

TERMS AND CONDITIONS OF AGREEMENT

1. GRANT

1.1 Grant: The Council agrees that it shall make payment of the Grant to the Recipient on the payment date(s) set out in the Reference Schedule.

1.2 Application of Grant: In consideration of payment of the Grant the Recipient agrees that it shall apply the Grant solely for the purposes described in the Reference Schedule.

2. CONDITIONS OF GRANT

2.1 Accountability: The Recipient shall:

- (a) Provide the Accountability Reports specified in the Reference Schedule on or before each of the relevant Reporting Dates;
- (b) Acknowledge receipt of the Grant in its annual report and in any publicity material produced in conjunction with the Grant;
- (c) Keep and maintain accurate records of the application and expenditure of the Grant including but not limited to receipts, bank statements and invoices;
- (d) Notify the Police and the Council immediately if it has reason to believe that the Grant or any part has been stolen or misappropriated; and
- (e) Notify the Council immediately if it experiences any issues or difficulties which may compromise the use of the Grant for the purposes specified in the Reference Schedule;
- (f) Advise the Council of any changes to its legal status at any time during the Term of this Agreement.

2.2 No assignment: The Recipient shall not:

- (a) Assign, sublicense or otherwise dispose of its rights and obligations under this Agreement; or
- (b) Subcontract the provision of the services and/or the completion of the projects to which the Grant is to be applied, without the prior consent in writing of the Council. The Council may withhold its consent at its entire discretion or give its consent subject to certain conditions and shall not be required to give any reasons.

2.3 Review: On request from the Council, the Recipient shall facilitate a review of the application and expenditure of the Grant by:

- (a) Making its documents, records and premises available for inspection;
- (b) Providing any information in relation to the expenditure and application of the Grant within 14 days of a request by the Council;
- (c) 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
- (d) Doing all other things reasonably necessary to facilitate a review of the expenditure and application of the Grant.

2.4 Notice of Review: The Council shall:

- (a) Provide not less than 48 hours notice of its intention to carry out a review pursuant to clause 2.3; and
- (b) Carry out any review pursuant to clause 2.3 during working hours and at other such times as are reasonable having regard to the nature of the Recipient's undertakings.

2.5 Regulatory capacity: Nothing in clauses 2.3 or 2.4 limits the Council's powers of

inspection under any enactment or any of the Council's powers or discretions while acting in its regulatory capacity under the Resource Management Act 1991, the Building Act 2004 or any other enactment or regulation.

3. GRANT PUBLICITY

3.1 The Recipient acknowledges that the Council may include details of the Grant in public announcements or statements.

4. CO-OPERATION

4.1 The parties to this Agreement agree to collaborate to ensure the Grant is used in the most efficient way possible. To this end the parties agree that the following principles will be fundamental to the relationship:

- (a) **Integrity** – both parties will act with honesty and in good faith and ensure the wider interest, unique status, circumstances and reputation of the other party is respected and given full consideration at all times.
- (b) **Open Communication** – both parties will listen, talk and engage with each other openly and promptly including clear and timely written communications.
- (c) **Accountability** – both parties recognise the need for clear lines of accountability in the contracts and arrangements between the parties.
- (d) **Innovation** – both parties will build on successes and encourage new approaches and creative solutions.

5. MEETINGS BY REPRESENTATIVES

5.1 The Recipient and the Council shall each appoint a representative who shall be authorised to give and receive all directions and instructions in connection with the matters set out in this Agreement. 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 and organising the Grant. The Recipient's Representative shall make him or herself reasonably available to

attend such meetings at his or her own cost.

6. TERMINATION

6.1 **Term:** This Agreement shall be for the Term specified in the Reference Schedule.

6.2 **Material Breach:** Either party may terminate this Agreement immediately if the other party commits a material breach of this Agreement and fails to remedy the breach within 14 days after being given written notice to do so.

6.3 **Termination by Council:** The Council may terminate this Agreement immediately if:

- (a) the Recipient fails to comply with its obligations under this Agreement and continues to fail to comply with such obligations after requests from the Council to do so;
- (b) the Recipient ceases to be able to pay its debts as and when they fall due, becomes bankrupt or goes into liquidation, ceases to carry on business in the ordinary course, or has a receiver or manager, a liquidator, an administrator or other like person appointed in respect of any of its assets;
- (c) the Recipient, by any means whatsoever, causes the image or reputation of the Council to fall into disrepute;
- (d) the Council determines that in its reasonable opinion the provision of the services and/or the completion of the project to which the Grant is to be applied will not proceed or be completed, for any reason whatsoever, whether or not within the control of the Council.

6.4 **Liability to Recipient:** 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 under this clause 6.

6.5 **Grant:** On termination or expiry of the Term of this Agreement the Recipient shall immediately refund any part of the

Grant that remains unutilised. If the parties cannot agree, clause 8 shall apply.

- 6.6 Accrued Rights:** Except as expressly provided in this Agreement, the termination or expiry of this Agreement shall not prejudice the rights of either party accrued prior to the date of termination or expiry.

7. INDEMNITY

- 7.1 Indemnity:** 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.

8. DISPUTE RESOLUTION

- 8.1 Negotiation:** Should any dispute or difference arise between the parties concerning this Agreement, the parties agree that they will, in good faith, endeavour to resolve the dispute by consultation and negotiation between representatives of each party.
- 8.2 Arbitration:** If the dispute cannot be resolved by representatives of each party within 14 days after the date the dispute arose, then either party may refer the dispute to be determined by a sole arbitrator appointed by the parties. If the parties cannot agree upon such appointment, an arbitrator shall be appointed by the President for the time being of the Canterbury District Law Society who will act in accordance with the Arbitration Act 1996 and the express provisions of this clause will prevail in the event of any inconsistency with the Arbitration Act 1996 to the extent permitted by law.

9. NOTICES

- 9.1 Notice in Writing:** Any notice, or other communication under this Agreement is to be in writing and is to be made or given by facsimile, personal delivery or by post to the addressee at the facsimile number or address set out in the Reference Schedule. Any changes to the notice

details set out in the reference Schedule shall be immediately notified to the other party.

- 9.2 Receipt:** No notice or other communication will be effective until received. A notice or other communication will be deemed, in the absence of proof to the contrary, to have been received by the party to whom it was sent:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of a facsimile, on the working day on which it is transmitted and a transmission confirmation report is received from the machine on which it was transmitted, provided that if a facsimile is transmitted after 5.00pm (in the place of receipt) on a working day, or not on a working day, then the facsimile will be deemed to have been received on the next working day;
- (c) in the case of a letter, on the 5th day after posting via fast post or airmail.

10. GENERAL

- 10.1 Council as Local Authority:** The Recipient acknowledges that the Council, in terms of its regulatory function as a Local Authority, is obliged to act as a Local Authority and not as a party to this Agreement. Nothing in this Agreement will affect the Council's rights, powers, duties and obligations in the exercise of its functions as a Local Authority, and the rights, powers, duties and obligations of the Council under all public and local statutes, district plans, by-laws, orders and regulations may be fully exercised as if this Agreement had not been executed by it.
- 10.2 Force majeure event:** A party will not be liable for any failure to perform its obligations under this Agreement to the extent that failure is due to factors outside its reasonable control, including but not limited to acts of God, war, fire, electricity, failure or third party industrial actions.
- 10.3 Entire agreement:** This Agreement is the entire agreement between the parties in relation to the matters set out in it. It replaces all earlier negotiations, representations, warranties,

understandings and agreements, whether oral or written, between the parties relating to the Grant.

- 10.4 **No partnership:** Nothing in this Agreement shall be deemed to constitute an agency, partnership or joint venture between the parties. Neither party shall have by virtue of this Agreement the authority to oblige or bind the other party in any manner whatsoever.
- 10.5 **Modification:** No modification or alteration of, or addition to, any of the provisions of this Agreement is to be effective unless it is agreed by the parties in writing.
- 10.6 **No waiver:** Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise and is not to amount to a waiver.
- 10.7 **Illegality:** If one or more of the provisions of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement are not to be affected and are to continue in full force and effect.
- 10.8 **Governing law:** This Agreement shall be governed by and construed and interpreted in accordance with the laws of New Zealand.

11. DEFINITIONS

- 11.1 **"Agreement"** means this agreement and the Schedules to it.
- 11.2 **"Council's Representative"** means the representative of the Council specified in the Reference Schedule.
- 11.3 **"Recipient's Representative"** means the representative of the Recipient specified in the Reference Schedule.
- 11.4 **"Grant"** means the Grant to be paid by the Council to the recipient under this Agreement. The Grant shall be inclusive of any GST which may be payable from time to time.
- 11.5 **"Term"** means the term of this Agreement set out in the Reference Schedule, unless terminated earlier in accordance with clause 6.