval from DESBT to the applicant.
- l) 'guidelines' means the guidelines for the Program made available to the applicant as part of the application process.
- m) 'Minister' means the Minister with responsibility for the Small Business Digital Grants Program.
- n) 'personal information' has the same meaning as in the *Information Privacy Act 2009* (Qld).
- o) 'project' means the project or activity detailed in the application for which the applicant is seeking a grant.
- p) 'project report' is a report provided by the participant outlining the advice

received, its implementation, the results/outcomes achieved and the impact on the business, and includes a final project report.

## Applications

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

## Disclosure and publication

- 9. By submitting an application, the applicant:
  - a) acknowledges that submitting an application does not guarantee that the applicant will be eligible to receive a

- grant. Selection of the applicant for a grant shall be at DESBT's sole and absolute discretion.
- b) acknowledges that in the event that the application is approved, the applicant has read, and agrees to be bound by the funding agreement throughout the term of the funding agreement.
  - c) authorises the use and/or publication of the applicant's name and details of the project, in relation to any promotional or advertising purposes in conjunction with the Small Business Digital Grants Program.
  - d) authorises the use and disclosure by DESBT and/or the Minister of the applicant's name, contact details and details of the project (including grant amount), for any promotional, advertising or accountability reporting purpose in relation to the Small Business Digital Grants Program. Disclosure may include to Members of Parliament.
  - e) acknowledges that DESBT, its officers, employees, assessment panel members, agents and sub-contractors may use and disclose any of the information provided with the application including personal information, to Queensland Government departments or agencies, Queensland Government bodies, non-government organisations and/or the Commonwealth, states or territories for any purpose in connection with the administration of the Program.
  - f) acknowledges that the *Right to Information Act 2009* provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies, subject to the exemptions under that Act.
  - g) warrants that the applicant is not in breach of any law, constitution or any other requirement the applicant is bound to comply with.
  - h) warrants that the applicant is not, bankrupt or insolvent.
  - i) warrants that the use of such information or material as above will not infringe the rights of any third party or any law.

## Assessment

- 10. DESBT will assess applications against the assessment criteria and will provide recommendations to the DESBT delegate for approval.
- 11. All decisions and recommendations of DESBT are binding and final and there is no process of appeal.

## Successful applications

- 12. The successful applicant must:
  - a) commence the project within 1 month from the approval date. Provision of the grant to the applicant will be subject to and conditional upon the applicant's compliance with the funding agreement.
  - b) obtain all appropriate documentation for the project (e.g. permits, approvals, insurances and any legal requirements) and provide copies to DESBT on request.

- c) complete the project within 3 months of the approval date, unless otherwise agreed in writing by DESBT.
- d) advise DESBT of all project changes immediately.
- e) fulfil all reporting and acquittal requirements as per the funding agreement.

## Payments, GST and reporting

- 13. The Grant is not subject to GST. The Grant is GST exclusive. No part of the Grant is to be applied towards the payment of GST.
- 14. A single grant payment will be made directly to the applicant on:
  - a) successful completion of the project;
  - b) DESBT's acceptance of a final project report from the applicant (to be provided within 28 days of the project's completion); and
  - c) provision of copy/copies of invoice(s) and receipt(s) from any consultant(s); and
  - d) evidence of payment of applicant's contribution to the project, up to a matched amount of consultant costs.
- 15. The applicant must submit valid tax invoice(s) to DESBT in accordance with GST legislation and reporting requirements.
- 16. Payments of the grant will be made via electronic funds transfer to the applicant.

## Other obligations

- 17. If an application is successful, the applicant acknowledges that:
  - a) DESBT makes no representations or warranties regarding the qualifications and experience of the available consultants, or the information sources contained in the guidelines. The applicant shall make its own enquiries before deciding whether the consultant chosen is suitable for the applicant's needs.
  - b) any information, opinions or other assistance provided by the consultant is in response to the information or material that the applicant has provided to the consultant, and that DESBT is not responsible for the accuracy or completeness of this information or material.
  - c) any reliance or other use of the information, opinions or other assistance provided by a consultant shall be entirely at the applicant's own risk.
  - d) should the applicant require services in addition (Additional Services) to the services set out in the application, the applicant shall be required to negotiate a separate agreement directly with the consultant. Any arrangement between the applicant and the consultant for the provision of Additional Services is not part of the project and DESBT accepts no responsibility for any such arrangement.

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- e) the provision of information or other assistance by DESBT or the consultant in relation to the project does not guarantee the applicant's success in any business activity.
- f) the applicant retains sole responsibility for the applicant's actions and decisions (regardless of whether they are based on options or suggestions provided by the consultant or other services provided). Furthermore, the applicant will not bring any claim or action against DESBT, should the applicant's business activity not achieve its intended aims.
- g) the applicant releases (to the full extent permitted by law) and indemnifies DESBT from and against any claim which may be brought against or made upon or incurred by DESBT arising directly or indirectly out of any advice provided to the applicant by a consultant or any agreement the applicant enters into with a consultant or a third party, or as a result of the advice provided by DESBT.
- h) the applicant will have and maintain appropriate insurances in relation to the business and upon reasonable request, provide evidence of currency to DESBT.
- i) except for any liability that cannot be excluded by law, DESBT (including its officers, employees and agents) is excluded from all liability (including negligence) for any loss or damage (including loss of opportunity or personal injury) whether direct, indirect, special or, arising in any way out of the application or the funding agreement.
- j) any intellectual property created from the project will be owned by the applicant.
- k) the applicant will complete an acquittal report within 28 days of the completion of the service that has been provided to them, describing how the service has been of assistance to them and their business. DESBT will provide the acquittal report template to the applicant.
- l) the applicant agrees to provide any information reasonably requested by DESBT.
- m) the applicant agrees to participate in a survey 6 months after the completion of the project following up on outcomes.
- n) the applicant agrees to complete the project within 3 months of the commencement date, unless otherwise agreed in writing between the parties.
- o) any variations to the project should be supplied to DESBT for prior approval. Any approval will be at the absolute discretion of DESBT, and if the variation is approved, the applicant will be notified in writing by DESBT. No variation will be implemented without the applicant first receiving a notice of approval from DESBT.
- p) the applicant may only lodge 1 application at a time. Successful applicants may not re-apply.

- q) either party may terminate the funding agreement by written notice with immediate effect if the other party:
  - a. breaches a material term of the funding agreement which is not capable of being remedied; or
  - b. breaches a material term of the funding agreement which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so
- r) where a party terminates the funding agreement, the applicant must provide DESBT with:
  - a. any outstanding invoices for work performed by a consultant up to the date of termination;
  - b. an acquittal report; and
  - c. refund of any part of the grant which remains unspent or uncommittedwithin 30 days of the termination date.
- s) a party may notify the other party in writing of the occurrence of a dispute (Dispute Notice) and the parties will try to resolve the dispute through negotiation.
- t) in the event of a dispute, if the parties are unable to resolve a dispute within 15 business days from the receipt of the Dispute Notice, the dispute is to be referred to the parties' authorised officers for resolution. Each party will continue to perform its obligations in accordance with the funding agreement.
- u) each party must not disclose the other party's Confidential Information to a third party without the other party's prior written consent, except:
  - a. to its representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
  - b. to its professional advisers who are obliged to keep the information confidential;
  - c. as required or permitted by law; or
  - d. where that party is DESBT, to any relevant Minister (including his/her advisers), the Parliament of the State of Queensland (including Parliamentary Committees), any Australian Government department, Queensland Government department, agency or authority or where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.
- v) DESBT may, at its discretion, carry out random audits of applications to ensure that the information provided is true and correct. Where it is found that false or misleading information has been provided, penalties may apply, including refunding to DESBT some or all of the grant funding.
- w) the following clauses survive expiry or termination of the funding agreement:
  - a. 16(a) (no warranty);
  - b. 16(f) (no claim);

- c. 16(g) (indemnity);
- d. 16(h) (insurance);
- e. 16(i) (liability);
- f. 16(j) (intellectual property);
- g. 16(m) (survey);
- h. 16(u) (confidential information);
- i. 16(v) (audits); and
- j. 16(w) (survival).

## Other

- 18. DESBT reserves the right to amend these conditions at any time in accordance with clause 6 above.
- 19. DESBT reserves the right not to allocate the total amount of funding available for the Program if, in the opinion of the application review panel, there are insufficient applications of suitable merit.
- 20. All costs associated with the preparation of applications and any associated costs will be the sole responsibility of the applicant.
- 21. Additional terms and conditions may be included in the approval letter provided to the applicant by DESBT.
- 22. Complaints related to the outcome of an application will be dealt with in accordance with DESBT's complaints management policy. This policy can be viewed by visiting [www.desbt.qld.gov.au](http://www.desbt.qld.gov.au).