



# First Nations Sport and Recreation Program Round 2

## Terms and Conditions

### Version 2.0 - Funding Terms and Conditions

The following terms and conditions will apply to the Tier 1 funding under Round 2 of the Program if the application is approved, from the date of the Department's letter of funding approval.

1. The Department reserves the right to withdraw the First Nations Sport and Recreation Program or make changes at any time. Any changes to the program will be publicly advertised on the Department's website at [First Nations Sport and Recreation Program | Recreation, sport and arts | Queensland Government \(www.qld.gov.au\)](http://www.qld.gov.au).
2. In consideration of the Organisation complying with the Funding Agreement (including clause 4), the Department will provide the Organisation with the Approved Funding, within 60 days of the date of the Department's approval letter/email (or execution of an additional funding agreement, if required).
3. Any payment to the Organisation by the Department is not an admission or acceptance by the Department that the Organisation has complied with the Funding Agreement.
4. Payment of the Approved Funding and the Funding Agreement is subject to and conditional upon the Organisation being compliant as at the date of payment of the Approved Funding (see clause 2), with:
  - a. all requirements of the Office of Fair Trading (that have been outstanding for more than 6 months prior to the date of the Organisation's Application for funding), where the Organisation is incorporated under the relevant State association legislation;
  - b. the Organisation's name on bank account details supplied with application matching the Organisation's legal name; and
  - c. the Organisation providing a copy of their actual bank statement which must state BSB, Account Number and Account Name of Organisation. Bank statements should not be older than March 2023. The Department can alternatively accept a print-out or letter which has been bank stamped and verified by the bank. The details must match the Australian Business Register printout regarding the legal Organisation's name and the details supplied with the application.
5. Where the compliance requirements in Clause 4 are not rectified by the due date for payment of the Approved Funding (see clause 2) or any further date specified by the Department in a letter requiring rectification of the outstanding clause 4 compliance items, the Funding Agreement will immediately come to an end, the Department will have no obligation to pay the Approved Funding to your Organisation, and your Organisation must return any Approved Funding paid.
6. The Organisation's application and/or use of the Approved Funding will be deemed as acceptance of the Funding Agreement. The Department may in its absolute discretion, require the Organisation to enter into an additional funding agreement (for example, if the Department determines that the project is complex). If the Department's approval letter/email requires entering into an additional funding agreement, then these Funding Terms and Conditions will not apply and additional funding agreement will apply instead upon execution of that agreement, the Department will not make any payment of the Approved Funding until the additional funding agreement is signed.
7. The Funding Agreement commences on the date of the funding approval letter and ends 60 days after Project Completion Date ('**Expiry date**'), unless terminated earlier in accordance with clauses 5, 23 or 234.
8. The Organisation warrants that it is an **Eligible Organisation**, and that the person agreeing to be bound by the Funding Agreement is authorised to do so on behalf of the Organisation.
9. Payment will be made by electronic transfer in accordance with the bank account details specified in the application. It is the Organisation's responsibility to notify the Department of any changes to its bank details by



providing either a bank statement which details the Organisation's account information or a letter from the financial institution with details of the Organisation's account for the payment of the Approved Funding.

10. If incorrect bank account details are supplied by the Applicant and payment is made to an incorrect account, the Department will not make another payment to the correct account unless the amount of the original funds have been returned to the Department. The Department is under no obligation to recover the original funds paid to incorrect bank details supplied by the Applicant.

11. The Approved Project must be delivered by the Project Completion Date.

12. The Organisation agrees to:

- a. undertake the Approved Project;
- b. spend the Approved Funding:
  - i. on the Approved Project, and for no other purpose (Approved Project means the project approved by the Department as stipulated in the Department's approval letter/email);
  - ii. for expenditure incurred from the date of the funding approval letter from the Department;
  - iii. by 30 June 2024, or such later date if approved in writing by the Department in its absolute discretion, upon written request by the Organisation;
- c. not spend the Funding on Ineligible Items;
- d. be responsible for providing any additional funds (in excess of the Approved Funding) required to complete the Approved Project;
- e. if the Approved Project is delivered and there remains an amount of unspent Approved Funding, then the Organisation may:
  - i. for Tier 1 Projects, spend the amount of the underspend, by the date in clause 11b. above, on another eligible cost, equipment or training project, specified employee costs as detailed in section 6.0 of the First Nations Sport and Recreation Program Guidelines and that is not an Ineligible Item.
- f. keep accurate records and accounts of expenditure of the Approved Funding;
- g. use the Approved Funding in a way to ensure value for money, transparency and accountability of public funds;
- h. respond to an online survey provided by the Department after the Project Completion Date;
- i. acknowledge the Queensland Government's funding contribution as specified at [www.qld.gov.au/recreation/sports/funding/acknowledgement](http://www.qld.gov.au/recreation/sports/funding/acknowledgement);
- j. upon receipt of an invoice from the Department, return to the Department any part of the Approved Funding not spent, expended or committed, in accordance with the Funding Agreement (as determined by the Department) as follows:
  - i. in accordance with the amount and date specified in the notice provided in clause 244, where the Funding Agreement is terminated by the Department;
  - ii. immediately where the Organisation terminates the Funding Agreement pursuant to clause 233; and
  - iii. within 10 business days of receipt of the invoice and written notice requiring the Organisation to return the amount of Approved Funding where (i) and (ii) above, do not apply;
- k. maintain public liability insurance for a sum of not less than \$20 million for any one event and workers compensation for a sum as required by law. Certificates of Currency must be provided at any time upon the request of the Department;
- l. keep all records relating to the Approved Project for a period of seven years, and permit the Department access to such records for audit purposes, for any reasonable time;
- m. provide to the Department all information as requested by the Department, in relation to the Approved Project and Approved Funding;
- n. comply with all relevant Acts, subordinate legislation and lawful requirements in carrying out the Approved Project; and
- o. comply with any Special Conditions specified in the Department's approval letter/email.

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13. The Organisation agrees that if it spends the Approved Funding or any part of the Approved Funding for any purposes other than those allowed by the Funding Agreement or fails to return unspent money to the Department by the Expiry Date, that amount will be deemed to be a liquidated debt due and payable to the Department.
14. The Organisation agrees to release, discharge, indemnify and keep indemnified the State of Queensland, its employees and agents from and against any loss, damages, claims, legal costs, expenses and costs arising from:
- the Approved Project;
  - the Organisation's non-compliance with the Funding Agreement;
  - any negligent act or omission or wilful misconduct by the Organisation, its employees, contractors, volunteers, agents or any person for whose conduct the Organisation is liable;
  - contravention by the Organisation of any Commonwealth, State or local law;
  - death or personal injury to any person, or property damage or loss, in connection with the Organisation's performance of the Funding Agreement; or
  - an actual infringement of any third party's intellectual property rights or moral rights.
15. The Organisation agrees that the Department may disclose the following information (including, without limitation, the Organisation's confidential information), to third parties or advisers:
- some or all of the information contained in the application form or Funding Agreement, to publicise funding arrangements and programs of the Department; or
  - the Organisation's general details and information concerning the Approved Project, to publicise funding arrangements and programs of the Department; or
  - any information, for the purposes of undertaking an audit or an evaluation of the Funding Agreement or the First Nations Sport and Recreation Program.
16. The Organisation agrees that the email address it provides as part of the registration or application process will be used by the Department and/or the Department's contracted service providers in relation to the Program to communicate with it. Dependent on its email service provider this may involve the transfer of personal information overseas.
17. Ownership of all intellectual property rights in all material the Organisation creates pursuant to the Approved Project ('**the Material**') vests in the Organisation.
18. The Organisation grants the Department a perpetual, irrevocable, royalty-free, worldwide and non-exclusive licence (including a right to sub-licence) to use, communicate, reproduce, publish, adapt, and modify, the Material for any purpose
19. The Organisation agrees that the email address it provides as part of the registration or application process will be used by the Department and/or the Department's contracted service providers in relation to the Program to communicate with it. Dependent on its email service provider this may involve the transfer of personal information overseas.
20. The Approved Funding is exclusive of Goods and Services Tax or similar tax, levy or impost imposed by the Commonwealth ('GST').
21. Where the Organisation is registered for GST:
- the Department will pay the Organisation the GST amount at the same time as paying the Approved Funding;
  - the Organisation agrees to allow the Department to issue the Organisation with a Recipient Created Tax Invoice (RCTI) in respect of GST applicable to advances of the Approved Funding. The following requirements will apply for the duration of the Funding Agreement:
    - the Department can issue the Organisation with an RCTI in respect of the supplies;
    - the Organisation will not issue tax invoices in respect of the supplies for which the Department issues RCTIs;
    - the Organisation acknowledges that it is registered for GST and agrees to notify the Department if the Organisation ceases to be registered;
    - the Department acknowledges that it is registered for GST and agrees to notify the Organisation if the Department ceases to be registered for GST;

- v. by fulfilling all these conditions the Department will issue a RCTI upon each payment made to the Organisation under the Funding Agreement; and
  - vi. both parties to this supply agree that they are parties to an RCTI agreement as outlined in GSTR2000/10.
22. The Organisation will be in breach of the Funding Agreement and the Department may suspend or terminate the Funding Agreement if the Organisation:
- a. does not comply, to the Department's satisfaction, with a notice to remedy a default (within the timeframe specified in the notice) of any provision in the Funding Agreement;
  - b. becomes insolvent, enters into external administration, is wound up (except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies), or in the Department's opinion, suffers financial distress which may have an adverse effect on the Organisation's ability to complete the Approved Project; or
  - c. is no longer eligible to receive the funding, including without limitation, if the Organisation is no longer an Eligible Organisation.
23. Either party may terminate the Funding Agreement for any reason, on the provision of one month's written notice to the other party. If the Funding Agreement is terminated under this clause 233, neither party will have any liability to pay the reasonable costs of the other party in relation to the termination.
24. If the Funding Agreement is terminated under clause 222 or 233, the Organisation agrees to comply, to the Department's satisfaction, with the requirements specified in any notice given by the Department, including any directions regarding the return of any unspent part of the Approved Funding.
25. General
- a. The Organisation agrees that it will not assign or subcontract its rights and obligations in relation to the Approved Project, without the Department's prior written consent.
  - b. No rights under the Funding Agreement will be waived except by notice in writing signed by each party.
  - c. The Approved Project and the Funding Agreement are governed by the laws of the State of Queensland.
  - d. All notices under the Funding Agreement must be in writing and may be delivered by hand, pre-paid post, or email to the other party, unless a specific mode of delivery is specified by either party (except email). In the case of the Organisation, notices are to be provided to the Accountable Officer in the application form.
  - e. The Funding Agreement may only be varied by:
    - i. a document signed by or on behalf of each party;
    - ii. an email exchange between the parties for the Organisation as specified in the Organisation's login; and for the Department being the email address of your closest Sport and Recreation Service Area Office (<https://www.qld.gov.au/recreation/sports/office-locations>). *The Electronic Transactions (Queensland) Act 2001* specifies applicable rules for time of dispatch (s23), time of receipt (s24), and place of dispatch and receipt (s25), which will apply unless otherwise agreed between the parties; or
  - f. If any provision of the Funding Agreement is held to be illegal or unenforceable, the provision will be severed from the Funding Agreement and the remaining provisions will govern the relationship of the parties.
  - g. Clauses 12, 13, 14, 15, 19, 23, 24 and 25 will survive expiration or termination of the Funding Agreement.
  - h. The use of the word 'includes' in any form, is not a word of limitation.
26. If there is any ambiguity in or inconsistency between the various parts of the Funding Agreement, the following order of precedence applies to resolve the ambiguity or inconsistency:
- a. the Department's approval letter/email;
  - b. these Funding Terms and Conditions;
  - c. the application form; and
  - d. the First Nations Sport and Recreation Program Guidelines.
27. The following definitions apply to these conditions:

- a. **'First Nations Sport and Recreation Guidelines'** means the First Nations Sport and Recreation Program Guidelines available at [First Nations Sport and Recreation Program Round 2 \(www.qld.gov.au\)](http://www.qld.gov.au).
- b. **'Approved Funding'** means that amount as stipulated in the Department's approval letter/email.
- c. **'Approved Project'** means the project approved by the Department as stipulated in the Department's approval letter/email.
- d. **'Department'** means the State of Queensland acting through the Department of Tourism, Innovation and Sport.
- e. **'Department's approval letter/email'** means the letter/email from the Department advising that the funding has been approved unconditionally, and that no compliance items are outstanding.
- f. **'Eligible Organisation'** means an organisation that meets the eligibility criteria specified in section 5.0 of the First Nations Sport and Recreation Program Guidelines.
- g. **'Funding Agreement'** means the Department's approval letter/email (including any attachments), the application form, these Funding Terms and Conditions (or, if required under clause 5, the additional funding agreement) and the First Nations Sport and Recreation Program Guidelines.
- h. **'Ineligible Items'** means those items listed in section 6.3 of the First Nations Sport and Recreation Program and any items not related to the Approved Project or deemed by the Department as ineligible.
- i. **'Organisation'** means the organisation specified in the application form which has been approved by the Department's approval letter/email to receive funding under the First Nations Sport and Recreation Program.
- j. **'Project Completion Date'** means 30 June 2024.