

GRANTS FUNDING AGREEMENT

TERMS AND CONDITIONS

1. RECIPIENT DECLARATION AND ACKNOWLEDGMENT

1.1 The Recipient declares that:

- (a) It is not insolvent or bankrupt and no action, whether threatened or actual, has been taken to start any type of insolvency administration in relation to the Recipient;
- (b) All information provided by the Recipient in connection with this Agreement was, at the time it was provided, true, complete and accurate;
- (c) It is not aware of any information that has not been disclosed to the Council which may, if disclosed, negatively affect the decision of the Council whether to provide the Grant;
- (d) It is not aware of anything that might prevent it from carrying out any obligations under this Agreement;
- (e) It has no conflict of interest (real or perceived) in connection with the Grant; and
- (f) The person signing this Agreement is 18 years of age or over with authority to sign on behalf of the Recipient, is not an undischarged bankrupt, and is not receiving a salary as part of this Grant.

- 1.2 The Recipient acknowledges that the Council has no financial or other responsibility for the Project, including for any debts of the Recipient, other than as set out in this Agreement.

2. THE GRANT

- 2.1 The Council will pay to the Recipient the Grant specified in the Reference Schedule on the Payment Date specified in the Reference Schedule, to a bank account nominated by the Recipient, PROVIDED THAT:

- (a) The Agreement has been signed by both parties; and
- (b) The Recipient has met, or is undertaking actions reasonably expected to meet, the applicable Conditions of Grant set out in Clause 3 and the Reference Schedule.

- 2.2 The Grant is personal to the Recipient and is not transferable to any other person, project or purpose.

- 2.3 The Grant comprises the full amount that the Council may be required to pay under this Agreement. The Council will not be liable, nor required to pay, for any additional costs, claims, liabilities, losses, damages or expenses incurred by the Recipient in connection with the Project.

3. CONDITIONS OF GRANT

- 3.1 Payment of the Grant is contingent on the conditions set out in this Clause 3 and the Reference Schedule being met.

- 3.2 Within four (4) months of the date of this Agreement the Recipient must have either completed the Project or have the Project in operation.

- 3.3** Within six (6) months of the date of this Agreement, the Recipient must provide a project report to the Council that includes all of the information that the Council reasonably requires in respect of the relevant Project.
- 3.4** The Recipient must hold at least \$2,000,000 of public liability insurance for the Term of this Agreement, or any such other amount agreed by the Council in its sole discretion.
- 3.5** The Recipient will comply with the publicity and promotion conditions set out in this Clause 3.5. For the purposes of this Agreement, "**Promotional Material**" includes, but is not limited to, posters, brochures, fliers, banners, advertising, webpages, promotional signage, media releases, public announcements and statements.
- (a) The Recipient will collaborate with the Council in the development (including, but not limited to, form and content) of all Promotional Material to be used in connection with the Project and the marketing and promotional plan for the Project.
 - (b) All Promotional Material used by the Recipient to publicise the Project will, before distribution:
 - (i) Be approved by the Council; and
 - (ii) As appropriate and where possible, incorporate the Council logo. For the purposes of fulfilling this obligation, the Council grants to the Recipient, for the Term of this Agreement, a non-exclusive, non-transferable licence to use the Council logo on all Promotional Material approved by the Council.
 - (c) In all other circumstances, the Recipient will not use the Council logo without the prior consent of the Council's Representative, such consent not to be unreasonably withheld.
- 3.6** The Recipient will make itself available for all reasonable requests from the Council to participate in any promotional activities to promote the Project or the Council. When and where appropriate, the Recipient will acknowledge the Council's assistance with the Project in a positive manner.
- 3.7** The Recipient must apply the Grant solely for the Purpose described in the Reference Schedule and must refund to the Council any portion of the Grant, plus any GST payment related to the Grant, not used for the Purpose.
- 3.8** The Recipient must, in providing the Project and applying the Grant:
- (a) Act within the law and meet all applicable legal obligations;
 - (b) Act with honesty and in good faith and ensure the wider interest, status, circumstances and reputation of the Council is respected and given full consideration at all times; and
 - (c) Act to a high standard of conduct.
- 3.9** The Recipient must:
- (a) Comply with all reasonable financial management or accounting procedures as are required by the Council from time to time. For the avoidance of doubt, such accounting procedures shall include maintenance of records of all itemised budgeted expenditure and actual expenditure and the dates of such expenditure of the Grant (including, but not limited to, receipts, bank statements and invoices); and
 - (b) Upon reasonable request by the Council or the Council's auditor, or if required by law, facilitate a review of the application and expenditure of the Grant by:
 - (i) Making its documents, records and premises available for inspection;
 - (ii) Providing any information in relation to the expenditure and application of the Grant within 20 days of a request by Council;

- (iii) Procuring the availability of personnel to discuss the application and expenditure of the Grant with the Council's Representative or any person designated by the Council's Representative; and
- (iv) Doing all other things reasonably necessary to facilitate a review of the expenditure and application of the Grant.

3.10 The Recipient must:

- (a) Notify the Police and the Council immediately if it has reason to believe that the Grant or any part has been stolen or misappropriated;
- (b) Notify the Council immediately if it experiences any issues or difficulties, or any event occurs, which may compromise the use of the Grant for the Purpose, which includes, without limitation, the occurrence of any event under Clause 11.2; and
- (c) Advise the Council immediately of any changes to its legal status at any time during the Term of the Agreement.

4. REPRESENTATIVES AND MEETINGS

- 4.1** The Recipient and the Council will each appoint a representative, as specified in the Reference Schedule, who will be authorised to give and receive all directions and instructions in connection with the matters set out in this Agreement.
- 4.2** The Recipient's Representative and the Council's Representative agree to meet as reasonably required by either party in order to discuss the matters set out in this Agreement.
- 4.3** The Recipient's Representative will make itself reasonably available to attend such meetings, at its own cost.

5. APPOINTMENT OF AUDITOR

- 5.1** The Council shall have the right to appoint an auditor, at its cost, to examine all financial books and records relating to the application by the Recipient of the Grant.

6. HEALTH AND SAFETY

- 6.1** The Recipient will comply with its obligations, and ensure its sub-contractors and volunteers comply with their obligations, under the Health and Safety in Employment Act 1992 (the "**HSE Act**") and all regulations made under the HSE Act and all approved codes of practice under Section 20 of the HSE Act.

7. INTELLECTUAL PROPERTY

- 7.1** Except as expressly provided in this Agreement, neither party has any right or interest in, nor the right to use in any manner, the other party's name or their product's names, logos, trade marks or other intellectual property.
- 7.2** The Recipient grants to the Council, for the Term of this Agreement, a licence to use any of the Recipient's current and future logos (whether or not a logo relates to the Recipient or the Project or both) in connection with any material relating to the Council and its affairs, whether or not related to the Project.
- 7.3** The Recipient warrants that it has the authority, copyrights, permissions or licences that may be required for the Project and shall indemnify and keep indemnified the Council from and against all claims, liabilities, losses, damage and expenses suffered or incurred by the Council in connection with any breach by the Recipient of the warranties contained in this Clause 7.3.

8. FORCE MAJEURE/ SEISMIC ACTIVITY

- 8.1** Neither party will be responsible for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control, which includes floods, earthquakes and other acts of God but excludes any industrial actions or business trading risk.
- 8.2** Notwithstanding Clause 8.1, on the occurrence of any seismic activity in Christchurch or its surrounds which has, or is likely to have had an adverse effect on the vacant space sites such that access or the safety of the public is in doubt, the Council shall be entitled to suspend immediately this Agreement and the performance of any and all obligations (without any liability or compensation to the Recipient) until the Council has received written confirmation, to its satisfaction, that the relevant sites are safe and fit for the intended use.

9. CONFIDENTIALITY AND ADVERTISEMENTS

- 9.1** For the purposes of this clause, "**Confidential Information**" means all information relating to the other party or the other party's business of which a party becomes aware by virtue of its relationship with the other party under this Agreement and any other agreement between the parties, and shall include the matters set out in this Agreement.
- 9.2** The parties agree that any Confidential Information pertaining to this Agreement, remains strictly confidential and is not to be disclosed to any other party except in the circumstances where:
- (a) The Confidential Information is already in the public domain (otherwise than by breach of this clause);
 - (b) A party is required to release the Confidential Information by any statutory or regulatory obligation (including the Council's obligations under the Local Government Official Information and Meetings Act 1987), or by any judicial or arbitration process;
 - (c) The other party has consented in writing to the disclosure of the Confidential Information; or
 - (d) The disclosure of Confidential Information to an independent auditor as required in accordance with this Agreement.
- 9.3** The Recipient will not make any announcement or communication in relation to the Grant, the Council's Grant funding process, or the relationship between the parties without first consulting the Council.
- 9.4** The Council may include details of the Grant in public announcements or statements.

10. CANCELLATION OF PROJECT

- 10.1** The parties acknowledge that the Recipient may cancel or postpone aspects of the Project or its initiatives owing to inclement weather conditions, earthquake damage, cordon movements or for any cause beyond the reasonable control of the Recipient. For the avoidance of doubt, "inclement" shall be taken to mean weather conditions that are unacceptable to the Recipient, and as reasonably agreed to by the Council, in that such conditions would impair performance, cause damage to equipment or raise health and safety concerns.
- 10.2** The parties agree that if the Project is cancelled in accordance with Clause 10.1:
- (a) The Council shall be under no liability to the Recipient or any other person to pay any compensation or damages for any loss that the Recipient may suffer arising out of cancellation of the Project. No penalties or cancellation charges shall be payable by the Council;
 - (b) The Council shall not be obliged to make any further payments of the Grant;

- (c) The parties agree to meet and negotiate in good faith the amount of the Grant that should be retained by the Recipient in recognition of any Grant utilised prior to cancellation. The Recipient must immediately refund to the Council the agreed amount of unutilised Grant. If the parties cannot agree then Clause 13 shall apply;
- (d) The parties will each immediately deliver to the other all documentation and property in their possession or control that belongs to the other party; and
- (e) The obligations set out in Clause 15.7 will continue to apply.

10.3 The parties agree that if aspects of the Project's initiatives are cancelled or postponed in accordance with Clause 10.1:

- (a) The Council shall be under no liability to the Recipient or any other person to pay any compensation or damages for any loss that the Recipient may suffer arising out of cancellation of the initiatives. No penalties or cancellation charges shall be payable by the Council; and
- (b) The obligations set out in Clause 15.7 will continue to apply.

11. TERM AND TERMINATION

11.1 Subject to Clause 15.7, this Agreement shall commence on the Commencement Date specified in the Reference Schedule and shall continue for the Term specified in the Reference Schedule unless earlier terminated in accordance with this Agreement.

11.2 The Council may immediately terminate this Agreement, either entirely or in part, by written notice to the Recipient if one or more of the following events occurs:

- (a) The Recipient is, or becomes, unable to pay its debts when due, or there is an enforceable judgment, distress, attachment, execution or other process in an amount in excess of \$25,000 enforced against the Recipient;
- (b) The Recipient enters into, or resolves to enter into, any voluntary administration, compromise or assignment for the benefit of its creditors, or enters into, or resolves to enter into, a court-approved arrangement or a capital reorganisation or reconstruction or there is a change in the effective management or control of the Recipient;
- (c) An application or order is made or a resolution passed for the winding up of the Recipient other than for the purpose of amalgamation or reconstruction approved by the Council;
- (d) A receiver, a receiver and manager, an official manager, a liquidator, a statutory manager, a trustee or an equivalent person is appointed over all or part of the Recipient's assets or undertaking;
- (e) The Recipient ceases to carry on its business (except in the circumstances of force majeure);
- (f) The Project is cancelled, other than in accordance with Clause 10;
- (g) As a result of the Council's budgetary processes under the Long-Term Plan or Annual Plan where the funding allocated to the Project is no longer available;
- (h) There is, in the Council's reasonable opinion, an irretrievable breakdown in relations between the Council and the Recipient, a loss of confidence in the Recipient, or the Recipient fails to co-operate and meet with the Council;
- (i) The Recipient commits a breach of this Agreement and fails, after receipt of written notice requesting remedy of the breach within a reasonable timeframe, to remedy that breach within that timeframe.

12. CONSEQUENCES OF TERMINATION

12.1 On termination of this Agreement under Clause 11:

- (a) The Council shall be under no liability to the Recipient or any other person to pay any compensation or damages for any loss that the Recipient may suffer arising out of termination of this Agreement.
- (b) The parties agree to meet and negotiate in good faith Council support to the Recipient for any loss or damage resulting from the termination of this Agreement. If the parties cannot agree then Clause 13 shall apply;
- (c) The Council shall not be obliged to make any further payments of the Grant;
- (d) The parties agree to meet and negotiate in good faith the amount of the Grant that should be retained by the Recipient in recognition of any Grant utilised prior to termination. The Recipient must immediately refund to the Council the agreed amount of unutilised Grant. If the parties cannot agree then Clause 13 shall apply;
- (e) The parties will each immediately deliver to the other all documentation and property in their possession or control that belongs to the other party; and
- (f) The obligations set out in Clause 15.7 will continue to apply.

13. DISPUTE RESOLUTION

13.1 Without limiting the application of the sub-clauses below relating to dispute resolution, in the event of a dispute, disagreement or difference of opinion ("**Dispute**") arising under the Agreement as to:

- (a) The meaning or application of any part of the Agreement; or
- (b) Any other matter touching or concerning the Agreement,

the parties shall actively and openly endeavour to amicably settle such Dispute themselves, with a view to achieving prompt resolution.

13.2 A party claiming that a Dispute has arisen must give written notice to the other party, specifying the nature of the Dispute. On receipt of such a notice, the parties shall endeavour to resolve the Dispute amicably and expeditiously, with a view to achieving prompt resolution.

13.3 If the parties do not resolve the Dispute within 10 Business Days of receipt of a notice given under the sub-clause above, a party may, by written notice to the other, refer the Dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

- (a) A single arbitrator be appointed. If the parties fail to agree on an arbitrator, the President of the Arbitrators and Mediator Institute of New Zealand Incorporated shall appoint the arbitrator;
- (b) No person who has participated in an informal dispute resolution of the Dispute shall act as arbitrator;
- (c) The place of arbitration shall be Christchurch;
- (d) The arbitrator will proceed promptly to deliver an award. The parties shall co-operate fully with the arbitrator;
- (e) The arbitrator's decision in respect of findings of fact shall be final and binding, and the appeal rights under Clause 5 of the Second Schedule of the Arbitration Act 1996 are expressly excluded; and
- (f) Each party shall bear its own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.

13.4 Pending the settlement of any Dispute, the parties shall continue to perform all their obligations under the Agreement except neither party shall be obliged to pay any money which is the subject of the Dispute.

- 13.5** Neither party may commence any court or arbitration proceedings relating to a Dispute unless it has complied with the sub-clauses above relating to dispute resolution, except where either of them seeks urgent interlocutory relief (e.g. temporary or provisional decisions or judgements).
- 13.6** This clause 13 shall not apply to disputes involving third party claims against Council arising out of the performance of this Agreement.
- 13.7** For the purposes of this clause 13, and clause 14 below, "**Business Day**" means a day on which registered banks are open for business in Christchurch excluding Saturdays, Sundays and Canterbury Anniversary Day. A business day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm New Zealand time (standard time or summer time, as appropriate).

14. NOTICES

- 14.1** All communications under this Agreement which are required to be in writing, shall be sent by mail with postage prepaid or by hand delivery to the Address for Notices set out in the Reference Schedule or such other address as a party has notified in writing.
- 14.2** Subject to the following sub-clause, notice given in person is deemed to be served upon delivery or by post three (3) Business Days after the date of posting. Any notice served on a non-Business Day is deemed to have been served on the first Business Day after that day.
- 14.3** The Council shall only be deemed to have received delivery of a notice upon the Council acknowledging in writing receipt of the notice.

15. GENERAL

15.1 The Council as Regulatory Body

- (a) The Recipient acknowledges that the Council, in terms of its regulatory function as a Local Authority, is obliged to and shall act as an independent Local Authority and not as a party to this Agreement. The Recipient shall have no right or claim against the Council in its capacity as a party to this Agreement as a result of any lawful action or decision made by the Council in the performance of its regulatory function except in the case of bad faith in its capacity as a party to this Agreement.
- (b) Any decision of the Council acting in its regulatory capacity shall not be construed as an approval of the Council as a party to this Agreement or as a variation unless otherwise expressly agreed.

15.2 Governing Law and Jurisdiction

This Agreement is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

15.3 Severability

In the event that any one or more of the provisions contained in this Agreement is declared invalid by an order, decree or judgment of any Court of competent jurisdiction, this Agreement will be read as if such provision had not been inserted. Where this action results in undue hardship on either party or constitutes a substantial deviation from the general intent and purpose of the parties as reflected in this Agreement, a variation rectifying such anticipated consequences will be entered into by the parties.

15.4 Entire Agreement

- (a) This Agreement constitutes the entire agreement between the parties relating to the subject matter and replaces all prior agreements or undertakings whether oral or written.

- (b) Each party, except to the extent qualified herein, confirms that on entering into this Agreement it has not relied upon any statement, warranty or other representation made or information supplied by or on behalf of the other party.
- (c) Notwithstanding the sub-clauses above, where the Recipient has made specific representations as to its history, skills, performance and qualities, such representations may be relied upon by the Council in determining whether or not the Recipient has met the standards expected of it in relation to the provision of the Project and the application of the Grant.

15.5 Variations

This Agreement cannot be amended, modified or varied except in writing signed by the Council's Representative and the Recipient's Representative.

15.6 Waiver

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver will not prejudice rights in respect of any subsequent breach.

15.7 Continuing Obligations

The Recipient's obligations contained under the provisions of the following clauses shall continue in force notwithstanding the termination, cancellation or expiry of this Agreement: Intellectual Property; Confidentiality and Advertisements; Cancellation of Project; Consequences of Termination; Dispute Resolution.

15.8 Indemnity

Without in any way limiting Clause 7.3, the Recipient indemnifies the Council in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Council and any other person claiming through the Council as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omissions of the Recipient in the performance of its obligations under this Agreement.

15.9 No Partnership

Nothing in this Agreement constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.

15.10 No Assignment

Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party.

15.11 Costs

Each party shall bear its own costs (including legal costs) of and incidental to the negotiation, preparation and execution of this Agreement.