



Ministry of **Transport**
TE MANATŪ WAKA

Grant Funding Agreement

Ministry of Transport

[full legal name of recipient]

Grant Funding Agreement

PART 1: KEY DETAILS

1	Date	[date]
2	Parties	<p>The Sovereign in Right of New Zealand, acting by and through the Minister of Transport (<i>Ministry</i>)</p> <p>[Full legal name of recipient] [identifying details, e.g. NZBN] (<i>Recipient</i>)</p>
3	Background	<p>The Ministry issued a Request for Proposals for International Airfreight Capacity dated on or about [date] (<i>RFP</i>).</p> <p>The RFP sought commitments from applicants to make available agreed levels of international air freight capacity on certain air routes, offered to the market at prices determined in accordance with an agreed end customer pricing methodology and designed to keep air freight affordable for those end-users.</p> <p>The primary purpose of the RFP was to support the economic viability of international airfreight routes, in order to ensure the supply of critical imports (particularly medicines, medical supplies, agricultural or other production machinery) and maintain economic benefits of high value exports (particularly seafood, meat, horticulture).</p> <p>The Recipient responded to the RFP with a proposal dated on or about [date] (<i>Proposal</i>). As a result of subsequent negotiations between the Ministry and the Recipient, the Ministry wishes to provide Grant Funding to the Recipient to make available the Flights for the Routes, on the terms of this agreement.</p> <p>This agreement consists of the Key Details in this Part 1, the General Terms in Part 2, and the defined terms and rules of interpretation in Part 3.</p>
4	Start Date and End Date	<p>Start Date: [date]</p> <p>End Date: [date]</p> <p>[Note, as at signing, this is intended to cover “Phase 1” as defined in the RFP, with the ability for a mutually agreed extension to cover “Phase 2”.]</p>
5	Routes, Flights, Designated Capacity and Timetable	<p>The Routes, Flights, Designated Capacity and Timetable are as follows:</p> <p>[to be inserted or attached]</p>
6	Pricing methodology	<p>The Designated Capacity will be made available to the market at prices not exceeding those determined in accordance with the following pricing methodology:</p> <p>[to be inserted or attached]</p>
7	Prioritisation Policy	<p>Competing demand for the Designated Capacity will be prioritised in accordance with the following policy:</p> <p>[to be inserted or attached]</p>
8	Pre-approved subcontractors	<p>The following subcontractors are approved under clause 3.11 of the General Terms:</p> <ul style="list-style-type: none">[list approved subcontractors]
9	Grant Funding	<p>The Grant Funding is calculated as follows:</p> <p>[insert or attach calculation methodology, e.g. US\$/kg of Designated Capacity for each Flight flown]</p> <p>The Maximum Total Funding is NZ\$[], plus GST (if any).</p>

10 Instalments and Criteria

The Recipient may claim the Grant Funding [monthly] in arrears, by submitting a Payment Request following the end of the relevant calendar month.

Each [monthly] instalment will comprise all the Grant Funding accrued for that month in accordance with item 9 above.

To be eligible to claim Grant Funding for a Flight, the Recipient must show that:

- the Flight travelled the relevant Route on the day scheduled in the Timetable
- the air cargo capacity of the Flight was equal to or exceeded the Designated Capacity for that Flight, and
- the Designated Capacity on that Flight was offered to the market solely at prices not exceeding those determined in accordance with the Pricing Methodology.

11 Reporting

The Recipient will provide the Ministry with a weekly report, showing:

- Flights operated, identified by Route and date
- For each Flight:
 - Designated Capacity offered vs used
 - Types of goods carried, with totals per category
 - Consigners

12 Review and extension

The Grant Funding provided for in this agreement is intended to cover the initial period up to the End Date.

However, the Government recognises that it may be necessary to provide further financial support for international air freight routes beyond the End Date, and has entered into this agreement with the intention that it may be used as a vehicle for such further financial support.

Accordingly, during the period from the Start Date to the End Date, the Recipient will make itself available for discussions with the Ministry on what further financial support might be needed for the Routes beyond the End Date, for how long, and how that support might be structured (e.g. if mechanisms other than a conditional grant might improve the public value realised by the Ministry from the financial support).

The Recipient will make available to the Ministry on request, on a confidential basis, full open book information regarding the Recipient's costs and revenues associated with the air freight services it operates on each Route, for the purpose of informing the discussions above.

Prior to the End Date, the Ministry will review the financial support provided to the Recipient and other operators of international airfreight services, and consider the case for extending the End Date and/or amending the terms of this agreement to provide further financial support for the Routes.

Subject to the Ministry being satisfied with the case for providing such further financial support, and with the terms offered by the Recipient for that purpose, the parties may agree to extend the End Date, and/or amend the terms of this agreement, to provide further financial support for the Routes.

Unless and until an extension or amendment to this agreement is signed, the Ministry is not obliged to provide any further financial support other than the Grant Funding payable in accordance with this agreement.

13 Nominated Executive

As at the date of this agreement, the Recipient's Nominated Executive is [name, title]. The Recipient may replace the Nominated Executive with an executive or equivalent or greater seniority, by notifying the Ministry.

14 **Addresses for notices**

The Ministry

[To be completed]

The Recipient

[To be completed]

SIGNATURES

Signed for and on behalf of the **Sovereign in Right of New Zealand** acting by and through the Minister for Transport:

Signed for and on behalf of **[full legal name of recipient]:**

Name:
Position/Title:
Date:

Name:
Position/Title:
Date:

PART 2: GENERAL TERMS

1 TERM

This agreement commences on the Start Date and continues until the End Date, unless terminated earlier in accordance with clause 8 or at law.

2 FUNDING

2.1 The Ministry will pay the Recipient the Grant Funding, subject to the terms of this Agreement.

2.2 The aggregate Grant Funding payable by the Ministry under this agreement will not exceed the Maximum Total Funding.

2.3 The Ministry will pay the Grant Funding in Instalments. The Ministry is not required to pay an Instalment until the Criteria for that Instalment have been satisfied, and the Recipient has submitted a corresponding Payment Request in accordance with this agreement.

2.4 Each Payment Request must contain:

- (a) details of the relevant Instalment;
- (b) reasonable evidence demonstrating satisfaction of all Criteria for the relevant Instalment;
- (c) a certificate signed by the Recipient's Nominated Executive confirming that to the best of their knowledge, after making all reasonable enquiry, those Criteria have been met.

2.5 The Ministry is not required to pay a Payment Request:

- (a) if submitted more than 90 days after the date when the Recipient first become entitled to claim payment of the relevant amount;
- (b) while the Ministry (acting reasonably) is not satisfied that the Criteria for the relevant Instalment have been met;
- (c) if payment will result in the Funding exceeding the Maximum Funding Total;
- (d) while there are one or more non-trivial breaches of this agreement by the Recipient that remain unremedied; and/or
- (e) if this agreement has been terminated.

2.6 Subject to the terms of this agreement, the Ministry will pay each valid Payment Request within 20 Business Days of receipt.

2.7 If the Recipient is liable for GST on any supply made under this agreement, the Ministry will pay the amount of that GST to the Recipient in addition to and at the same time as the Grant Funding, but only where the Recipient provides the Ministry with a valid tax invoice for that amount, complying with the requirements of the Goods and Services Tax Act 1985.

3 RECIPIENT'S RESPONSIBILITIES

3.1 The Recipient will use all reasonable endeavours to operate the Flights on the Routes, in accordance with the Timetable.

3.2 The Recipient will use all reasonable endeavours to promote and market the Designated Capacity, so that potential buyers of that capacity are aware of existence and able to access it.

- 3.3 The Recipient will ensure that the Designated Capacity on each Flight is offered to the market at prices not exceeding those determined in accordance with the Pricing Methodology.
- 3.4 The Recipient will use all reasonable endeavours to ensure that competing demand for the Designated Capacity is prioritised in accordance with the Prioritisation Policy. The Ministry may amend the Prioritisation Policy from time to time by giving notice to the Recipient, but will endeavour to allow at least 2 days for consultation with the Recipient before doing so.
- 3.5 The Recipient will provide the Ministry with the reports (if any) specified in the Key Details, in accordance with the timeframes and reporting requirements set out in the Key Details.
- 3.6 The Recipient will keep the Ministry informed of any matter known to the Recipient that could reasonably be expected to have an adverse effect on the Flights or Designated Capacity, or to result in a breach of any term of this agreement by the Recipient, or to otherwise entitle the Ministry to terminate this Agreement.
- 3.7 The Recipient will promptly notify the Ministry if the Recipient becomes aware of any matter that constitutes a Conflict of Interest, providing full details of the matter.
- 3.8 The Recipient will not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Ministry or the Crown more generally. The Recipient will keep the Ministry informed of any matter known to the Recipient which could reasonably be expected to have such an effect.
- 3.9 The Recipient must keep full and accurate records (including accounting records) of all matters pertaining to this agreement (including the Flights, the marketing and sale of the Designated Capacity, and the receipt and handling of the Grant Funding), and retain them for at least 7 years after the last payment of Funding under this agreement. The Recipient must make copies of these records available to the Ministry on request, if reasonably required for probity purposes.
- 3.10 The Recipient must carry out its activities in connection with this agreement in compliance with all applicable laws and regulations.
- 3.11 The Recipient must not subcontract its obligations under this agreement, except with the Ministry's prior approval.

4 WARRANTIES

- 4.1 The Recipient warrants that, as at the date of this agreement:
- (a) all information and representations disclosed or made to the Ministry by the Recipient in connection with this agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive the Ministry as to any material matter;
 - (b) it has disclosed any and all Conflicts of Interest to the Ministry;
 - (c) it has disclosed to the Ministry all matters known to the Recipient, relating to the Routes, Flights, Designated Capacity, Grant Funding, the Recipient or its Contractors and Personnel, that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of the Ministry; and
 - (d) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

4.2 The Recipient acknowledges that the Ministry has entered into this Agreement in reliance on these warranties.

4.3 The Recipient acknowledges and agrees that the Ministry has made no warranty or representation that any funding or financial support is or will be available to the Recipient Project other than the Grant Funding committed in accordance with this agreement.

5 **AUDIT**

5.1 At any time during the term of this agreement or the 18 months immediately afterwards, the Ministry may carry out an audit of the Recipient's Payment Requests and/or reporting under this Agreement, and/or one or more aspects of the Recipient's compliance with this Agreement. The Ministry will limit these audits to no more than once every 6 months, and will give not less than 5 Business Days' notice to the Recipient, in each case except for audits initiated in relation to a suspected fraud.

5.2 Each audit will be carried out by an independent and reputable provider of auditing services nominated by the Ministry, which may include Audit New Zealand. The Ministry will procure that the auditor gives a confidentiality undertaking in favour of the Recipient that is no less strict than the confidentiality obligations imposed on the Ministry under this Agreement, but to avoid doubt the auditor will not be prevented from disclosing any information to the Ministry, or from retaining any notes or other information necessary for the auditor to maintain its professional indemnity insurance cover.

5.3 The Recipient will co-operate with the audit, and permit the auditor to inspect all premises, hardware, software, equipment, inventory, systems, data or other records, documents, processes and other items in the possession or control of the Recipient or its contractors and agents wherever they might reasonably be considered relevant to the purposes of the audit. The Recipient will ensure its personnel are available to answer questions from the auditor as reasonably required for the purposes of the audit.

5.4 Nothing in this agreement limits any statutory audit powers that the Ministry or Audit New Zealand may have.

6 **CONFIDENTIALITY**

6.1 Each party will keep the other party's Confidential Information in confidence, and will use or disclose that Confidential Information only to the extent necessary to perform its obligations, and/or take the intended benefit of its rights, under this agreement. However, this will not prohibit:

- (a) either party from using or disclosing any information with the express prior consent of the other party;
- (b) use or disclosure of information that has become generally known to the public other than through a breach of this agreement;
- (c) either party from disclosing information to its Contractors and Personnel for the purposes of this agreement, so long as the relevant Contractors and Personnel use the information solely to enable that Party to perform its obligations and/or take the intended benefit of its rights under this agreement, and so long as they are informed of the confidential nature of the information;
- (d) disclosure required by any statute or regulation, or any compulsory order or requirement issued pursuant to any statute or regulation; and/or

- (e) disclosure by the Ministry at the request of an officer of parliament, a parliamentary select committee, a royal commission, or a minister of the Crown (including for the purposes of a parliamentary question).

6.2 Nothing in this Agreement restricts the Ministry's ability to:

- (a) discuss with, and provide to any Minister of the Crown, any other government agency or any of their respective advisors, any information concerning this agreement or the Routes, Flights, Designated Capacity, Grant Funding, the Recipient or its Contractors and Personnel;
- (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown; and
- (c) publicise and report on the awarding of the Grant Funding, including the name of the Recipient and its Contractors, the amount and duration of the Grant Funding, and the details of the Routes, Flights, Designated Capacity and Pricing Methodology.

7 PUBLICITY

7.1 Other than as specified in this agreement, the Recipient does not have the right to use the Ministry's name, or to enter into any commitment, contract or agreement on behalf of the Ministry or any associated body, or to make any public statement or comment on behalf of the Ministry.

7.2 The Recipient will not make any media statements or press releases regarding this agreement without the Ministry's prior approval.

8 TERMINATION

8.1 The Ministry can terminate this agreement by giving notice to the Recipient, if:

- (a) the Recipient is materially in breach of this agreement;
- (b) the Recipient is subject to a Conflict of Interest which cannot be managed to the Ministry's reasonable satisfaction;
- (c) it emerges that the Recipient has provided the Ministry with information in connection with this agreement that (intentionally or not) is materially incorrect or misleading, and/or omits material information; and/or
- (d) the Recipient is involved in any intentional, negligent or reckless conduct which, in the reasonable opinion of the Ministry, carries a real risk of reputational damage for the Ministry if it continues to provide Grant Funding to the Recipient.

However, if the Ministry considers that the matter can realistically be remedied, the Ministry will give notice to the Recipient requesting a remedy, and will not exercise this right of termination unless the matter remains unremedied at least 5 days (or any longer period agreed with the Recipient) after that notice.

8.2 The Ministry can terminate this agreement by giving notice to the Recipient, if the Flights successfully flown in any 7 day period represent less than 90% (by Designated Capacity) of the Flights scheduled in the Timetable to be flown over that same period.

- 8.3 The Ministry can terminate this agreement by giving notice to the Recipient, if:
- (a) the Recipient is involved in any fraud or corruption, in connection with this agreement or otherwise;
 - (b) it emerges the Recipient has wilfully or recklessly misled the Ministry, in connection either with the parties' entry into this agreement, or the administration of this agreement; and/or
 - (c) the Recipient has wilfully or recklessly committed a material breach of this agreement.
- 8.4 The Ministry can terminate this agreement by giving notice to the Recipient, at any time while:
- (a) the Ministry reasonably considers that the Recipient has become or is likely to become, insolvent or bankrupt;
 - (b) the Recipient is subject to the appointment of a liquidator, receiver, manager or similar person in respect of any of its assets; or
 - (c) the Recipient has ceased to carry on its operations or business (or a material part of them) in New Zealand.
- 8.5 If the Ministry is entitled to terminate this agreement under clause 8, it may also choose to terminate this agreement only in respect of a particular Route or Routes.
- 8.6 If the Ministry terminates this agreement (either as a whole, or in respect of one or more Routes) under clause 8.3 or clause 8.4, the Recipient must immediately repay on demand by the Ministry all Grant Funding received by the Recipient in respect of the Routes subject to the termination.
- 8.7 Clauses 5, 6, 7, 8, 9, 10 and 11 survive expiry or termination of this agreement, along with any other parts of this agreement necessary to give effect to those provisions. Expiry or termination of this agreement does not affect any accrued rights, including any rights in respect of a breach of this agreement that occurred before expiry or termination.

9 LIABILITY

- 9.1 The total aggregate liability of each party under or in connection with this agreement will not in any circumstances exceed the total amount of Grant Funding paid or payable under this agreement.
- 9.2 Neither party will be liable under or in connection with this agreement for any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill or loss of opportunity, or any special damages or indirect or consequential loss.
- 9.3 The limitations and exclusions in this clause 9 do not apply to any liability either party may have for fraud or wilful misconduct, or for any breach of clause 6, but otherwise they apply to all liability arising under or in connection with this agreement, whether in contract, tort (including negligence), equity or under any other law or legal theory.

10 DISPUTES

- 10.1 In the event of any dispute, controversy or claim arising out of or in connection with this agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a Dispute), either Party may give written notice to the other specifying the nature of the Dispute and requesting discussions under this clause 7 (**Dispute Notice**). As soon as reasonably practicable following receipt of a Dispute Notice, the Parties will meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.

10.2 A Party must not commence any proceedings in connection with a Dispute unless at least 40 days have elapsed since the issue of a corresponding Dispute Notice, and that Party has used reasonable endeavours to comply with this clause 7. However, nothing in this clause will prevent either Party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

11 GENERAL

11.1 Any notice or other communication to be given under this agreement must be in writing addressed to the recipient at the address from time to time notified by that Party in writing to the other Party. Until a change is so notified, the address of each Party is as specified in the Key Details. Delivery can be carried out by hand, by post with postage prepaid, or by email.

11.2 Each of the Parties agrees to execute and deliver any documents, including transfers of title, and to do all things as may reasonably be required by the other party to obtain the full benefit of this agreement according to its true intent.

11.3 No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this agreement.

11.4 This agreement constitutes the sole and entire understanding with respect to the subject matter hereof and supersedes all prior discussions, representations and understandings, written or oral. No amendment to this agreement will be effective unless agreed in writing and signed by both Parties.

11.5 Neither Party may assign or transfer any of its contractual rights or obligations under this agreement, except with the other Party's prior written approval. The other Party may give or withhold its approval as it sees fit.

11.6 No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.

11.7 The exercise by a Party of any express right set out in this agreement is without prejudice to any other rights, powers or remedies available to a Party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this agreement.

11.8 This agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this agreement.

11.9 Any provision of this agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

11.10 This agreement is to be governed by the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

11.11 This agreement may be executed in any number of counterparts (including facsimile or scanned and emailed copies). So long as each Party has received a counterpart signed by each of the other Parties, the counterparts together shall constitute a binding and enforceable agreement.

PART 3: INTERPRETATION

Defined terms

In this agreement, unless the context requires otherwise:

Conflict of Interest means any matter arising from the conduct or relationships of the Recipient and/or its Personnel that might reasonably be perceived as impairing the impartiality and objectivity of the Ministry's decision-making in respect of the award of financial support under this agreement or any follow-on arrangement.

Contractor of a party, means any company or other entity engaged to carry out work necessary for or ancillary to the performance of that party's obligations under this agreement, whether directly or through one or more intermediaries, and whether under an existing contract or a contract entered into specifically for the purposes of this agreement.

Criteria means the "Criteria" for an Instalment, as specified in the Key Details.

End Date means the "End Date" specified in the Key Details.

Designated Capacity for each Flight, means the "Designated Capacity" for that Flight as specified in the Key Details.

Flights means the flights specified in the Key Details.

General Terms means Part 2 of this agreement.

Grant Funding means the funding or any part of the funding (as the context requires) payable by the Ministry to the Recipient in accordance with the terms of this agreement, as described in the Key Details.

Instalment means an instalment of Grant Funding as contemplated in the Key Details.

Key Details means Part 1 of this agreement.

Payment Request means a request submitted to the Ministry by the Recipient seeking payment of Funding.

Personnel means in respect of an entity, any individual who is a director, officer, employee, contracted staff member or other worker of that entity, or of that entity's Contractors or agents.

Pricing Methodology means the pricing methodology specified or referred to in the Key Details.

Prioritisation Policy means the prioritisation policy specified or referred to in the Key Details, as amended from time to time in accordance with this agreement.

Recipient means the Recipient specified in the Key Details.

Routes means the routes specified in the Key Details.

Start Date means the "Start Date" specified in the Key Details.

Timetable means the timetable for the Routes and Flights, as specified in the Key Details.

Construction

In the construction of this agreement, unless the context requires otherwise:

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;

Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Inclusions: a reference to “includes” is a reference to “includes without limitation”, and “include”, “included” and “including” have corresponding meanings;

Joint and Several Liability: any provision of this agreement to be performed or observed by two or more persons binds those persons jointly and severally;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Precedence: if there is any conflict between the different parts of this agreement, then unless specifically stated otherwise, the General Terms will prevail over the Key Details, and the Key Details will prevail over any other documents attached to or incorporated by reference into this agreement;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Writing: a reference to “written” or “in writing” includes email and any commonly used electronic document format such as .DOC or .PDF.