Confidentiality and conflict agreement

For independent Panel Members for the Whakatāne District Business Recovery Grant Programme

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (Full Name)

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (Address)

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(“**Recipient**”)

**In favour of:** Her Majesty the Queen in right of New Zealand acting by and through

 The Ministry of Business, Innovation and Employment at:

 Ministry of Business, Innovation and Employment

 PO Box 5672

 Wellington

 New Zealand

 (“**MBIE**”)

**Background**

1. At the request of MBIE, the Recipient will be a member of the Independent Panel for the Whakatāne District Business Recovery Grant Programme ‘the WDBRGP Panel’.
2. In the course of participating as a member of the WDBRGP Panel, the Recipient will be provided with Confidential Information of MBIE and third parties.
3. The purpose of the provision of the Confidential Information is to enable the Recipient to participate as a member of the WDBRGP (“**Purpose**”)
4. The Recipient agrees to be bound by certain duties of confidentiality, non-use of information, and declaration and management of conflict with respect to the Purpose and the Confidential Information, in accordance with the terms of this agreement.

**By this agreement the recipient agrees as follows:**

1. **Definitions**

The following definitions are used in this Agreement:

1.1 “**Confidential Information**” means all information, research, findings, data and know-how, trade secrets, forecast, information as to systems or processes, business plans, research and development plans, marketing plans, business relationships, marketing information and customer information, whether technical or not, and the like, which is disclosed to the Recipient by MBIE or third parties or generated by the Recipient in the course of his or her participation as a member of the WDBRGP Panel, but does not include information that:

 (a) is within the public domain at the date of the disclosure; or

 (b) subsequently enters the public domain without the fault of the Recipient; or

 (c) at the date of disclosure to the Recipient is demonstrated to be known to the Recipient; or

(d) is at any time received by the Recipient from a third party who is lawfully in possession of the information and had the right to disclose it.

 **2. Disclosure**

 2.1 Except as provided under clause 3 the Recipient agrees not to disclose to any other person any Confidential Information without the prior written consent of MBIE.

2.2 This agreement is not intended to restrict the disclosure of Confidential Information by the Recipient to the extent that the Recipient is required to disclose such Confidential Information by law, provided that the Recipient takes such reasonable steps as are available under law to protect such Confidential Information and notifies MBIE of the Recipient’s obligation to make such disclosure prior to the time disclosure is made.

 **3. Use**

3.1 The Recipient agrees not to use any Confidential Information for any purpose other than for the purpose

 **4. Material**

4.1 The Recipient must take all reasonable care to ensure that all material (“**Material**”) in the Recipient’s possession that contains or incorporates Confidential Information is kept securely, and must return, destroy, or otherwise deal with the Material as directed by MBIE.

4.2 The Recipient agrees that all Material is the property of MBIE or such third party as advised by MBIE.

 **5. Conflict Interest**

5.1 The Recipient warrants that it has, at the date of this Agreement, disclosed any circumstances that give rise to, or could give rise to, a conflict of interest in the exercise of the Recipient’s functions in relation to the Purpose on the attached form.

5.2 The Recipient agrees to promptly disclose any circumstances that give rise to, or could give rise to, a conflict of interest in the exercise of the Recipient’s functions in relation to the Purpose during the Recipient’s participation as a member of the WDBRGP Panel.

5.3 If in reasonable opinion of MBIE the Recipient has a genuine conflict of interest, the Recipient acknowledges that MBIE may promptly terminate the Recipient’s participations as a member of the WDBRGP panel or exclude the Recipient from parts of the WDBRGP Panel’s business.

 **6. General**

6.1 The Recipient acknowledges that damages may not be an adequate remedy for breach of the Recipient’s obligations under this agreement and that MBIE is also entitled to seek an injunction to compel specific performance of the Recipient’s obligations.

6.2 A failure by the Recipient or MBIE to enforce a provision of this agreement will not constitute a waiver of any right to future enforcement of that or any other provision.

6.3 This agreement is governed by, and construed in accordance with, the laws of New Zealand.

 **7. Term**

7.1 The obligations created by this agreement with respect to disclosure and use of Confidential Information and Material continue following the termination or expiry of the Recipient’s participation as a member of the WDBRGP Panel.

 **EXECUTED** by the **RECIPIENT** (Signature)

 In the presence of:

 Name

 Address

 Occupation

 (Signature)

**CONFLICT OF INTEREST**

A conflict of interest is where the Recipient’s duties and responsibilities as a member of the WDBRGP Panel could be affected by some other interest or duty that the Recipient may have, or the appearance of such conflict.

The existence of a conflict is not in itself improper but such conflicts must be appropriately managed.

For further clarification refer the Office of the Auditor-General’s *Managing conflicts of interest:* Guidance for public entities at [www.oag.govt.nz/2007/conflicts-public-entities/docs/oag-conflicts-public-entities.pdf](http://www.oag.govt.nz/2007/conflicts-public-entities/docs/oag-conflicts-public-entities.pdf)

**Declaration of conflict of interest**

The Recipient declares the following interest relevant to the Recipient’s participation as a member for the WDBRGP Panel:

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| --- | --- | --- |
| **Interest** | **Nature of Interest (actual, potential, perceived)** | **Conflict** |
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Please state “Nil” if there are no conflicts of interest.

 (Recipient’s signature)

 (date)