

Foundation Funding Agreement

Parties	
Foundation	Newcastle Permanent Community Foundation Company Limited , ABN: 79 092 437 379, of 307 King Street, Newcastle West NSW 2302, in its capacity as trustee of the Newcastle Permanent Charitable Foundation (“ Foundation ”)
Contact	Attention: Jason Bourke Telephone: (02) 4927 4217 Manager - Charitable Foundation & Sponsorship The Marketing Team Newcastle Permanent Building Society Email: jason.bourke@newcastlepermanent.com.au Fax: (02) 4927 4335
Recipient	[insert Recipient name], ABN: [insert] of [insert address]
Contact	Attention: [insert name] Telephone: [insert] Email: [insert] Fax: [insert] (“ Recipient ”)
Details	
Background	<p>A The Foundation has been established by the Newcastle Permanent Building Society Limited (“Society”) to provide support for the community through financial assistance to charities, community groups and other worthwhile causes in the Hunter, Central Coast, Mid North Coast, New England and Northern Rivers regions of NSW.</p> <p>B The Foundation wishes to provide a Grant to the Recipient for the purpose of the Project on the terms set out in this agreement.</p>
Grant	[Insert Grant and details of date/s for payment]
Project	[Insert the name and nature of the Project]
Funding Benefits	<p>Title: The Foundation is [a/the] [major / exclusive] benefactor for the [description of the Project]</p> <p>Project: [Description of Project]</p> <p>Funding Period: [Complete duration]</p> <p>Project specific benefits: [List the marketing benefits specific to the Project (such as branding on websites, vehicles, brochures, advertising and other marketing activities)]</p> <p>Other benefits: [List other benefits (such as Directors of the Society or Foundation being sent invitations to events relating to the Project)]</p>
Governing law	New South Wales

Date of agreement	[Insert Date]
EXECUTED as an agreement.	
<p>SIGNED for and on behalf of NEWCASTLE PERMANENT COMMUNITY FOUNDATION COMPANY LTD by its duly authorised representative:</p> <p>..... Signature</p> <p>..... Printed Name</p> <p>..... Position</p> <p>..... Date</p> <p>In the presence of:</p> <p>..... Signature</p> <p>..... Printed Name</p>	<p>SIGNED for and on behalf of [RECIPIENT's NAME] by its duly authorised representative:</p> <p>..... Signature</p> <p>..... Printed Name</p> <p>..... Position</p> <p>..... Date</p> <p>In the presence of:</p> <p>..... Signature</p> <p>..... Printed Name</p>
<p>Note: By executing this agreement each signatory represents that he or she is authorised to sign on behalf of their entity. The date of this agreement will be the date this agreement has been executed by both parties.</p>	

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General Terms

1 Appointment

During the term of this agreement and in return for the Grant, the Recipient:

- (a) appoints the Foundation as [a /the][major /exclusive] benefactor for the Project; and
- (b) grants to the Foundation the rights and benefits referred to in this agreement.

2 Term

2.1 Term

This agreement commences on the date upon which it is signed by both parties and subject to clause 9 (Termination), continues until the last to occur of:

- (a) the Grant having been fully received and expended by the Recipient;
- (b) the Project having been completed;
- (c) the Project Completion Report being received; and
- (d) the expiration of the Funding Period.

3 Grant

3.1 Exclusive use of the Grant

The Grant must only be used for the Project in accordance with the proposal submitted by the Recipient to the Foundation or as otherwise approved in advance by the Foundation in writing.

3.2 Payment to the Recipient

The Grant will be paid by the Foundation to the Recipient at the time or times specified in the Details subject to the provision to the Foundation of:

- (a) a Tax Invoice (inclusive of GST) for the Grant or each Grant instalment (as relevant); and
- (b) Public liability and workers compensation certificates of currency acceptable to the Foundation.

3.3 Multi-year Projects

Where the Grant is paid by the Foundation to the Recipient by instalments, payment of subsequent instalments is also subject to the Recipient providing the Foundation with progress reports to the Foundation's satisfaction.

3.4 Renewal

Continuation of the Grant beyond the Project Term is neither represented nor guaranteed by the Foundation and is subject to a new Application being submitted in line with the stated closing dates on the Foundation's web site.

3.5 Obligation to Report

- (a) The Recipient must report to the Foundation whenever and in such manner as the Foundation requires in relation to the Project.
- (b) Without limiting that general reporting obligation, if the Recipient receives from the Foundation a Grant totalling in excess of \$5,000 the Recipient must provide a written report to the Foundation promptly following the completion of the Project. An outline of this required report is attached as schedule 1.
- (c) Also without limiting that general reporting obligation, if the Recipient receives a Grant for a Project which extends beyond one year the Recipient must provide to the Foundation a report at not more than 6 monthly intervals outlining how the Project is performing to its objectives. An outline of this required report is attached as schedule 2.

4 Exclusivity

The parties agree that the Recipient must not accept any grant or commitment to make a grant for the Project identified in the proposal submitted by the Recipient from any financial institution or any other company or entity which is a competitor of the Society or a rival foundation to the Foundation, without the written consent of the Foundation.

5 Funding benefits

5.1 Title

The Recipient grants the Foundation the right to refer to itself by the Title set out in the Details in the marketing and promotion of the Foundation.

5.2 Project

The Recipient must provide the benefits specific to the Project set out in the Details.

5.3 Acknowledgement

The Recipient must, during the Funding Period and unless otherwise notified in writing by the Foundation, acknowledge the Foundation's support in all signage, promotional material,

communications and media exposure regarding this Project and place the Foundation's name or logo on all premises or major equipment purchased with the Grant, in a form acceptable to the Foundation.

5.4 References to the Grant

The Recipient grants to the Foundation and the Society the right to refer to the Grant in such manner as they may determine including in corporate advertising, as a by-line in advertising, media announcements, websites and promotional materials.

5.5 Other benefits

The Recipient must provide the Foundation with the other benefits set out in the Details.

5.6 Cessation of Reference to the Foundation

The Foundation may by notice in writing to the Recipient require the Recipient to cease referring to the Foundation as a benefactor and using the name, logo or image of the Foundation or the Society in connection with the Project or the activities of the Recipient.

6 Promotion of the Grant

6.1 Announcements and Media

- (a) Media announcements on the Grant will be made initially by the Foundation. The Foundation will have the right to review and approve prior to release all announcements regarding the Grant, and may provide advice and information on media initiatives relating to the Grant.
- (b) All media releases and media information distributed by the Recipient related to the Grant must clearly acknowledge the Grant and the support of the Foundation. Media releases may also be distributed by the Foundation outlining its involvement in the Project through the Grant.

6.2 Logo

All mentions of the Grant (including media, print and signage) during the Funding Period must carry the Foundation's name and logo in a form and style to be approved by the Foundation.

7 Intellectual Property

7.1 The Foundation's name and logo

The Foundation grants to the Recipient the permission to use the Foundation's name and logo

as set out in clause 6.2 and the Details for advertising and promotional purposes.

7.2 The Foundation's intellectual property rights

The Recipient acknowledges that:

- (a) the Foundation's intellectual property rights remain the property of the Foundation at all times;
- (b) nothing in this agreement transfers any of these rights to the Recipient; and
- (c) the Recipient is only permitted to use any of those rights in the matter contemplated by this agreement.

7.3 No rights on termination

On the termination of this agreement, neither party will have any further right to use the name or logo of the other party, or any other promotional device or material relating to the other party.

8 Confidentiality

8.1 Agreement to remain confidential

The Recipient must keep the terms of this agreement confidential unless otherwise required or permitted by this agreement or approved in writing by the Foundation.

8.2 Disclosure of Confidential Information

No Confidential Information may be disclosed by the Recipient to any person except:

- (a) Representatives of the Recipient or its Related Entities requiring the information of the purposes of this agreement; or
- (b) with the written consent of the Foundation which consent may be given or withheld in its absolute discretion; or
- (c) if the Recipient is required to do so by law; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this agreement; or
- (e) if the information is in or becomes part of the public domain other than through a breach of this agreement or an obligation of confidence owed by the Recipient or to the provider of the Confidential Information.

9 Termination

9.1 Foundation's right to terminate

- (a) The Foundation may terminate this agreement if:
- (i) the actions or inactions of the Recipient bring (actually or potentially) the Foundation or the Society into disrepute or cause (potentially or actually) reputation damage to the Foundation or the Society;
 - (ii) the Project does not proceed;
 - (iii) the Recipient becomes insolvent or has a liquidator, administrator or receiver appointed in relation to all or part of its assets or affairs;
 - (iv) the Recipient breaches this agreement; or
 - (v) the Project does not meet its objectives/milestones set out in the Application or any proposal or the reports provided to the Foundation.

9.2 Refund upon termination

If termination of this agreement occurs all unallocated monies from the Grant are to be promptly refunded to the Foundation. The Foundation will not be required to provide any further Grant instalment.

9.3 Publicity

The Recipient must not publicise the termination of this agreement.

9.4 Removal of logos

Following the expiration or early termination of this agreement or upon a notice being given pursuant to clause 5.6 the Recipient must promptly, unless otherwise notified by the Foundation, cease to use and remove from all documents, signs, websites, promotional and other materials (whether in written, electronic or any other form) all references to the Foundation, the Society and their names, logos and other identifying images, return to the Foundation any artwork or other materials containing the name, logos or other images of the Foundation or the Society and either provide to the Society or destroy any other materials containing those logos, names or images.

9.5 Survival

The obligations in clauses 7 - Intellectual Property, 8 - Confidentiality and this clause 9 survive termination of this agreement.

10 Insurance

- (a) During the term of this agreement the Recipient must ensure that it maintains all appropriate insurance policies including (but not limited to) a public liability insurance policy (covering, amongst other things ordinarily associated with such an insurance policy, personal injury to third parties and property damage) in connection with the Project and any activities that may be associated with the Foundation or the Society.
- (b) The Recipient must arrange, maintain and provide the Foundation with evidence of the following insurances during the continuance of this agreement:
- (i) Workers compensation; and
 - (ii) Public and products liability for a minimum amount of \$10 million dollars in respect to any single claim.
- (c) The public and products liability policy must include as parties indemnified by the policy the Newcastle Permanent Community Foundation Company Limited and Newcastle Permanent Building Society Limited.
- (d) The public and products liability policy must contain a cross liability clause and indemnify and keep indemnified the Foundation and the Society from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgements, orders, decrees, costs, losses and expenses of any nature whatsoever which they may suffer or incur in connection with the loss of life, personal injury and/or damage to property arising out of the use of the Grant or any association of the Foundation or the Society with the Project or the activities of the Recipient.

11 Warranties and Indemnities

11.1 Warranties

The Recipient warrants to the Foundation that:

- (a) it is properly constituted and legally permitted to carry out the activities and responsibilities under or in connection with the Project;
- (b) entering into this agreement by the Recipient does not breach any third party contracts with the Recipient or any laws relating to interference with those third party contracts;
- (c) it has not granted any rights to any other person, or entered into any agreements that will prevent or limit the Foundation's rights including without limitation benefits under this agreement;
- (d) it will conduct its affairs and the Project in a manner that reflects favourably at all times on the Foundation and the Society's good name, goodwill and reputation;
- (e) it will not make any false or misleading representations with regard to the Foundation or the Society; and
- (f) it will avoid deceptive, misleading or unethical practices that are or might be detrimental to the Foundation or the Society or the public.

11.2 Indemnities

The Recipient indemnifies the Foundation and the Society against any proceedings, suits, claims, costs, damages and expenses whatsoever which may be incurred by or brought against any of them arising out of or relating to:

- (a) any breaches of this agreement;
- (b) the staging of any events or programs in connection with the Project or the using of the Grant; and
- (c) any activity carried out in relation to the Project or the using of the grant.

12 Dispute Resolution

- (a) For the avoidance of doubt, nothing in this clause prevents a party seeking urgent injunctive or similar relief from a court nor prevents the right of the Foundation to terminate this agreement under clause 9.1 nor to give a notice under clause 5.6.
- (b) Any party ("**Initiating Party**") claiming that a dispute has arisen must, before commencing legal proceedings in relation to the dispute, give the other party

("Responding Party") a notice setting out brief details of the dispute ("**Dispute Notice**"). Within 5 business days of service of a Dispute Notice, the Responding Party must give the Initiating Party a notice setting out brief details of the Responding Party's position on the dispute ("**Reply Notice**").

- (c) In the event a Dispute Notice and a Reply Notice are given, the parties will make available representatives with authority to settle the dispute for the purpose of meeting in an effort to resolve the dispute. At least one meeting of the authorised representatives must take place within 10 business days of service of a Reply Notice.
- (d) For the avoidance of doubt, in the event the Responding Party does not give a Reply Notice or make its authorised representatives available for a meeting within the time periods contained in this clause 12, the Initiating Party will be entitled to commence legal proceedings in relation to the dispute.

13 Notices and other communications

13.1 Form - all communications

Unless expressly stated otherwise in this agreement, all notices and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) and marked for the attention of the person identified in the Details or, if a party has notified otherwise, then marked for attention in the way last notified.

Communications sent by email need not be marked for attention. However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

13.2 Delivery

Communications must be:

- (a) left at or sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (b) sent by fax to the fax number or by email to the address set out or referred to in the Details; or
- (c) given in any other way permitted by law.

13.3 When effective

Communications take effect from the time they are received or taken to be received under clause 13.4

(whichever happens first) unless a later time is specified.

13.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

14 Miscellaneous

14.1 Assignment

The Recipient may not assign or otherwise deal with its rights under this agreement without the written consent of the Foundation, which consent may be withheld or granted, unconditionally or upon such conditions as the Foundation in its absolute discretion determines. The Foundation may assign or otherwise deal with its rights under this agreement in its absolute discretion with or without the consent of the Recipient.

14.2 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

14.3 No representations or warranties

Each party acknowledges that in entering into this agreement it has not relied on any representations or warranties about its subject matter except as provided in the agreement.

14.4 No partnership or agency

- (a) Nothing in this agreement shall create or constitute or be deemed to create or constitute a partnership between the parties for the purposes of the taxation law

of Australia or any other law of any type or jurisdiction.

- (b) Nothing in this agreement authorises either party to act or represent or hold itself out as having authority to act as agent of or in any way bind or commit the other party to any obligation.

14.5 Waiver and variation

A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

14.6 Entire Agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

14.7 Rights of Society

- (a) This agreement is intended to confer certain benefits and protections for the Society.
- (b) The Foundation will hold the benefit of the indemnity in favour of the Society in clause 11.2 and all other rights and benefits relating to the Society arising under this agreement as trustee for the Society and the Recipient acknowledges and agrees that the Foundation may enforce these rights and benefits as trustee for the Society.

14.8 Limitation of Liabilities

Neither the Foundation nor the Society is liable to the Recipient or third parties in relation to the Project. Any such liabilities if incurred are to be indemnified by the Recipient in accordance with clause 11.2.

14.9 Governing Law

This agreement is governed by the laws in force in the State of New South Wales and the parties submit unconditionally to the non-exclusive jurisdiction of the appropriate courts of the State of New South Wales and any courts competent to hear appeals therefrom.

15 Interpretation

15.1 Definitions

The capitalised terms in Parties and Details have the meanings ascribed to them. The following definitions also apply unless the contrary intention appears:

Application means an application by the Recipient to request a Grant from the Foundation in accordance with the process and criteria as set out on the Foundation's website.

Confidential Information means all confidential, non-public or proprietary information of the Foundation or the Society, regardless of how the information is stored or delivered, and which is provided to or received or accessed by the Recipient before, on or after the date of this agreement, relating to the business, technology or affairs of the Foundation or the Society, including in the case of the Society and without limitation, its members. It also includes any information which the Foundation or the Society notifies the Recipient is confidential.

Details means the section of this agreement headed "Details".

Funding Period means the funding period of the Grant as shown in the Details.

Grant means the sum of money the Foundation pays or agrees to pay to the Recipient as consideration of this agreement and for the purpose of carrying out the Project.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*.

Input Tax Credit has the meaning it has in the GST Act.

Project means the initiative the subject of the Application.

Project Completion Report means the report referred to in clause 3.5(a) pertaining to completion of the Project.

Project Term means the duration of the Project as stated in the Application or otherwise consented to in writing by the Foundation.

Related Entity has the meaning it has in the *Corporations Act 2001 (Cwlth)*.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Tax Invoice has the meaning it has in the GST Act.

15.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) a document (including this agreement) includes any variation or replacement of it;
- (b) something in the singular includes the plural and vice versa;
- (c) a person includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- (d) a statute, ordinance, code or other law includes regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of them;

15.3 Headings

Headings are for convenience only and do not affect the interpretation of this agreement.

Schedule 1 - Report (Clause 3.5 (b))

NEWCASTLE PERMANENT CHARITABLE FOUNDATION PROJECT COMPLETION REPORT

Company Name:
Project Name:
Project Start Date:
Project Completion Date:
Amount of Grant:

Ratings

- 1 – Failed
- 2 – Ineffective
- 3 – Neutral
- 4 – Successful
- 5 – Very Successful

1. How effective was the project in meetings its objectives?

1	2	3	4	5

Comments:

2. Did the project perform to budget? Please provide an itemised listing identifying how the grant provided by the Foundation was expended. (The Foundation may request copies of receipts for audit purposes).

1	2	3	4	5

Comments:

3. How do you rate the support offered by the Charitable Foundation?

1	2	3	4	5

Comments:

4. Is there anything you would have done differently?

Comments:

5. Is there anything that the Charitable Foundation needs to improve upon?

Comments:

6. Additional comments welcome:

Name: _____ Signature: _____

Date: _____

Schedule 2 - Report (Clause 3.5 (c))

NEWCASTLE PERMANENT CHARITABLE FOUNDATION PROJECT PROGRESS REPORT

Company Name:
Project Name:
Project Start Date:
Project Completion Date:
Amount of Grant:
Progress Report Number:

Ratings

- 1 – Failing
- 2 – Ineffectively
- 3 – Neutral
- 4 – Successfully
- 5 – Very Successfully

1. How effective is the project meetings its objectives?

1	2	3	4	5

Comments:

2. How is the project performing to budget? Please provide an itemised listing (to date) identifying how the grant provided by the Foundation have been expended. (The Foundation may request copies of receipts for audit purposes).

1	2	3	4	5

Comments:

3. What were the highlights of this period – major activities planned?

Comments:

4. What activities are behind schedule?

Comments:

5. What major activities are planned in the next reporting period?

Comments

6. Has any major issues or risks been identified that may affect the deliverables outlined at question 5?

Comments:

7. How do you rate the support offered by the Charitable Foundation?

1	2	3	4	5

Comments:

8. Is there anything you need to do differently?

Comments:

9. Is there anything that the Charitable Foundation needs to improve upon?

Comments:

10. Additional comments welcome:

Name: _____ Signature: _____
Date: _____