

Hazelbrook Legal.

DOING IT TOUGH GRANT CONDITIONS

COUNCIL OF SMALL BUSINESS ORGANISATIONS OF AUSTRALIA LTD
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PARTIES:

1. **COUNCIL OF SMALL BUSINESS ORGANISATIONS OF AUSTRALIA LTD ACN 008 597 304, of 33-35 ATCHISON STREET, ST LEONARDS, NSW 2065 (“COSBOA”).**

AND

2. **THE APPLICANT FOR THE “DOING IT TOUGH” GRANTS PROGRAM (“You”).**

BACKGROUND

- A. COSBOA has established the Doing It Tough Grants Program (**Program**) for Victorian microbusinesses (including sole traders) who have been negatively affected by the COVID-19 lockdowns implemented by the Victorian State Government in response to the COVID-19 pandemic.
- B. Under the Program, grants of \$3,000 will be made available to eligible Victorian microbusinesses.
- C. These Conditions set out the terms and conditions that apply to the submission of applications and the use of grant funds under the Program.

OPERATIVE PROVISIONS

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Applicant means a person or entity that submits an Application.

Application means an application for a Grant under the Program, submitted via the COSBOA website in accordance with the relevant application form.

Business Material has the meaning given in clause 6.2.

Conditions means these grant terms and conditions.

Grant means the provision of funding of up to \$3,000 by COSBOA to a Successful Applicant under these Conditions.

Personal Information has the meaning given to it in section 6 of the *Privacy Act 1988 (Cth)*, and its amendments from time to time.

Privacy Policy means the COSBOA Doing It Tough Program privacy policy which is available at <https://www.cosboa.org.au/doing-it-tough>, as amended from time to time.

Successful Applicant means an Applicant that COSBOA has determined, in its absolute discretion, is both eligible for, and will receive, a Grant under the Program.

You means an Applicant for a Grant under the Program, and includes Successful Applicants.

- 1.2 (Interpretation):** In these Conditions unless the contrary intention appears:
- (a) Headings are for convenience only and do not form part of these Conditions or affect its interpretation.
 - (b) A reference to any legislation includes regulations and other instruments under it and any variation or replacement of any of them.
 - (c) The singular includes the plural and vice versa, and words importing any gender include the other genders.
 - (d) References to any instrument are to that instrument as it may from time to time to be amended to extended in accordance with its terms.
 - (e) A reference to a “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any authority.
 - (f) References to dollars or \$ is a reference to Australian dollars.

1.3 (Drafting responsibility): No provision of these Conditions is to be construed against a party because that party (or that party’s adviser) was responsible for drafting it.

2 NATURE OF THESE CONDITIONS

2.1 (Consent to these Conditions): By submitting an Application, You acknowledge and agree that You have:

- (a) read and understood the terms of these Conditions; and
- (b) accepted and agreed to be bound by all terms of these Conditions.

2.2 (Binding nature of Conditions): Each party agrees that these Conditions are binding on that party’s legal personal representative, heirs, successors and permitted assigns.

2.3 (Exclusion of agency and partnership) Nothing in these Conditions is to be treated as creating a partnership, joint or co-venture or fiduciary obligation between the parties, or any two or more of them, under the laws of any applicable jurisdiction and, except as specifically provided in these Conditions, no party may act or has any authority to act as agent of or trustee for or in any way bind or commit any other party to any obligation.

3 GRANT APPLICATIONS

3.1 (Eligibility): By submitting an Application, you represent and warrant to COSBOA that:

- (a) You currently have three or fewer employees;
- (b) Your revenue for financial year 2020-2021 was less than \$75,000; and
- (c) You have not received any government financial support related to the COVID-19 pandemic since 1 June 2021.

3.2 (Proof of eligibility): You agree that if You are selected as a Grant recipient under the Program, you must provide to COSBOA such proof of your eligibility for a Grant as COSBOA may reasonably require from time to time.

3.3 (Third parties and background checks): You agree that COSBOA may provide information submitted by you in your Application to third parties for the purposes of performing a background check, confirming eligibility for the Program, confirming your identity or for any other purpose that COSBOA deems necessary for the administration of the Program.

3.4 (Applicant warranties): Without limiting any other warranties in these Conditions, by submitting an Application You warrant to COSBOA that:

- (a) all information submitted to COSBOA in Your Application is accurate, true and correct;
- (b) Your business does not promote, sell, or advertise any goods or services in contravention of any relevant law;
- (c) Your business is not insolvent, none of Your shareholders or directors are bankrupt, and you are not under any form of external administration;
- (d) You are not currently party to a civil or criminal matter; and
- (e) to the best of Your knowledge as at the date of your Application, neither You nor your officers or employees have any actual, perceived or potential conflicts of interest in relation to the Program.

3.5 (Personal Information): You agree that where information provided by You as part of the Program is Personal Information, this information will be dealt with in accordance with COSBOA's Privacy Policy.

3.6 (Grant decisions): You agree that COSBOA may make decisions on:

- (a) Applicant eligibility for a Grant;
- (b) whether to make a Grant; and
- (c) the quantum of any Grant,

in its sole and absolute discretion. You agree that any decisions made by COSBOA related to the Program are final and are not subject to review or appeal. You agree that COSBOA is not required to provide You with any information or reasons in relation to a Program decision.

4 GRANT PAYMENT

4.1 (Application): This clause 4 only applies to Successful Applicants.

4.2 (Payment): If You are a Successful Applicant, COSBOA agrees to pay the Grant to You in accordance with these Conditions.

4.3 (Withholding payment): Notwithstanding any other provision of these Conditions, COSBOA may by notice withhold payment of any amount of the Grant if it reasonably believes:

- (a) You have not complied with these Conditions;
- (b) You are unlikely to be able to manage the Grant in accordance with these Conditions; or
- (c) there is a serious concern relating to You or these Conditions which requires investigation.

- 4.4 (Addressing reasons):** If COSBOA withholds a payment under clause 4.3, it will only be obliged to pay the withheld amount if You have addressed the reasons contained in the notice provided under clause 4.3 to COSBOA's reasonable satisfaction.
- 4.5 (Spending the Grant):** You agree to only spend Grant money for legitimate purposes related to the operation of Your business and otherwise in accordance with these Conditions, and not for any other purpose.
- 4.6 (Repayment):** If any of the Grant amount has been spent other than in accordance with these Conditions, You agree to repay that amount to COSBOA, unless COSBOA otherwise agrees in writing.

5 RECORD KEEPING

You agree to keep financial accounts and other records relating to the receipt and expenditure of the Grant and to provide copies of those records to COSBOA upon request.

6 ACKNOWLEDGEMENTS AND PUBLICITY

- 6.1 (Acknowledgements):** You agree to acknowledge COSBOA's support in all promotions and advertising materials published by You in connection with the Program.
- 6.2 (Publicity):** You agree that COSBOA may use Your business' name, logo and related information (**Business Material**) in any advertising or public announcements relating to the Program, and You grant to COSBOA a perpetual, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sublicense all Business Material and all other material that You provide to COSBOA under these Conditions for the purposes of the Program.

7 INDEMNITY AND LIABILITY

- 7.1 (Indemnity):** You agree to indemnify COSBOA, its officers, employees and contractors against any claim, loss, damage or costs arising from or in connection with the provision of the Grant to You and Your expenditure of the Grant. Your obligation to indemnify COSBOA under this clause will reduce proportionally to the extent any act or omission on the part of COSBOA contributed to the claim, loss, damage or cost.
- 7.2 (Maximum liability):** The maximum aggregate liability of COSBOA under or in connection with these Conditions, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed an amount equal to the Grant paid to You.

8 DISPUTE RESOLUTION

- 8.1 (Informal resolution):** The parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.
- 8.2 (Urgent relief):** This clause 8 does not prevent any party from seeking urgent injunctive, declaratory or other interlocutory relief.
- 8.3 (No relief from obligations):** Notwithstanding that a negotiation or other attempt to resolve a dispute may have commenced, nothing in this clause is intended to relieve any party from

performing their obligations under these Conditions.

9 TERMINATION

COSBOA may terminate these Conditions by notice where it reasonably believes You:

- (a) have breached these Conditions;
- (b) have provided false or misleading statements in your Application; or
- (c) have become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or have come under any form of external administration.

10 GENERAL PROVISIONS

10.1 (Notices): A notice required to be given under these Conditions must be in writing and delivered using any of the following means:

- (a) hand delivery;
- (b) courier; or
- (c) e-mail,

in the case of COSBOA, to the contact details set out in the “Parties” section of these Conditions, and in the case of You, to your contact details provided as part of your Application, or such updated or replacement address notified by a party from time to time.

10.2 (Entire agreement): These Conditions comprises the parties’ entire understanding in relation to the subject matter of these Conditions and supersedes any prior agreement or arrangement.

10.3 (Cumulative): The rights, remedies and powers of the parties under these Conditions are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

10.4 (Consent): Unless these Conditions expressly provides otherwise, any approval or consent required to be obtained under these Conditions may be withheld, given conditionally, or given unconditionally, in each case in the relevant party’s absolute discretion.

10.5 (Waiver): A right granted to one party under these Conditions may only be waived by that party giving notice in writing to the other parties. A party does not waive any right granted under these Conditions merely by not exercising that right immediately.

10.6 (Severance): Any provision of these Conditions which is invalid or unenforceable in a particular jurisdiction, may be read down or severed to the extent of the invalidity or unenforceability in that jurisdiction only. The invalidity or unenforceability of a provision of these Conditions in one jurisdiction does not affect the:

- (a) application of that provision in any other jurisdiction in which it is valid and enforceable; or
- (b) remaining provisions of these Conditions.

10.7 (Governing law and Jurisdiction): These Conditions are governed by the laws in force in the state of Victoria and the parties submit to the exclusive jurisdiction of the Supreme Court of Victoria to decide any dispute between them in relation to these Conditions.