

# CODE FUNDING PROGRAMME - Terms and Conditions

## Background

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These terms and conditions and the **Summary of the Grant Programme (Terms)** govern the CODE Funding Programme (**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 successful Applicants 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 by the decisions of the CODE Board which is final and binding on all matters relating to the Programme.

The CODE Executive team, including its Chief Executive, has no influence over and makes no decisions regarding the successful Applicants of the game funding CODE provides.

## 1. Purpose

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1.1 New Zealand Centre of Digital Excellence Limited (**CODE**), based in Ōtepoti Dunedin, is funded by the Kānoa - Regional Economic Development & Investment Unit (Kanoa) and the Ministry of Business, Innovation and Employment (**MBIE**). 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.

## 2. KickStart, StartUp, Service Start & Travel Grants

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2.1 There are three funding types – KickStart, StartUp, Service Start, plus CODE travel grants for international travel and events (**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.

2.2 KickStart funding grants can range between \$10,000 and \$60,000; StartUp funding grants can range between \$60,000 and \$250,000; Service Start funding grants can range between \$10,000 and \$50,000. The maximum amount CODE will offer to a successful Applicant for a travel grant is \$8,000 (**Funding**).

- 2.3 In the case of travel grants, a successful Applicant shall contribute at least 20% of the total travel cost. For example, if the total of an Applicant's proposed travel budget is \$5,000, potential CODE funding would be set at a maximum of \$4,000. Where proposed travel costs are upwards of \$10,000, the successful Applicant would only be eligible for the maximum funding amount of \$8,000 or the total grant cap as mandated by CODE.
- 2.4 Successful Service Start Applicants must have third party funding or project investment that is the same or greater in value than the amount of the Service Start grant provided by CODE. Under this category, "investment" may include a valuation of hours invested by the Applicant  
Note: Applicants in the Service Start category must be Dunedin-based or willing and able to relocate to Dunedin.
- 2.5 A separate national Service Start programme (which excludes Dunedin providers) may be opened in future, but for the time being the national focus remains on early stage studios entering the market with games.

### 3. Eligibility

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- 3.1 Each Applicant must be based in Aotearoa New Zealand, and:
  - (a) be an individual or a group of individuals and at least 18 years of age or older; or
  - (b) a business entity incorporated in Aotearoa New Zealand.
- 3.2 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;
  - (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 undeclared conflict of interest with CODE, its staff or regular contributors in connection with the Funding.
- 3.3 For avoidance of doubt, individuals and entities are considered based in Aotearoa New Zealand if the work for the project for which they are applying for Funding will be carried out in Aotearoa New Zealand, and the entity operates its main business, or the individuals reside in Aotearoa New Zealand.
- 3.4 It is generally expected that no Applicant consisting entirely of undergraduate students will be successful in an application 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 they are enrolled with and approval from CODE. However, in exceptional circumstances, at CODE's discretion, applications with undergraduate students that don't comply with this clause may be accepted.
- 3.5 Funding is for digital only, interactive game projects with commercial outcomes in mind, including games for:

- (a) entertainment; and
  - (b) a serious purpose (such as games for health and education).
- 3.6 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), without written approval from CODE to that expenditure. 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 for clarity on any expenditure that is included or excluded.
- 3.7 CODE especially welcomes projects which generate Ōtepoti Dunedin/Aotearoa New Zealand-owned intellectual property (IP). However, licensed IP is eligible for Funding, provided applicants can show they have a legally binding license.
- 3.8 CODE will not fund:
- (a) non-digital games;
  - (b) games for gambling, pornographic or advertising purposes;
  - (c) the purchase of IP-rights;
  - (d) hardware or software (with the specific exclusion of console development kits which are valid expenditures);
  - (e) games for internal training purposes only or commissioned products;
  - (f) any product that could bring CODE, its shareholders or any department or organisation of the New Zealand Government into disrepute;
  - (g) overly simplistic educational games; or
  - (h) projects where there are possible legal and/or commercial issues due to the use of generative AI in the finished product.
  - (i) projects where there has already been sufficient investment in the game project/team or the developers have sufficient capital from previous product sales to complete the project so as to make CODE funding unnecessary for the completion of the game project's production. (This is subject to review upon request from the developer for exceptional circumstances).
- 3.9 CODE will generally not fund games which have been made available for sale before an Application is submitted, including via pre-sales services such as Steam Early Access. However, the game may have been provided as a reward as part of a crowd-funding or charitable campaign or been available for sale in a limited revenue testing environment. Grantees must generally complete an "acquittal milestone" before a game is made available for sale.

## 4. Full Application

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- 4.1 The Full Application must:
- (a) include a proposal document (**Proposal**) in PDF format, based on the provided application [writing guide](#);
  - (b) for KickStart Funding applications include an application form, project outline, budget, one-page CVs (except in the case of academic qualifications for serious game projects),
  - (c) for StartUp Funding applications, a link to upload a playable version or prototype (Prototype) of a game (Game) will be provided. Projects may not be provided for assessment via a third party service such as Steam or Itch.io. Please note, entries should be in development for any digital platform: mobile, browser, computer or console.
  - (d) for StartUp applications, 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;
  - (e) not contain any audio content, visual content, software code or any other material that infringes copyright or other intellectual property rights; and
  - (f) not contain any viruses or malicious content.
- 4.2 By applying for Funding, the Applicant warrants that all Eligibility requirements are met.
- 4.3 An Applicant may withdraw their Application at any time on or before the application deadline (specified on the round announcement email) by emailing: [funding@nz-code.nz](mailto:funding@nz-code.nz) and advising that they wish to withdraw their Application effective immediately.
- 4.4 CODE's application folders will be locked down following the Full Application deadline and no changes can be made to the Application or Prototype/Game files following this date.

## 5. Selection of Grant Recipients

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- 5.1 Each Applicant will be made aware of the result of their application in a timely manner.
- 5.2 Each Applicant will have the opportunity to discuss their results with the Industry Development Manager or the appropriate Regional Content Manager. This discussion may be held at a location with a CODE representative, or via Zoom meeting at a time agreed to by the Full Applicant. The purpose of feedback meetings is to discuss the potential pathways forward.
- 5.3 An Assessment Panel will assess each Applicant's written material, evaluate any demos provided, review any additional material and agree on the awarding of a Grant, in its sole discretion based on the following criteria:
- (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;
  - (e) business and production strategy, budget spreadsheet, based on the application writing guide provided (for KickStart and StartUp);
  - (f) strategy for reaching target markets, monetisation and sales vectors;
  - (g) evidence of consideration of diversity and accessibility factors and incorporation (as appropriate);
  - (h) the Assessment Panel's experience of the gameplay of the Prototype (if applicable);
  - (i) the capability of the Applicant to deliver the project as evidenced by the Application (however, early career developers are encouraged to apply, as long as they can demonstrate capacity to complete their project);
  - (j) economic 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.
- 5.4 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 the Assessment Panel will take the stage of production into consideration when judging.
- 5.5 The successful Funding recipients (**Grantee**) will be notified by a CODE representative as soon as possible after the completion of Assessment Panel deliberations and the CODE Board expenditure approval.
- 5.6 All decisions of the Assessment Panel are made at its sole discretion and are final and binding on all matters pertaining to the Programme. There is no guarantee that any Grants must be made, for example, in the unlikely event insufficient applications are assessed as being suitable.
- 5.7 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.
- 5.8 The Assessment Panel's decisions are passed to the Board of CODE, ranked in order of project viability and risk assessment. The specific funding amounts are then confirmed by CODE's Board based on the funding available in the relevant funding pool.

## 6. Grant Terms

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- 6.1 Before a Grantee receives Funding, a milestone schedule will be agreed between CODE 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.
- 6.2 The Grantee is responsible for the payment of taxes (if any), fees (including third party fees and disbursements) or other costs associated with the Grant.
- 6.3 The Grant is not transferable to another party.
- 6.4 The Grantee must be a NZ registered company. If a successful Applicant is not an incorporated company, it will need to incorporate a company to be its Grantee, transfer all relevant intellectual property into the Grantee company and procure that the Grantee Company to enter into a Funding Agreement with CODE.
- 6.5 As part of receiving a Kickstart or StartUp grant, CODE may require successful Applicants to provide mentorship to other New Zealand developers that have either received a KickStart or StartUp Grant, or are actively working towards an application for a CODE Grant (**Mentorship**). The time required for Mentorship is based on team size but will in no case more than two hours for a KickStart Grant and eight hours for a StartUp Grant (**Mentorship Time**).
- 6.6 Mentorship Time can be requested at any time by CODE (acting reasonably) within 2 years of the final payment of the Funding to the relevant Grantee. Upon receiving a request from CODE, the relevant Applicants and CODE shall work together to find a suitable day and time for the Mentorship to occur.
- 6.7 Mentorship may include but is not limited to advice regarding:
  - (a) business development;
  - (b) marketing;
  - (c) technical skills (eg. programming, design, art, QA, etc);
  - (d) CODE Grant Application advice.
- 6.8 All StartUp grants and recipients are subject to a mid-point audit upon 60% of the grant total having been paid out by CODE: for example, if the grant total is \$250,000, then once \$150,000 has been paid. At this point, the developer must be able to demonstrate some form(s) of market validation and market validation planning for the grant to continue, as set out in the contract for funding. This may be any form of: substantive wishlist generation, commercial attachment (or negotiation to form commercial attachment), playtesting, online community building, newsletter mailing list, expert evaluation or successful crowdfunding campaign, or any other factor that demonstrates audience engagement to the point where the game is commercially viable.

## 7. Relationship Principles

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- 7.1 CODE wishes to have an open, collaborative relationship with all Grantees. Grantees agree 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.
- 7.2 Any matters that arise 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.
- 7.3 The Grantee 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 the programme.

## 8. Intellectual Property Rights

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- 8.1 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.
- 8.2 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.
- 8.3 Each Applicant grants CODE a non-exclusive, royalty free license to use marketing materials, trailers, excerpts of gameplay and content, for any purpose relating to the Programme.
- 8.4 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.

## 9. Publicity

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- 9.1 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):
  - (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.

9.2 Applicants may choose to withdraw consent to their likeness and images being used for Promotional Purposes by notifying CODE. Where CODE receives such a request, CODE will cease using the likeness and images for Promotional Purposes as soon as reasonably practicable. 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.

## 10. Termination and Suspension

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- 10.1 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 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.
- 10.2 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.nz-code.nz/funding>)
- 10.3 If the Applicant/Grantee breaches these Terms and, 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.
- 10.4 CODE may exclude Applicants from future funding rounds where an Applicant is found to have harassed a CODE representative or any member of the wider CODE community.

## 11. Liability

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- 11.1 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 advice provided to an Applicant or Grantee by a Mentor;

- (c) any theft, unauthorised access or third-party interference;
- (d) 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;
- (e) use of any Grant or the outcomes from the use of any Grant; or

11.2 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.

11.3 Applicants may direct any questions, comments or complaints regarding the Programme to CODE. Any questions can be directed to [info@nz-code.nz](mailto:info@nz-code.nz).

## **12. No Waiver**

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12.1 No failure or delay by a party in insisting on the strict performance of these Terms or to exercise any right under these Terms 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.

## **13. Governing Law**

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13.1 These Terms are governed by New Zealand laws and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## **14. Survival**

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

## **15. No Agency**

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15.1 Nothing in these Terms 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.

## 16. Definitions

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16.1 Unless the context requires otherwise:

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

**Dunedin-based** means within the city limits as defined by Dunedin City Council Rates area. Funding is explicitly limited to Ōtepoti Dunedin-based ventures for Dunedin funding.

**National** means within Aotearoa, New Zealand.

Any capitalised terms that are referred to in these Terms shall have the meaning set out in the Terms.