

# Grant Deed

## Details

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**Parties**

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<b>State</b>	Name	<b>The Crown in Right of Tasmania represented by the Department of Tourism, Arts and the Environment (“Grantor”)</b>
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	Address	
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	Telephone
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	Facsimile
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	Attention
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**Grantee**

Name	
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ABN
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Address
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Telephone
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Fax
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Attention
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<b>Recitals</b>	<b>A</b>	The Grantee has applied for a grant under the Cooperative Marketing Fund (the “Program”).
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	<b>B</b>	The Grantor has agreed to provide the Grant to the Grantee as a one-off contribution for the Project under the Program.
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	<b>C</b>	The Grantee agrees to accept the Grant upon the terms and conditions set out in this Deed.
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<b>Date of Deed</b>	See Signing page
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# Grant Deed

## General terms

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### 1 Definitions

#### 1.1 Definitions

In this Deed unless the contrary intention appears:

“**Business Day**” means in relation to the doing of any action in a place any day other than a Saturday, Sunday or public holiday in that place;

“**Deed**” means this Deed and all its schedules and annexures;

“**Department**” means the Department of Tourism, Arts and the Environment;

“**Grant**” means the grant provided under clause 2.1;

“**Grantee**” includes its successors and permitted assigns;

“**Interest Rate**” means the rate of 5 per cent;

“**Legislative Requirements**” means Acts, Ordinances, regulation, by-laws, orders, awards and proclamations of the Commonwealth or the State applicable to the Grantee and the Project;

“**Project**” means the project as described in Schedule 1;

“**Secretary**” means the Secretary of the Department or his nominee;

#### 1.2 Interpretation

In this Deed:

- (a) the singular includes the plural and conversely;
- (b) headings are for convenience, and have no effect; and
- (c) a term of inclusion must not be interpreted to be a term of limitation.

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### 2 Grant

#### 2.1 Provision of Grant

The Grantor will provide the Grantee with a grant of \$X Dollars (\$X) for the Project.

#### 2.2 Payment of the Grant

Subject to clauses 2.3 and 5 being met the Grant will be payable in accordance with Schedule 2.

### **2.3 Bank Trust Account**

The Grantee must upon receipt of the Grant pay the Grant into a Grant Trust Account established as a trust account at an authorized deposit-taking institution as defined under the *Banking Act 1959* (Cwlth) to carry on banking in Australia, exclusively to receive and disburse the Grant. The Grantor will not advance any part of the Grant until the Grantee has given the Department written details of the Grant Trust Account.

### **2.4 Periodical Payments**

If Schedule 2 provides that the Grant is to be paid by any sort of periodical payments then the Grantor is entitled to defer any of those payments until the Grantee has completed the matters to which the payment relates to the Secretary's satisfaction.

### **2.5 Audit Trail**

The Grantee must maintain a thorough and complete audit trail of receipts and expenditures of the Grant through the account referred to in clause 2.3.

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## **3 Conditions of the Grant**

The Grantee agrees:

- (a) to use the Grant only for the Project;
- (b) to complete the Project by XXX or such other date as agreed by the Secretary;
- (c) to maintain proper financial accounts and records showing the use and expenditure of the Grant;
- (d) to provide the Grantor with reports and key performance indicator information in accordance with any Schedule 2 as necessary;
- (e) to provide the Grantor with a report verifying that the Project has been undertaken in accordance with Schedule 1. The report must also include audited financial statements detailing the expenditure of the Grant to the Project and is to be provided within three (3) months of completion of the Project;
- (f) to disclose the Grant as a separate and identifiable item in the Grantee's financial statements;
- (g) the Grantee must advise the Grantor immediately in the event that it is unable to complete the Project;
- (h) the Grantee must return to the Grantor any unspent funds upon completion of the Project
- (i) to provide any other information, report, statement or Statutory Declaration relating to the Project that the Grantor may reasonably

require within fourteen (14) Business Days of the Grantor's written request;

- (j) that any information to be provided by the Grantee under the terms of this Deed is to be in a form acceptable to the Secretary;
- (k) that the acceptance of the Grant does not commit the Grantor to any future financial assistance to the Grantee;
- (l) to give the Auditor-General for Tasmania or his or her nominee access to all financial statements and records about the use and expenditure of the Grant upon reasonable written notice first being given to the Grantee; and
- (m) to comply with all Legislative Requirements in undertaking the Project including ensuring its contractor or contractors comply with the Legislative Requirements.

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## **4 Promotional Activities**

### **4.1 Acknowledgement of Grant**

The Grantee must acknowledge that the Project is assisted by a grant made by the Grantor, through the Tourism Promotion Plan, and must display that acknowledgement in promotional material and publications about the Project as requested by the Grantor.

### **4.2 Project Opening and Major Announcements**

The Grantee undertakes to involve the Grantor (including the Minister for Tourism, Arts and the Environment) in the official opening of the Project or any major media announcements concerning the Project.

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## **5 Warranty**

If the Recipient is a body corporate, then it warrants that it is financially solvent as at the date of this Deed and is empowered to enter into this Deed.

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## **6 Goods and Services Tax**

### **6.1 Liability for GST**

Subject to any other provision of this deed expressing a contrary intention, if GST is imposed on a supply made under this Deed then the party paying for the supply must pay the amount of the GST to the party making the supply at the same time as, and in addition to, the amount payable for the supply.

## **6.2 Tax Invoice**

A party making a taxable supply under this Deed must give the recipient a Tax Invoice for the taxable supply when that supply is made.

## **6.3 Terms defined in the GST Act**

In this clause “GST” refers to the goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* and the terms used have the same meaning as defined in the GST Act.

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# **7 Repayment of the Grant**

## **7.1 Repayment**

If the Grantee:

- (a) fails to apply the Grant or any part of the Grant for the Project; or
- (b) fails to comply with the terms and conditions of this Deed where such failure relates to a material matter; or
- (c) provides incorrect information to the Secretary to meet its obligations under this Deed where the provision of such information relates to a material matter; or
- (d) if this Deed is terminated in accordance with clause 8 (*Termination*);

then the Grant or any part of the Grant (as the case may be) will at the absolute discretion of the Secretary become immediately due and payable to the Grantor within seven (7) days of the Grantee receiving a written notice of demand from together with any accrued interest (unless otherwise agreed in writing by the Secretary) at the Interest Rate. Any amount detailed in the notice becomes a debt due to the Grantor.

## **7.2 No affect to the Grantor’s right to damages**

If the Grantor enforces its rights under clause 6.1 (*Repayment*) or 7 (*Termination*) that does not affect the Grantor’s rights to damages for breach of contract if those damages exceed the amount of the Grant repaid or repayable under clause 6.1 (*Repayment*).

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# **8 Termination**

## **8.1 Termination**

The Grantor may terminate this Deed immediately, by giving written notice to the Grantee if the Grantee:

- (a) provides incorrect or misleading information to the Grantor;

- (b) fails to perform or observe any of its obligations under this Deed or fails to comply with the terms of this Deed;
- (c) if the Grantee is a company, an order is made, or a resolution is passed, winding up the Grantee, or a receiver, or receiver and manager, a provisional liquidator or an administrator is appointed to, over all or any part of the Grantee;
- (d) if the Grantee convenes a meeting or enters or proposes to enter into any arrangements or composition with its creditors;
- (e) if a mortgagee of the Grantee's property takes possession of any of that property; or
- (f) if the Grantee ceases or threatens to cease to carry on its activities, becomes insolvent, or commits an act of bankruptcy or act of insolvency.

## **8.2 Reservations on Termination**

Should the Grantor, terminate this Deed under clause 8.1, the Grantor reserves the right to demand repayment of any monies disbursed to the Grantee, in part or in full in accordance with clause 7.

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## **9 Inconsistency**

If this Deed is inconsistent with a document incorporated as part of it or the Schedules, then clauses 1 to 16 of this Deed prevails to the extent of the inconsistency.

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## **10 Resolution of Disputes**

### **10.1 Parties to negotiate about dispute**

If a dispute arises between the parties under this Deed (except in the case of action required to be taken under statute) the parties undertake in good faith to use all reasonable endeavours to resolve the dispute between them by negotiation.

### **10.2 Notice of dispute**

If one party has given a written notice of a dispute to the other party and the parties are unable to resolve the dispute by means of meeting or meetings held between them within twenty (20) Business Days after receipt of the notice, then the dispute must be submitted for resolution under the following sub-clauses.

### **10.3 Reference for determination**

The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience agreed between them. In the

absence of agreement the matter in dispute must be determined under the provisions of the *Commercial Arbitration Act 1986*.

#### **10.4 Final and binding decision**

The arbitrator's or independent expert's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.

#### **10.5 Party not to commence legal action**

Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

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## **11 Notices**

### **11.1 How to give a notice**

Any notice demand consent in writing or other communication to be given or made under or pursuant to this Deed shall be deemed to have been duly given or made when hand delivered in writing or sent by prepaid certified or registered post or by facsimile transmission (to the listed facsimile number) to the party to which such notice or demand or consent is required or permitted to be given or made under this Deed at the following addresses:

The Grantor

The Secretary  
Department of Tourism Arts and the Environment  
22 Elizabeth Street  
Hobart Tas 7000

Fax: 03 6233 5555

The Grantee

XXX

## **11.2 How to serve a notice**

A notice or other communication is taken to have been duly served:

- (a) in the case of hand delivery – when delivered;
- (b) if sent by prepaid post – on the third business day after the date of posting;
- (c) if sent by facsimile transmission (provided that the sending facsimile machine produces a print out of the time date and uninterrupted transmission record of the sending of the notice) – upon completion of sending if completion is within ordinary business hours in the place where the Grantee’s facsimile machine is located but if not then at 9.00 am on the next business day in that place.

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## **12 Entire agreement**

### **12.1 Entire Agreement**

The covenants, warranties, agreements and provisions contained in this Deed comprise the entire agreement between the parties about its subject matter.

### **12.2 Nothing to be implied**

No other covenants, warranties, disclaimers, agreements or provisions are to be implied into this Deed or to arise between the parties as collateral or other agreement because of a promise, representation, warranty or undertaking given or made by or on behalf of one party to another before it was signed. The existence of any such implication, or collateral or other agreement, is expressly negated and disclaimed by all parties.

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## **13 Insurance and Indemnities**

### **13.1 Grantee to insure**

The Grantee must ensure all relevant insurance including public liability insurance is obtained in relation to the Project to the satisfaction of the Grantor.

### **13.2 Evidence of insurance**

The Grantee must produce a certificate of currency for those insurance policies referred to in clause 13.1 at the request of the Grantor.

### **13.3 Grantee indemnifies the Grantor**

The Grantee hereby indemnifies and agrees to keep indemnified the Grantor from and against all or any actions, claims, demands, losses, damages costs and expenses for which the Grantor shall or become liable in respect of or arising from:

- (a) any breach by the Grantee or its servants and agents or any person of its obligations under this Deed;
- (b) any act or omission by the Grantee in connection with this Deed where there was negligent or unlawful act or omission or wilful misconduct of the Grantee; or
- (c) the use by the Grantor of any report provided by the Grantee in accordance with this Deed including any claims regarding the ownership or right to use intellectual property or moral rights in such reports.

#### **13.4 Obligations on Grantee**

The Grantee shall not in any way take any action to lessen or negate any of its obligations herein contained and hereby specifically waives any such right that it may have.

#### **13.5 Nature of indemnities**

The indemnities herein contained are continuing obligations of the Grantee separate and independent from any obligations of the Grantee and shall survive the termination or expiration of this Deed.

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### **14 Severance**

If any provision of this Deed is void, voidable by any party or illegal, it will be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) will be severed from this Deed without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Deed which will continue in full force and effect.

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### **15 Counterparts**

This Deed may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement. The parties agree that if necessary they may exchange faxed copies of counterparts and those faxed copies will be taken to constitute one agreement. The parties must exchange originals as soon as possible afterwards.

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### **16 Governing Law**

#### **16.1 Law of Tasmania**

This Deed is governed by the law of Tasmania, and the parties submit to the jurisdiction of the Courts of Tasmania.

#### **16.2 Proceedings issued under or about this Deed**

Any proceedings issued under or about this Deed, must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court, from the Tasmanian Registry of that court.

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## **17 Confidentiality**

### **17.1 Parties may disclose**

Despite any confidentiality or intellectual property right subsisting in this Deed or an annexure or attachment to it, either party may publish, without reference to the other, all or any of the following:

- (a) all or any part of this Deed;
- (b) a description of the Project to be undertaken under this Deed;
- (c) the date of this Deed, its commencement date, duration and expiry date;
- (d) a description of any extension of this Deed;
- (e) the name and address of the parties; and
- (f) the total of the Grant, including the funding for the extended term,

but excluding all, or those parts, of this Agreement (including parts in paragraphs (a) to (g) of this subclause), and any other material, identified in Schedule 3 (“Confidential Material”).

### **17.2 Limited confidentiality**

- (a) The Crown Contracts Confidentiality Standing Committee has determined that the Confidential Material is exempt from the Crown’s policy on disclosure of information in Government contracts.
- (b) The parties must maintain confidentiality of the Confidential Material for the period of the exemption, so far as the law allows, except to the extent that:
  - (i) the Confidential Material is available to the public generally, other than by breach of this Deed;
  - (ii) a law requires a party to file, record or register something that includes Confidential Material;
  - (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
  - (iv) it is necessary or advisable to disclose the confidential Material to a taxation or fiscal authority;

- (v) it is necessary to disclose the Confidential Material in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister's obligations to Parliament;
- (vi) the Confidential Material is disclosed confidentially to a party's professional advisers:
  - (A) to get professional advice about this Deed;
  - (B) to enforce this Deed; or
  - (C) otherwise to consult such professional advisers; or
- (vii) the parties agree otherwise in writing.

### **17.3 Employees to comply**

The parties must ensure that their respective employees who have access to Confidential Material, are aware of, and comply with, all confidentiality obligations affecting it.

### **17.4 Privacy obligations preserved**

Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

**Executed** as a Deed.

# Schedule 1

## Project Details

XXX

## Schedule 2

### Payment Schedule

XXX

## Schedule 3

### **Confidential Material**

There is no Confidential Material.

*[Delete the previous or the next clause (as appropriate) and this instruction]*

The following clauses, schedules, attachments, annexures, appendices or other material, are to remain confidential to the parties under clause 17 until [       ]:

(a)

# Signing page

**Dated:**

2006

**Signed** for and on behalf of )  
**The Crown in Right of Tasmania** by )  
**The Honourable Paula Catherine** )  
**Wriedt MHA** being and as Minister for )  
Tourism, Arts and the Environment )  
being a duly authorised person in the )  
presence of:

.....

.....

Signature of witness

.....

Name of witness (block letters)

.....

Address of witness

.....

Occupation

**Signed** by the **Grantee** in the presence )  
of: )

.....

Signature of witness

.....

.....

Name of witness (block letters)

.....

Address of witness

.....

Occupation

or

**Signed** by the **Grantee** in accordance )  
with section 127(1) of the *Corporations* )  
*Act 2001* (Cth) by authority of the )  
directors in the presence of: )

.....

.....

Signature of witness

.....

Name of witness (block letters)

.....

Address of witness

.....

Occupation

or

**The Common Seal** of the **Grantee** was )  
hereunto duly affixed in the presence )  
of: )

.....

Director

.....

Director/Secretary



# Grant Deed

Department of Tourism, Arts and the  
Environment

Dated 2006

**The Crown in Right of Tasmania  
("Grantor")**

and

**[Full name of Grantee] ("Grantee")**

**The Crown Solicitor of Tasmania**  
GPO Box 825  
Hobart 7001  
Phone: (03) 6233 3409  
Fax: (03) 6233 2874  
Email: crown.solicitor@justice.tas.gov.au

# Grant Deed

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# Grant Deed

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