

**ENVIRONMENTAL CERTIFICATION FUND**  
**CLIENT FUNDING AGREEMENT**

**STANDARD TERMS AND CONDITIONS**

**AGREEMENT** made this            day of            200

**BETWEEN**

**HER MAJESTY THE QUEEN** in right of Her Government in New Zealand acting by and through the Chief Executive of MFish of Fisheries (“MFish”)

**AND**            (“The Recipient”)

**BACKGROUND**

- A. MFish has been allocated funding for the independent environmental certification /assessment of New Zealand Seafood. The Objective of the Environmental Fisheries Certification Fund is to promote environmental certification and other independent assessment as a tool to:
- Enable the New Zealand seafood industry to respond to growing pressure for environmental sustainability;
  - Promote and improve the management and environmental performance of New Zealand fishing and aquaculture, including impacts of fishing and aquaculture on the aquatic environment;
  - Build public confidence in the management of New Zealand fishing and aquaculture;
  - Raise the profile of New Zealand’s seafood sector;
- B. The fund does this by financially assisting successful applicants with up to 50% of the costs associated with the undertaking of environmental certification or assessment of their fishery or aquatic activity.
- C. The Environmental certification fund is a contestable fund. The Recipient applied to MFish for assistance with their environmental certification or assessment costs. A copy of the Application is set out in Schedule 2.
- D. The Recipient has been awarded a grant from the Environmental Certification Fund to assist them undertake the environmental certification or assessment process.
- E. The Parties agree that the funding is provided by way of a conditional grant as set out in Schedule 1.
- F. The Parties agree to abide by the terms and conditions of this agreement.

**THE PARTIES AGREE** as follows:

**1. Basis of the Grant**

- 1.1 On the basis of the application to MFish for the grant as set out in Schedule 2, MFish has agreed to make a grant to the Recipient and the Recipient has agreed to accept the grant.
- 1.2 The Recipient will apply the grant to the purpose for which the grant was applied for as set out in Schedule 1 and in their application as set out in Schedule 2 .
- 1.3 The Recipient will comply with all the reasonable directions of MFish and shall exercise the degree of skill, care and diligence reasonably expected of a Recipient in similar circumstances in carrying out its obligation under this Agreement.

- 1.4 MFish and the Recipient will designate representatives as their respective points of contact for the administration of this agreement. The first such representatives are designated in Schedule 1.
- 1.5 The Recipient warrants that it is not insolvent and that no action has been taken to initiate insolvency administration in relation to the Recipient.
- 1.6 The Recipient warrants that all information provided by it to MFish in connection with this Agreement was at the time true, complete and accurate in all material respects and it is not aware of any material information that has not been disclosed to MFish that may if disclosed adversely affect the decision of MFish whether to provide funding
- 1.7 The Recipient shall not publish any advertisement or make any public statement relating to this Agreement without the prior approval of MFish. The Recipient agrees that MFish may publish information about the award of this grant. .
- 1.8 The Recipient agrees that MFish may disclose to or obtain from any other government organization any information about the Recipient for the purposes of gaining or providing information related to funding of the Recipient.
- 1.9 The Recipient shall immediately notify MFish of any problem it has with any matter connected with this Agreement.
- 1.10 The Recipient will report to MFish as set out in Schedule 1 and as otherwise reasonably required by MFish on matters relating to this agreement.
- 1.11 The Recipient agrees to provide MFish with a copy of the final environmental certification report or assessment report.
- 1.12 The Recipient must maintain true and accurate records in connection with the use of the funding as set out in Schedule 1 sufficient to enable MFish to meet its obligations under The Public Finance Act 1989, and to retain such record for at least 7 years after termination or expiry of this Agreement.
- 1.13 MFish may at MFish's expense, inspect or audit from time to time all records relevant to this agreement and the expenditure of the grant awarded under this agreement. The Recipient must allow MFish or any auditor nominated by MFish reasonable access to the Recipient's premises for this purpose.
- 1.14 MFish may renegotiate or terminate this agreement if MFish is not satisfied with the application of the grant or if the Recipient does something in connection with the grant which in MFish's opinion may damage the business or reputation of MFish or the Recipient breaches this agreement.
- 1.15 The Recipient will give MFish written notice of any change that occurs after the date of the execution of this Agreement which may affect the operation of this agreement.
- 1.16 The Recipient warrants that it has no direct or indirect pecuniary interest or conflict of interest that will affect its ability to perform its obligations under this Agreement. The Recipient will disclose to MFish if it receives any other funding for the purposes which MFish is providing this grant for.

## **2. Funding and Payment**

- 2.1 The Parties Agree that the funding is provided by way of a conditional grant to assist the Recipient to undertake an environmental certification or assessment process as set out in Schedule 1
- 2.2 Subject to the terms of this Agreement, MFish will pay the funding to the Recipient on the terms set out in Schedule 1. The Recipient undertakes to MFish only to use the funding for the matters set out in Schedule 1 and for no other purposes and to notify MFish immediately if it becomes aware of any misapplication or misappropriation of any funding.
- 2.3 Notwithstanding anything in this Agreement, the Recipient acknowledges that MFish is under no obligation to enter into any further funding agreements with the Recipient from the Environmental Certification Fund or any other source.
- 2.4 The funding paid to the Recipient is treated as income for the Recipient for the purposes of the Goods and Services Tax Act 1985. GST will be added to the funding if the Recipient is registered for GST. The funding

is otherwise inclusive of any taxes, duties, fees or other similar charges of any kind whatsoever (including, without limitation, any withholding taxes).

### **3. Termination**

- 3.1 MFish may immediately terminate this Agreement before the end of the term if:
  - 3.1.1 The Recipient fails to comply with any of the terms and conditions of this Agreement and fails to remedy such a failure within 14 working days of MFish giving written notice.
  - 3.1.2 The Recipient is dissolved becomes insolvent or goes into liquidation or an order is made or a resolution is passed for the winding-up or dissolution of the Recipient, or a receiver is appointed or otherwise ceases business.
  - 3.1.3 The Recipient terminates the environmental certification or assessment prior to the agreed final milestone being achieved
  - 3.1.4 MFish is released from its funding obligations.
- 3.2 Either Party may terminate at any time before the end of the term immediately by written notice to the other party if any provision of or the continued performance of this Agreement or any part of it becomes illegal.
- 3.3 Upon termination the Recipient will return to MFish any part of the funding already received which has not been used in accordance with this agreement.
- 3.4 Where this Agreement is terminated under this provision MFish will be released from its obligations to pay the funding or other amounts otherwise payable under this Agreement and without prejudice to any other rights or remedies available to MFish under this Agreement or at law or equity.

### **4. Disputes**

- 4.1 Disputes shall first be referred to means other than litigation or arbitration for resolution, such as negotiation, mediation, conciliation or independent expert appraisal, except where a party seeks urgent interlocutory relief.
- 4.2 Both parties will continue to perform their obligations under this agreement as if no dispute or difference had arisen pending the final settlement of any matter.

### **5. Intellectual Property**

- 5.1 Each Party retains its rights in any intellectual Property that exists at the commencement of this agreement.
- 5.2 The Recipient shall ensure that it will not infringe any intellectual property rights in the performance of the services. If infringement occurs The Recipient will at its own expense remedy the situation by either removing the offending material or obtaining a license to use it.

### **6. Force Majeure**

- 6.1 Neither party is in breach of this Agreement 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 (Force Majeure).
- 6.2 The party unable to fulfil its obligations due to a Force Majeure shall give notice to the other party and use all reasonable endeavors to avoid or remove the cause and perform its obligations.
- 6.3 Where the Force Majeure event continues for ten (10) working days, either party may immediately terminate this Agreement on written notice.

### **7. General Provisions**

- 7.1 MFish may require evidence of how the funding has been spent.

- 7.2 This Agreement may be amended by agreement by both parties in writing.
- 7.3 Neither Party may assign or transfer all or any part of its rights or obligations under this Agreement.
- 7.4 The Recipient acknowledges that the information contained in this Agreement is official information in terms of the Official Information Act 1982. In line with the policy of that Act; such information may be released unless there is a good reason, in terms of that Act, to withhold the information. MFish agrees to advise the Recipient if there is such a request.
- 7.5 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of the Agreement will remain in full force and effect.
- 7.6 Indemnities, intellectual property and confidentiality clauses shall survive termination of this Agreement.
- 7.7 Each party will sign, execute and do all deeds, schedules, acts, documents and things as may reasonably be required by the other party to carry out the Agreement.
- 7.8 Nothing in this Agreement will be deemed to constitute either Party as the agent , party or joint venture of the other.
- 7.9 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 its rights in respect of any subsequent breach of the Agreement. Failure to enforce any clause of this agreement will not be construed as a waiver under this Agreement.
- 7.10 This Agreement is governed by and is to be construed in accordance with the laws of New Zealand.
- 7.11 This Agreement and its attached Schedules, or any subsequent variation signed by both Parties may be added to and shall constitute the entire agreement between the Parties and supercedes all prior representations, agreements statements and understandings, whether verbal or in writing.

**EXECUTED** as an Agreement

**SIGNED** by **HER MAJESTY THE QUEEN**  
**IN RIGHT OF NEW ZEALAND** acting by  
 and through the Chief Executive of MFish of Fisheries: \_\_\_\_\_

Address:

Facsimile No:

Attention:

**SIGNED** by **THE RECIPIENT** .....  
 by:

\_\_\_\_\_

\_\_\_\_\_

Address:

Facsimile No:

Attention:

## **SCHEDULE 1**

**1. PURPOSE OF THE GRANT**

The Recipient has applied for and has been granted funding by MFish to:

**2. PAYMENTS, AND MILESTONE PLAN**

The amount of the grant is \$ **0000.00**

This amount is to be paid in the following instalments by way of conditional after the completion of key milestones and progress reports as set out below:

**3. The Recipient's Eligible Costs are as follows:**

**4. The term of this Agreement is from the date of execution and expires when the last grant payment is made.**

**5. The authorized representatives of the Parties and their contact details are as follows:**

## **SCHEDULE 2**

- Application form
- Guide for Applicants