

CODE FUNDING PROGRAMME

TERMS AND CONDITIONS



1. Background

These terms and conditions and the **Summary of the Grant Programme** govern the CODE Funding Programme (**the Programme**).

The purpose of the Programme is to promote and strengthen game development and the game development ecosystem in Aotearoa New Zealand by encouraging eligible applicants (**Applicants**) to make an Expression of Interest (**EOI**) for projects, then a **Full Application** if deemed suitable/feasible. Funding will only be released to individuals and entities after assessment by an expert panel, and funds not allocated in any given round will be carried forward to the next.

By participating, all Applicants agree to be bound by these Terms and Conditions and by the decisions of the assessment panel which are final and binding on all matters relating to the Programme.

2. Purpose

- 2.1. New Zealand Centre of Digital Excellence Limited (CODE), based in Ōtepoti Dunedin, is funded by the Provincial Growth Fund, administered by Kānoa. CODE has an explicit regional remit to build the capacity of individuals and entities to drive innovation, revenue and jobs in the local game development sector, which is why funding is presently limited to Ōtepoti Dunedin-based ventures. Additional national funding via MBIE which will be launching soon and Terms and Conditions will be amended to reflect this in future.
- 2.2. The Programme is part of the overall effort to build an authentic ecosystem with strong local roots that grow from our schools and tertiary networks and are nurtured with funding and wrap-around mentorship for new, young or growing companies.

3. KickStart, Scale Up, Start Up Funding and Service Start

- 3.1. There are four funding types – KickStart, Start Up, Scale Up and Service Start (**Grants**). Although outcomes from each funding type and eligibility criteria have been defined, CODE may decide to vary these for particular Applicants or circumstances that arise. Programmes may be suspended at any time.

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3. KickStart, Scale Up, Start Up Funding and Service Start - contd.

- 3.2. KickStart funding grants can range between \$10,000 and \$40,000; Start Up funding grants can range between \$50,000 and \$150,000; Scale Up funding grants can range between \$75,000 and \$250,000; Service Start can range between \$10,000 and \$50,000 (**Funding**).
- 3.3. The Applicant acknowledges and agrees that advice from CODE or any other **Mentor** (any other person providing advice arranged by CODE under the Programme) will be informal and provided in good faith. No liability will be incurred by either the relevant Mentor or CODE arising out of, or in connection with, the Applicant's reliance (or otherwise) on the relevant advice.
- 3.4. Scale Up Applicants must commit their own matched funding or funding from an outside investor or investors to the project or the company, determined per project, in order for CODE to contribute. This must be at least a 1:1 match in real monies, but will preferably be above.
- 3.5. Service Start Applicants must either commit their own matched funding or funding from an outside investor or investors to the project or the company, determined per project, in order for CODE to contribute. This may take the form of combination of "In Kind", a valuation of hours invested by the applicant and real monies either from their own capacity or external investors.

4. Eligibility

- 4.1. "Dunedin-based" means within the city limits as defined by Dunedin City Council Rates area.
- 4.2. Funding is explicitly limited to Ōtepoti Dunedin-based ventures for the Dunedin fund. If not it falls directly into CODE's national fund.
- 4.3. Each Applicant must be:
 - (a) an individual, or a group of individuals living in Aotearoa New Zealand and at least 18 years of age or older; or
 - (b) A business entity incorporated in New Zealand and based in Ōtepoti Dunedin (of that fund applies).
- 4.4. Each Applicant declares that:
 - (a) It is not insolvent or bankrupt and no action, whether threatened or actual, has been taken to start any type of insolvency administration in relation to the Applicant; and
 - (b) It is not aware of any information that has not been disclosed to CODE which may, if disclosed, negatively affect the decision of CODE whether to provide Funding; and
 - (c) It has no conflict of interest (real or perceived) in connection with the Funding.

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4. Eligibility - contd.

- 4.5. For avoidance of doubt, individuals and entities are considered based in Ōtepoti Dunedin if the work for the project for which they are applying for Funding will be carried out in Ōtepoti Dunedin, and the entity operates its main business, or the individuals reside in Dunedin.
- 4.6. It is generally expected that no Applicant consisting entirely of undergraduate students may apply for Funding, including solo projects. Undergraduate students aged over 18 may participate in projects, with the proviso that they have written permission from the training institution and approval from CODE. However, in exceptional circumstances CODE may make a decision to override this clause.
- 4.7. Funding is for digital, interactive game projects with commercial outcomes in mind, including games for:
 - (a) entertainment; and
 - (b) a serious purpose (such as games for health).
- 4.8. While CODE acknowledges the advantages outsourcing can provide for the profitability of companies and for addressing skills shortages, no more than 20% of the CODE funding portion of the project, can be spent outside Ōtepoti Dunedin or Aotearoa New Zealand (depending on fund), unless in exceptional circumstances. In this clause “production cost” means allowable spending as defined in the Summary of the Grant Programme document, Part 2, Spending. For avoidance of doubt please contact CODE if you want clarity on any expenditure being included or excluded.
- 4.9. CODE especially welcomes projects which generate Ōtepoti Dunedin/Aotearoa New Zealand-owned intellectual property (IP). However, licensed properties are eligible for Funding, provided applicants can show they have a legally binding license.
- 4.10. CODE will not fund non digital games, games for gambling, pornographic or advertising purposes, the purchase of IP-rights, hardware or software (with the specific exclusion of console development kits which are valid expenditures), games for internal training purposes only or commissioned products. CODE reserves the right not to fund any product that would bring CODE, our shareholders or any department or organisation of the New Zealand Government into disrepute.

5. Full Application

- 5.1. The Full Application must:
 - (a) include a proposal document (**Proposal**) in Google Docs or PDF format, based on the provided template;
 - (b) for Start Up and Scale Up Funding applications, include a playable version or prototype (**Prototype**) of a game (**Game**) provided as either:
 - i. a registration code supplied for evaluation purposes that enables installation from a digital storefront including but not limited to as Steam, Epic Game Store, Itch.io or similar services; or

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5. Full Application - contd.

- ii. a weblink to an online version of the Prototype playable inside a web browser; or
- iii. a weblink to download an .EXE or .ZIP file for Windows PCs; or
- iv. a weblink to download an .APK file for Android devices; or
- v. a TestFlight invitation for Apple devices (CODE to provide judges' account details) or;
- vi. another means of delivery agreed in advance with CODE;

Please note, entries should be in development for any digital platform: mobile, browser, computer or console. If there is a reason why the above delivery options are not possible, then please email funding@codedunedin.nz

- (c) for Start Up specifically, not include a Prototype that is available for sale at the time of submission, including via pre-sales services such as Steam Early Access. However, it is able to have been provided as a reward as part of a crowd-funding or charitable campaign;
- (d) not contain any audio content, visual content, software code or any other material that infringes copyright or other intellectual property rights; and
- (e) not contain any viruses or malicious content.

5.2. By applying for a Grant, the Applicant warrants that all Eligibility requirements are met.

An Applicant may withdraw their Application at any time on or before the Application Deadline as specified on the Round Announcement by emailing: funding@codedunedin.nz and advising that they wish to withdraw their Application effective immediately.

6. Selection of Grant Recipients

6.1. Each Full Application made aware of the result of their applications in a timely manner. Each applicant will have the opportunity to discuss their results with the Operations Manager or the appropriate Regional Content Manager.

- (a) This may be held at a location with a CODE representative, or via Zoom meeting at a time agreed to by the Full Applicant; and

6.2. The Panel will assess the Applicant's written material, evaluate any demos provided, review any additional material (including art folders, narrative scripts etc) and base the assessment decision making on:

- (a) appeal of the concept;
- (b) commercial potential;
- (c) point of difference, originality or any other market advantage;
- (d) visual, audio, design and graphic style;

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6. Selection of Grant Recipients

- (e) business and production strategy, based on the template provided (for KickStart and Start Up, this means an assessment only of the production budget);
 - (f) Understanding of target markets, monetisation and sales vectors;
 - (g) evidence of consideration of diversity and accessibility factors and incorporation (if appropriate);
 - (h) the Panel's experience of the gameplay of the Prototype (if appropriate); and
 - (i) The track record of the applicant and principal(s) (however, early career developers are encouraged to apply, as long as they can demonstrate capacity to complete their project);
 - (j) Economic, cultural and creative benefits of the project to Ōtepoti Dunedin/ Aotearoa New Zealand.
 - (k) The innovation, creative ambition and quality of the project;
 - (l) The quality of all supporting materials, if appropriate;
- 6.3. CODE acknowledges that Prototypes may be either early-stage or late-stage and do not represent the complete product as described in the Proposal, and will take this into consideration when judging.
- 6.4. The successful Grant recipients (**Grantee**) will be notified by a CODE representative as soon as possible after the competition of Panel deliberations and Board expenditure approval (**Notification Date**), which will be shared with Full Applicants during the assessment period.
- 6.5. All decisions of the Panel are made at the Panel's sole discretion and are final and binding on all matters pertaining to the Programme. There is no guarantee that any of the Grants must be made, for example, in the unlikely event insufficient applications are assessed as being suitable.
- 6.6. If reasonable efforts are made to contact the Grantee by the Notification Date using the details provided in the Full Application, and these efforts are unsuccessful, CODE may disqualify the Grantee.

7. Grant Terms

- 7.1. Before a Grantee receives Funding, a milestone schedule will be agreed between the CODE or an appointed consultant and the Grantee for the scheduling of payments. Payments will be released dependent upon CODE being satisfied that the recipients have achieved the relevant agreed milestones.
- 7.2. Arrangements for the redemption of the Grant will be made between the Grantee and CODE.
- 7.3. The Grantee will bear the responsibility for any taxes, fees (including third party fees and disbursements) or other costs associated with the Grant.

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7. Grant Terms - contd.

- 7.4. The Grant is not transferable to another party.
- 7.5. The Grantee must be a NZ registered company.
- 7.6. Any violation of these Terms and Conditions by the Grantee may result in the Grantee's disqualification, and an alternate Grant recipient may be selected.

8. Relationship Principles

- 8.1. CODE wishes to have an open, collaborative relationship with all Grantees. Grantees agrees to communicate regularly, constructively and openly with CODE [and with other Grantees], with the intention of furthering CODE's purposes and the Purpose of the Programme.
- 8.2. Any matters that arises which requires resolution shall be brought to the other party's attention as soon as possible and the parties shall meet, in good faith, to seek a resolution.
- 8.3. The parties agree to take appropriate account of the principles of Te Tiriti o Waitangi, and to create and maintain opportunities for Māori to participate in and contribute to CODE and the programme.

9. Intellectual Property Rights

- 9.1. CODE does not claim ownership in the intellectual property rights of any sample code, Proposals, videos, articles or any other content submitted as part of an EOI or Full Application.
- 9.2. Each Applicant grants CODE a non-exclusive, royalty free licence to use its Prototype or any other item submitted as part of the Application for any purpose relating to the Programme process.
- 9.3. Each Applicant grants CODE a non-exclusive, royalty free license to use marketing materials, gameplay, trailers and content for any purpose relating to the Programme process.
- 9.4. Each Applicant warrants that no part of its EOI or Full Application infringes the intellectual property rights of any third party, and will indemnify CODE and Mentors against any loss or damage suffered by them arising out of or in connection with a breach by the Applicant of this clause.

10. Publicity

- 10.1. By submitting an EOI or a Full Application, each Applicant grants CODE and Mentors the rights to (without requiring the Applicant's permission or the requirement to pay the Applicant any compensation):

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10. Publicity - contd.

- (a) profile the Applicant and publicise the Applicant's involvement in the Programme process and the nature of the application in or for any promotional communications, advertising or other purposes including, but not limited to, media releases, media interviews, websites, blogs, and social media sites (together Promotional Communications);
 - (b) use, copy, modify, and publish (excluding any information of a personal nature other than to identify the Applicants) any part of the Full Application (including video footage, screenshots or any other samples from the Prototype or other parts of the Application) in any **Promotional Communications**;
 - (c) record, photograph, videotape, and use the likeness and images of, each Applicant. This material will be owned by CODE and may be used for Promotional Communications.
- 10.2. Successful applicant(s) will include a CODE splash screen and/or ending credits as appropriate in their game to acknowledge the CODE funding, to be supplied by CODE in a suitable format for use.

11. Termination

- 11.1. If for any reason any aspect of the Programme is not capable of running as planned, including by reason of infection by computer virus, network failure, bugs, tampering, unauthorised intervention, fraud, technical failures or any cause beyond the control of the CODE which corrupts or affects the administration, security, fairness, integrity or proper conduct of the Programme, CODE may in its sole discretion cancel, terminate, modify or suspend the Programme, or invalidate any affected EOI or Full Applications.
- 11.2. CODE may at any time, modify, alter or cancel the Programme or any aspect of the Programme without prior notice. Any notification of such modifications will be posted on the CODE website. (<https://www.codedunedin.nz/funding>)
- 11.3. If the Applicant/Grantee breaches these Terms and Conditions, then without prejudice to CODE's other rights or remedies, CODE may:
 - (a) withhold future Funding; and/or
 - (b) require the Grantee to repay any Funding received; and/or
 - (c) terminate these Terms and Conditions.

12. Liability

- 12.1. To the maximum extent permitted by law, CODE and Mentors (including their officers, employees and agents) will not be liable (whether in contract, tort, negligence or otherwise) for any form of loss or damage, whether direct, indirect, special or consequential, arising out of or in connection with the Programme or any related contract, including in respect of:

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12. Liability - contd.

- 12.1. To the maximum extent permitted by law, CODE and Mentors (including their officers, employees and agents) will not be liable (whether in contract, tort, negligence or otherwise) for any form of loss or damage, whether direct, indirect, special or consequential, arising out of or in connection with the Programme or any related contract, including in respect of:
- (a) any technical difficulties or equipment malfunction (whether or not under CODE's control);
 - (b) any theft, unauthorised access or third party interference;
 - (c) any EOI or Full Application that is late, lost, altered, damaged or misdirected (whether or not after their receipt by CODE) due to any reason beyond the reasonable control of CODE;
 - (d) use of any Grant or the outcomes from the use of any Grant; or
- 12.2. Each Applicant agrees that its participation in the Programme and acceptance of any Grant is not in violation of any applicable laws, regulations or policies of NZ or of a NZ government agency.
- 12.3. Applicants may direct any questions, comments or complaints regarding the Programme to CODE. Any questions can be directed to info@codedunedin.nz

13. Variations

- 13.1. Subject to clause 3.1, no amendment to these Terms and Conditions will be effective unless made in writing and signed by both parties.

14. No Waiver

- 14.1. No failure or delay by a party in insisting on the strict performance of these Terms and Conditions or to exercise any right under these Terms and Conditions will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.

15. Governing Law

- 15.1. This Agreement is governed by New Zealand laws and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

16. Survival

- 16.1. The confidentiality, intellectual property and limitation of liability obligations in these Terms and Conditions, and any other obligations which by their nature are to continue beyond the expiry or termination of these Terms and Conditions, survive beyond the expiry or termination of these Terms and Conditions.

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17. No Agency

- 17.1. Nothing in these Terms and Conditions will be deemed to create a partnership, joint venture, employment relationship or agency between the parties. No party has any authority to bind another party, unless expressly permitted to in these Terms and Conditions.

18. Definitions

- 18.1. **Terms and Conditions** means these Terms and Conditions and the Summary of Information for each fund in the Grant Programme.