

The Stay Connected Fund – Round 1 (2022)

Application Terms and Conditions

The Stay Connected Fund is conducted by the State of Queensland acting through the Department of Communities, Housing and Digital Economy (the Department), ABN 86 504 771 740 in accordance with the Guidelines and the following Terms and Conditions.

1. Definitions

In these Terms and Conditions:

- (a) 'Applicant' means the entity submitting the Application to the Department relating to the Stay Connected Fund.
- (b) 'Confidential Information' means all information, trade secrets and knowledge of/or disclosed by or on behalf of the Customer or the Applicant ("**Discloser**") to the other party ("**Recipient**") in connection with the Stay Connected Fund or Funding Agreement or created using that information which:
 - i) is by its nature confidential;
 - ii) is designated or marked by the Discloser as confidential;
 - iii) the Recipient knows or ought to know is sensitive or confidential;but does not include information which:
 - i) is or becomes public knowledge other than by breach of a confidentiality obligation; or
 - ii) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient;
 - iii) the Recipient receives from another person on a non-confidential basis.
- (c) 'Conforming Offer' means an offer by the Applicant to enter into a Funding Agreement to provide the Project to the Customer, which includes all the information requested, is received by the Closing date and time, and meets all other requirements for offers as set out in the Guidelines.
- (d) 'Customer' means the State of Queensland acting through the Department of Communities, Housing and Digital Economy (ABN 86 504 771 740).
- (e) 'The Department' means the Department of Communities, Housing and Digital Economy.
- (f) 'Application' or 'application' means the application for funding submitted by the Applicant as part of the Stay Connected Fund.
- (g) 'Funding Agreement' means the Funding Agreement between the Customer and the Applicant which is formed when both parties sign the document. The agreement between the Customer and the Applicant also comprises:
 - i) these Terms and Conditions;
 - ii) the Guidelines;
 - iii) the application submitted by the Applicant relating to the Project;
 - iv) any other terms agreed in writing between the parties.
- (h) 'Funding' means the amount of funding approved by the Customer for the Project as set out in the Funding Agreement.
- (i) 'Guidelines' mean the *Stay Connected Fund Application Guidelines* made available to the Applicant as part of the application process.

- (j) 'Laws' means all:
 - i) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
 - ii) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Project;
 - iii) the requirements of any authority with jurisdiction in respect of the Project, as applicable; and
 - iv) fees and charges payable in connection with the foregoing.
- (k) 'Personal Information' has the same meaning as in the *Information Privacy Act 2009 (Qld)*.
- (l) 'Project' means the activity detailed in the Application for which the Applicant is seeking funding.
- (m) 'Service Start Date' means the Services Start Date specified in the Funding Agreement.
- (n) 'Services' means the services set out in the Funding Agreement
- (o) 'Terms and Conditions' means this document.

2. Applicant acceptance

By submitting an Application, the Applicant:

- (a) accepts these Terms and Conditions.
- (b) offers to enter into a Funding Agreement with the Customer to deliver the Project.

3. Reservation of Rights

Without limiting its rights, the Department reserves the right in its absolute discretion and at any time to:

- (a) change the structure, procedures and timing of the Application process or the overall transaction process for the Queensland Resident-Operated Retirement Villages Support Service (the Program), including by varying the provisions of this Application
- (b) amend, update or supplement the information, terms, procedures and protocols or any aspect of the Program or Application process set out in this Application without giving reasons
- (c) alter the terms of participation in the Application process or the overall procurement process for the Program
- (d) change the lodgement requirements
- (e) deliver the Program through another procurement process
- (f) vary or amend any assessment criteria, develop and consider sub-criteria for any, or all, of the assessment criteria or take into account information provided in response to a particular criterion in the assessment of any other criterion
- (g) seek clarification regarding, or further information in relation to, a Respondent or any matter relating to its Application Response including to question any Respondent, or to invite presentations from Respondents

- (h) conduct due diligence investigations including in relation to potential or perceived conflicts of interest, and take into account information from those investigations, its own and other sources in evaluating Application Responses and considering if there is anything which may preclude a Respondent from being included in the shortlist of Respondents
- (i) refuse to allow participation or terminate any further participation by any party at any point in the Application Process
- (j) allow further parties to participate in the Application Process or the overall procurement process at any time (whether or not they have submitted an Application Response)
- (k) allow changes to the structure of any Respondent
- (l) terminate or reinstate the Application Process
- (m) not proceed with the Program, or not proceed with the Program in the manner outlined in the Application
- (n) amend the scope of the Program
- (o) undertake the Program itself
- (p) waive any requirement or obligation under these Application terms and conditions, without prejudicing, varying or limiting any other requirement, obligation or rights
- (q) accept part or whole of an Application Response
- (r) negotiate on any aspect of a Respondent's Application Response before identifying whether it accepts or rejects part or whole of the Application Response hold discussions, meetings or workshop with one or more Respondents at any time during the Application process
- (s) negotiate with any person (including someone other than a Respondent)
- (t) request additional information from any Respondent or any participant of a consortium (participant)
- (u) invite refined Application Responses from any one or more Respondent
- (v) obtain and consider any objective information from any source other than the Respondent in consideration of an Application Response
- (w) allow the withdrawal of a Respondent from the Application process
- (x) accept or reject any Application Response or reject all Application Responses at any time (including prior to or during assessment) for any reason or discontinue assessment of an Application Response irrespective of the extent to which it satisfies any of the assessment criteria, or shortlist all, some or none of the Application Respondents
- (y) publish the names of Respondents and Shortlisted Application Respondents
- (z) issue an Addendum or information document;
- (aa) not provide Respondents with any reason for any actions or decisions it may take or any debriefing, including in respect of the exercise by the Department of any or all of the abovementioned rights

- (bb) use or incorporate feedback, comments or other information provided by a person who submits an Application Response on a non-attributable basis in preparing any procurement or contract documentation in relation to the Program and in carrying out any procurement in relation to the Program, but will be under no obligation to do so
- (cc) take such other action as it considers in its absolute discretion appropriate in relation to the Application process or the overall procurement process for the Program.

The Department is not required to provide Respondents with any reason for any actions or decisions it may take, including in respect of the matters listed in clause 1.

No party will have any claim against the Department, any of its authorities or agencies, or their respective officers, employees, agents, contractors or advisors with respect to the exercise, or failure to exercise, any such right.

4. Personal Information

Personal Information provided by Respondents may, in the course of and for the purposes of evaluation, be used by or disclosed to any Department of the State of Queensland, including the Department, its Ministers, or any of their representative officers, employees, advisers, contractors or agents relevant to the Program.

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

5. Publicity

Unless otherwise required by law, Respondents shall not make or issue any publicity statements or disclosures in relation to their involvement with the Program unless the written consent of the Department has first been obtained.

6. Costs to be Borne by Respondents

Neither the State, its Ministers, nor any of their respective officers, employees, advisers, contractors or agents shall be responsible for, or pay or reimburse, any costs, expense or loss which may be incurred by any Respondent:

- (a) in the preparation of its Response, attending any meetings, providing any further information or clarification
- (b) in reviewing, investigating, analysing or preparing any information in relation to the ITO process
- (c) in connection with its participation in the ITO process, or
- (d) as a result of any modification or termination of the ITO process.

7. Disclaimer

This document and any information that accompanies it have been prepared to give potential Respondents background information in relation to the Program. This document does not, and does not purport to, comprehensively describe the scope of the Program.

The Department makes no warranty or representation (express or implied), and does not assume any duty of care to Respondents that the information in this Application or any other Disclosed Information is current, accurate, adequate, suitable, reliable or complete, or that the information has been independently verified, and the Department accepts no responsibility for interpretations, opinions or conclusions formed by the Respondents.

The Department does not accept any responsibility or liability arising from negligence or otherwise for any reliance placed on any written or oral communications transmitted to as Respondent in the course of the Application process. The Department will have no responsibility to inform any recipient of this document of any matter or information in its knowledge or possession which may relevant to the Program or Application process or affect any other matter or information contained or referred to in this Application.

Recipients of this document acknowledge that they will make their own independent assessments and investigations of the information contained or referred to in this document and their own appraisal of the opportunity to participate in the Program.

This Application and all statements and information made in relation to it reflects the Department's current intention only. The information and intentions set out in this Application may change at any time without notice. The risk, responsibility and liability connected with an Application Response is solely that of each Respondent.

“Disclosed Information” means this document and any other document, data or information in any medium which is at any time:

- (a) issued or made available by or on behalf of the Department to potential Respondents or Respondents for or in connection with the Application or the Program, or
- (b) is referred to or incorporated by reference in any such document, data or information.

8. Ownership of Responses

Subject to this clause 6, all Application Responses will become the property of the Department on lodgement.

If a Respondent considers some information it proposes to submit to be confidential and of commercial value and utility in the market place it must approach the Department in writing prior to lodging an Application Response about information that the Respondent considers to be of this nature. On receiving a request from a Respondent, the Department, in consultation with the Probity Advisor, will (in its absolute discretion) consider, determine and notify the Respondent in writing regarding whether or not the Department will treat the relevant information as confidential and of a commercial value and utility in the market place. If the Department agrees with the Respondent that any submitted information has such character, it will not make such information publicly available (unless required by law or policy to disclose such information).

Any intellectual property rights that may exist in an Application Response are retained by the Respondent. Any element of an Application Response considered to carry any intellectual property rights should be clearly identified by the Respondent. Where the Department, in its sole discretion, determines that such elements are subject to such a right, the Department will treat that element accordingly.

By lodging an Application Response, the Respondent grants a non-exclusive, fully paid up and royalty-free, perpetual, irrevocable, transferable licence(with the right to sub-licence) to the Department to use, copy, adapt, modify, disclose or do anything else desirable or necessary at the Department's absolute discretion, to all material (including material that contains any intellectual property rights of the Respondent or any other person) contained in an Application

Response, for the purposes of evaluating and clarifying that Application Response and do all things necessarily associated with the Application process and the finalising of arrangements for the Program.

9. Canvassing

Respondents must not contact any members, or employees or officers of the Department (including their advisors) with a view to providing or obtaining information in respect of any part of the Program, the Application Process or their Application Response, or attempt to support or enhance their prospect of being selected as a Shortlisted Application Respondent other than as expressly permitted by this Application. At the sole discretion of the Department, any unauthorised communication or attempted approach by a Respondent may lead to the Respondent's exclusion from the Application Process.

10. Collusion

Respondents and participants including their respective officers, employees, agents, contractors and advisors must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Respondent or any other person in relation to the preparation or lodgement of an Application Response. Evidence of such conduct may lead to the rejection of the Application Response of all Respondents involved.

11. Confidentiality

Acknowledgement

By accepting the Application, each Respondent acknowledges and agrees that:

- (a) the Application is Confidential Information
- (b) by providing the Application to the Respondent, the Department did not convey any proprietary or other interest to the Respondent, and
- (c) the Department reserves the right to make all or part of the Confidential Information available to the public.

Confidentiality Undertaking

By accepting the Application, the Respondent, undertakes for the benefit of the Department that it:

- (a) must keep the Confidential Information secure and protected so that no unauthorised person is able to gain access to it
- (b) must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose, or cause or permit the disclosure of, any Confidential Information, except as permitted under the Application or by the Department
- (c) must only use the Confidential Information for the purposes of submitting a Response in respect of the Application
- (d) must promptly notify the Department if the Respondent wishes to retain a copy of any documents and/or records containing Confidential Information for the purposes of the Respondent's own reasonable internal credit, risk, insurance, legal and professional responsibilities and the Respondent must identify the documents and/or records and the reasons for the request for retention. Any consent granted by the Department may require the Respondent to return the copies of the documents and/or records to the Department at the end of a specified period of time, and

- (e) if requested by the Department, will immediately return to the Department, or destroy or delete as the Department directs, all original Confidential Information and copies together with any other documents which reproduce, are based on, utilise or relate to Confidential Information (except to the extent a Respondent is required to retain such Confidential Information by law). If the Department does not make such a request, the Respondent must destroy each copy of those documents.

Disclosure of Confidential Information

The Respondent may only disclose the Confidential Information:

- (a) to its officers, employees, agents, contractors, potential funders and professional advisors for the sole purpose of preparing and submitting a Response, provided that any such disclosure is on the basis that the recipient agrees in writing to be bound by the terms of this undertaking, in respect of the Program
- (b) if required by any applicable law or requirement of any public authority, provided the Respondent provides the Department with prior notice of the disclosure, and using reasonable endeavours, agrees with the Department the form and extent of the disclosure, and
- (c) if otherwise permitted by the Department in writing.

The Department may request the Respondent must provide copies of the recipient's written agreement to be bound by the terms of the above undertaking within two business days of the Department's request.

“Confidential Information” means:

Information of, or supplied by, the Department, that is:

- by its nature confidential
- designated as confidential.

Or

“Confidential information” means information that:

- the Respondent knows or ought to know is confidential
- is by its nature confidential or is designated by the Department as confidential
- has been obtained from the Department in connection with the Program, including the location of the development sites and any details in relation to the development sites
- is comprised in or relates to any intellectual property rights of the Department, or
- relates to the clients of the Department

but does not include information that:

- the Respondent can demonstrate:
 - was already in the possession of the Respondent and not subject to an obligation of confidentiality;
 - was lawfully received from a third party who lawfully possessed the information and provided it to the Respondent without breach of a confidentiality obligation;

- was independently developed by the Respondent, or
- is public knowledge other than through a breach of a confidentiality obligation.

12. Privacy

Respondents must comply with those parts of the Information Privacy Act 2009 (QLD) which are applicable to the Department in relation to the discharge of Respondents' obligations in relation to the Application process, as if the Respondent was the State.

Respondents must:

- ensure that the personal information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse
- not use personal information other than for the purposes of the Application process and performance of the Respondent's obligations under the Application, unless required or authorised by law
- not disclose personal information without the consent of the Department, unless required or authorised by law
- not transfer personal information outside of Australia without the consent of the Department
- ensure that access to personal information is restricted to those of its employees and officers who require access in order to perform their duties under the program in relation to the Application process
- ensure that its officers and employees do not access, use or disclose personal information other than in the performance of their duties under the program and in relation to the Application process
- ensure that its officers, employees, agents, contractors, potential funders and advisors who have access to personal information comply with these obligations
- fully co-operate with the Department to enable it to respond to applications for access to, or amendment of a document containing an individual's personal information and to privacy complaints
- comply with such other privacy and security measures as the Department reasonably advises the Respondent in writing from time to time.

The Respondent must immediately notify the Department on becoming aware of any breach of its obligations or a breach of an officer, employee, agent, contractor, potential funder or advisor in relation to personal information.

13. Right to Information

The *Right to Information Act 2009* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies. The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest. Information provided to the Department by a Respondent through the Application process is potentially subject to disclosure to third parties.

14. Conflict of Interest

Any party with a real or perceived Conflict of Interest must declare that interest to the Department as soon as the conflict is identified.

The Department reserves the right, in its absolute discretion, at any stage to:

- place conditions on the further participation of any Respondent that has a Conflict of Interest
- exclude any Respondent that has a Conflict of Interest from participation in the Application process or any further procurement, and
- undertake investigations to satisfy itself that there are no conflicts of interest which may preclude a Respondent from participating in the Program.

Respondents are required to ensure that their performance in respect of identifying, declaring and resolving any conflict of interest is beyond reproach and Respondents (or if the Respondent is a consortium, each participant comprising the Respondent) must complete Form 8 – conflict of interest declaration.

"Conflict of Interest" means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Respondent to fairly and objectively participate in the Program.

15. Changes to Participants

Where a Respondent is a consortium, the Respondent will be evaluated and short-listed on the basis of the participants identified in the Application Response. If a Respondent lodges its Application Response without having identified all participants, this may affect that Respondent's ability to meet the Evaluation Criteria and the Department reserves the right to eliminate that Respondent from further participation in the evaluation process.

Where participants change after the closing date for submission of Application Responses, Respondents must notify the Department of this change. If the Department, in its sole discretion, determines that this change is material, the Department reserves the right to re-evaluate the Application Response and to eliminate the Respondent from further participation in the Application process if deemed necessary by the Department.

A Respondent should (as a minimum) notify the Department of any change to any of the following entities or individuals:

- (a) any entity that proposes to take a direct equity interest in the Respondent if successful the ultimate parent entity of any entity that proposes to take a direct equity interest in the Respondent if successful
- (b) any other entity that is likely to be in a position to exercise control or influence (direct or indirect) over the future management and operation of the Respondent if successful, and
- (c) any director, secretary or chief executive officer of any entity falling within the above paragraphs and any proposed new directors, secretary or chief executive officer.

16. The Department may rely on Information in Application Responses

By submitting an Application Response, the Respondent:

- (a) warrants to the Department that the information contained in its Application Response is accurate and complete as at the date on which it is submitted and not misleading (including by omission of information) and may be relied on by the Department in

evaluating the Application Response and determining whether or not to shortlist the Respondent

- (b) warrants for the benefit of the Department that it has all the necessary experience, skill and resources to perform and carry out its obligations in accordance with the Application
- (c) undertakes to promptly advise the Department if it becomes aware of any change in circumstances which causes the information contained in its Application Response or subsequent information provided to the Department, to become inaccurate or incomplete in a material respect
- (d) warrants that it has the authority and rights to grant the Department a licence in respect of clause 8
- (e) acknowledges that the Department will rely on the above warranty and undertaking when evaluating their Application Response.
- (f) acknowledges that the Department may elect to remove a Respondent from the procurement process for the Program as a result of material changes to the information presented in its Application Response
- (g) acknowledges that any shortlisting does not mean that the Department is satisfied as to the information provided by the Respondent and that such information may need to be resubmitted and may be evaluated again in later stages of the procurement process for the Program
- (h) acknowledges that the Department may suffer loss or damage if the Respondent breaches the above warranty and undertaking.

17. No Legal Relationship

The information in this document has been compiled on behalf of the Department for the guidance of parties interested in participating in the Application Process for the Program. The Application documents or communications do not constitute an offer or an invitation to make an offer in relation to participation in the Program and does not indicate an intention by the Department to enter into any form of relationship (legal or equitable) with any party receiving it.

18. Not Exhaustive

This Application and any information that accompanies it has been prepared to give potential Respondents background information in relation to the Program. This Application does not, and does not purport to, comprehensively describe the scope of the Program or contain all of the information that Respondents and their advisors would desire or require in reaching decisions in relation to whether or not to submit an Application. Respondents must form their own views as to what information is relevant to such decisions.

19. No Appeal

Respondents will not have a right to appeal to the Department against any decisions arising from the processes involved in this Program, whether during the ITO Process or in later processes or procurement stages.

20. Addenda

The Department may issue addenda to this Application or any other part of the Application by issuing a notice in writing identifying the addenda as being under this section. Addenda may

modify or clarify the Application in any manner and all such addenda shall become part of the Application. No explanation or interpretation of the Application may be relied upon by the Respondent as an amendment to the Application unless given in the form of addenda.

21. Acceptance of Conditions

Respondents are required in their Application Response to explicitly acknowledge and accept each of the terms and conditions of this Application. By lodging an Application Response in accordance with this Application, Respondents acknowledge their acceptance of the terms and conditions of this Application.