



2020/21 FUNDING AGREEMENT

Whangamata Information Centre

DATE

PARTIES

BETWEEN Thames-Coromandel District Council, 515 Mackay Street, Thames (**Council**)

AND _____

BACKGROUND

- A. As part of its ten year planning cycle Council adopts a Long Term Plan (LTP) every three years on 1 July. The LTP contains budgets for Council's many activities.
- B. _____ is a registered _____ (registration # _____) which operates the Whangamata Information Centre.
- C. Council has made budgetary provisions to fund the Whangamata Information Centre through _____
- D. This Agreement sets out the conditions of the Funding.

AGREEMENT

Council agrees to provide the Funding to the Recipient, and the Recipient accepts the Funding, on the terms of this Agreement.

In signing this Agreement, the Recipient acknowledges that:

- a. It has read and understood the terms of this Agreement
- b. It has had the opportunity to seek advice about this Agreement before signing it
- c. It is satisfied as to the conditions of the funding and its obligations.

EXECUTION

SIGNED for and on behalf)
of **THAMES-COROMANDEL**)
DISTRICT COUNCIL)
By Rob Williams, Chief Executive)

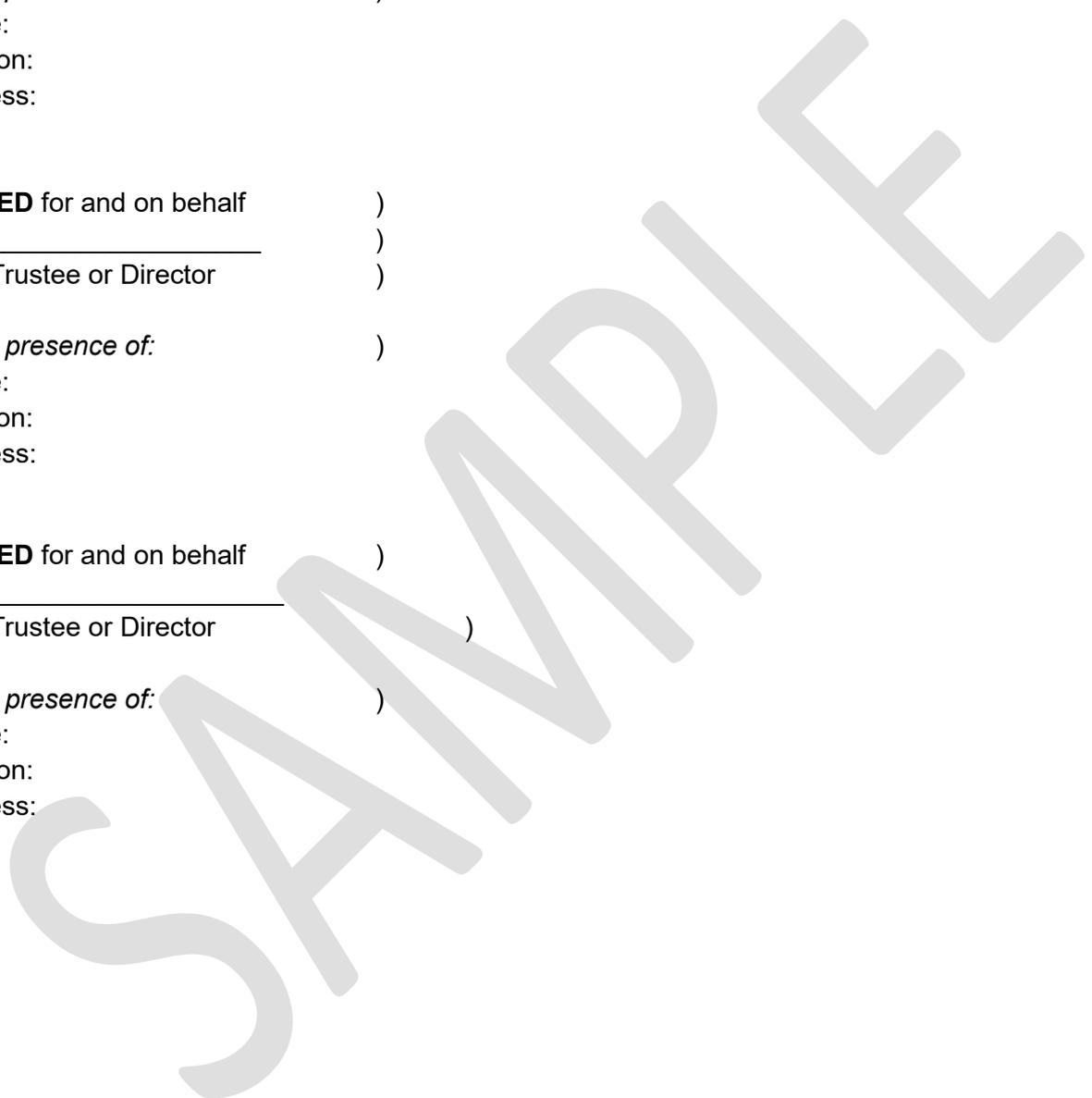
In the presence of:)
Name:)
Position:)
Address:)

SIGNED for and on behalf)
Of _____)
by a Trustee or Director)

In the presence of:)
Name:)
Position:)
Address:)

SIGNED for and on behalf)
Of _____)
by a Trustee or Director)

In the presence of:)
Name:)
Position:)
Address:)



SPECIFIC TERMS

Clause references are to the General Terms

Council Representative	
Name	Colleen Litchfield
Phone	07 868 0200
Mobile	027 230 6119
Email	colleen.litchfield@tcdc.govt.nz

Recipient Representative	
Name	
Phone	
Mobile	
Email	

DOCUMENTS (cl 1.2)	The documents forming part of this Agreement are: <ul style="list-style-type: none">• The Signing Page• The Specific Terms• The General Terms• Schedules
OTHER TERMS (cl 1.3)	Lease of Council Premises The Recipient leases premises at 616 Port Road, Whangamata from Council (in its capacity as a property owner). The lease of the premises is entirely contingent on the Recipient continuing to receive the Funding. The lease contains provisions that deal with any termination of this funding agreement.
FUNDING (cl 2.1)	The following funding has been approved by Council: 2020-2021 \$57,004.00 (Exclusive of GST) Payment will be made to the Recipient in three equal instalments on the following dates, on receipt of a valid invoice: 1 July 2020, 1 November 2020 and 1 March 2021.
FUNDING PERIOD (cl 3.1)	1 July 2020 to 30 June 2021
PURPOSE (cl 3.1)	The purpose of the Funding is to enable the Recipient to operate a visitor information centre (Centre).
OBJECTIVES & MEASURES (cl 3.3)	a) The Recipient shall operate the Centre 7 days a week (open a minimum of 44hrs per week) between 1 December- 28 February the following year. From 1 March to 30 November each year the Recipient may determine the hours of operation that best accommodate visitor demand of the local area. b) There must be at least one appropriately trained employee operating the Centre at all times during operation.

	<ul style="list-style-type: none"> c) Disseminate local information including local events and initiatives to facilitate tourism and generate revenue into the region. d) Provide booking services for local, district and regional accommodation, attractions, activities, tours and local transport. e) Network and share knowledge with other visitor information centres within the region. Record and report on foot traffic, both domestic and international, into the Centre.
<p>REPORTING</p> <p>(cl 5.1)</p>	<p>The Recipient shall provide reports to the Council's Representative on the performance of the centre. Each report shall include but not be limited to the following matters:</p> <ul style="list-style-type: none"> a) Progress on delivery of matters set out in clauses 3.1 and 3.3. b) Financial statements to match the reporting period. This includes profit & loss statements for the funding year to date. c) An annual set of audited accounts to be submitted by 30 September; d) Progress on achieving matters set out in a business plan. e) Details on significant risks or issues relating to the Centre's operation. <p>The Recipient shall provide the report as set out below.</p> <p>Reporting Periods</p> <p>1 July to 31 October - Report required by 20 November</p> <p>1 November to 28 February - Report required by 20 March</p> <p>1 March to 30 June - Report required by 20 July</p>
<p>RECOGNITION</p> <p>(cl 2.5)</p>	<p>The Recipient shall give fair and proper public acknowledgement of Council's support, including as follows:</p> <ul style="list-style-type: none"> a) <u>Promotional materials</u>: Placement of Council's name and logo on advertising and promotional material (e.g. print advertising, posters, newsletters, signage). b) <u>Website</u>: Acknowledgement of Council on the Recipient's website, including a link to Council's website using Council's logo. c) <u>Communications</u>: Acknowledgement of Council as a supporter, wherever possible, in press conferences, news releases, speeches, launches, articles sent to any publications, magazines, editorial and annual reports. d) <u>Opportunities</u>: the Recipient shall advise Council of any marketing and promotional opportunities for Council to promote its role as a supporter of the Recipient. <p>The acknowledgements above shall be commensurate with the amount of the Funding (including placement and prominence relative to acknowledgements by the Recipient of its other supporters).</p> <p>Use by the Recipient of Council's name and logo must be in accordance with Council's brand guidelines, as notified by Council from time to time, and the Recipient provide a proof to Council's Representative for sign-off by Council prior</p>

to use.

SAMPLE

GENERAL TERMS

DEFINITIONS AND INTERPRETATION

1.1 Definitions: Unless the context otherwise requires, capitalised words have the meanings given to them in this Agreement and as follows:

“Business Day” means a weekday (Monday to Friday) excluding any New Zealand public holidays and Auckland Anniversary Day;

“Contact Address” means, in relation to a party, the physical and postal addresses, facsimile number, and email address (as the case may be) for purposes of communications under this Agreement notified by that party to the other party from time to time;

“Funding” means the total financial funding set out in the Specific Terms.

“Funding Period” means the period to which the Funding relates and will be applied for the Purpose, as set out in the Specific Terms.

“GST” means goods and services tax as provided in the Goods and Services Tax Act 1985;

“Insolvency Event” means anything that reasonably indicates that there is a significant risk that the Recipient is insolvent or is or will become unable to pay its debts as they fall due including:

- (a) any step being taken to make the person bankrupt, wind up the person’s business or to have a receiver, receiver and manager, administrator, liquidator or statutory manager appointed to or in respect of the person or any of its assets;
- (b) any statutory demand being served on the person, or any proceedings being brought or threatened against the person for recovery of a liquidated or undisputed debt;
- (c) the person ceasing to carry on its business; or
- (d) a meeting of the person’s creditors being called or held or the person entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;

“Objectives and Measures” means those outcomes, objectives, measures, key performance indicators (KPIs), goals and targets set out in the Specific Terms;

“Party Representative” means the Council Representative and the Recipient Representative (as the case may be) set out in the Specific Terms, or anyone else who is appointed by a party (and duly notified to the other party) to discharge those roles from time to time;

“Probity Event” has the meaning given in clause 9.4; and

“Purpose” means the purpose for which the Funding is to be used as set out in the Specific Terms.

1.2 References and interpretation: Except where the context otherwise requires, this Agreement shall, be interpreted and applied in accordance with the following principles:

Agreement: references to this “Agreement” include the Signing Page, Specific Terms, General Terms and Schedules;

Clauses and schedules: references to clauses and schedules are to clauses in the General Terms and the schedules to this Agreement (unless stated otherwise);

1.3 Terms: The Specific Terms prevail over the General Terms to the extent of any inconsistency. The General Terms do not limit additional rights or obligations in the Specific Terms or in any schedules.

2 FUNDING AND PAYMENT

- 2.1 Funding:** Council will provide the Funding to the Recipient for the Purpose as set out in the Specific Terms, subject to the Recipient complying with this Agreement,
- 2.2 Payments:** The Funding will be paid in accordance with Council's grant payment process.
- 2.3 Conditions:** The Funding (and any instalments thereof) will be paid to the Recipient subject to the following conditions:
- (a) Council is satisfied the Recipient has complied with all material obligations under this Agreement (including the reporting requirements) and is not in default of any obligations;
 - (b) Council continues to have confidence in the Recipient's structure, governance, management, operational practices, and financial stability/solvency; and
 - (c) Council is satisfied that the Recipient intends to only use the Funding for the Purpose during the Funding Period.
- 2.4 Non-exclusive funding:** For avoidance of doubt, this Agreement does not limit Council's freedom to fund any other organisation with the same or similar objectives to the Recipient.
- 2.5 Recognition:** the Recipient will give fair and reasonable acknowledgement of Council's funding contributions, including as set out in the Specific Terms.

3 RECIPIENT'S RESPONSIBILITIES

- 3.1 Use of Funding:** The Recipient will use the Funding during the Funding Period solely for the Purpose and in a manner that is diligent and prudent.
- 3.2 Legal compliance:** The Recipient shall:
- (a) obtain all necessary licences, authorisations, permits and registrations to enable it to achieve the Purpose; and
 - (b) comply with all applicable laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements.
- 3.3 Objectives and Measures:** The Recipient will use its best endeavours to try to achieve the Objectives and Measures during the Funding Period.
- 3.4 No additional funding:**
- (a) The Recipient is responsible for organising all additional funding over and above the Funding which may be required for the Purpose or other activities and operations of the Recipient.
 - (b) The Recipient will actively seek funding contributions during the Period to assist it with the costs associated with the Purpose from other sources, i.e. sponsorship, donations, grants and through other fund raising initiatives.
 - (c) The Funding is only for the Period and Purpose and Council is under no obligation to provide any funding to the Recipient other than the Funding. Any decision about providing further funding to the Recipient will be at Council's sole discretion and subject to a separate funding application and agreement.

4 PARTIES' RELATIONSHIP

- 4.1 Representatives:** The Party Representatives are the first and primary contact persons in relation to this Agreement, except to the extent otherwise provided in this Agreement or agreed by the parties.
- 4.2 No surprises:** The Recipient shall communicate regularly with Council about its use of the Funding, including promptly raising and escalating any issues (including media issues) likely to be of concern to Council.
- 4.3 Publicity and reputation:** The Recipient acknowledges that its activities may affect Council's reputation, and accordingly:

- (a) Disrepute: The Recipient must not do anything which brings, or would be likely to bring, Council or any of its Council-controlled organisations, into disrepute; and
- (b) Public communication: The Recipient shall not make any representations or public statements relating to or impacting upon its relationship with the Council or this Agreement, without the prior written approval of Council or as permitted under this Agreement.

4.4 Council publicity: Council may at its discretion promote in any media its support of the Recipient and the Purpose.

4.5 Conflicts of interest:

- (a) The Recipient undertakes that it has disclosed, and that it will disclose, to Council in writing any actual, potential or perceived conflict with the interests of Council under this Agreement or in any other material way.
- (b) The Recipient shall manage any conflicts in consultation with Council. If Council considers that a conflict is not being, or cannot be, appropriately managed by the Recipient then Council may immediately terminate this Agreement by written notice to the Recipient.

4.6 Recipient's responsibility:

- (a) The Recipient is not (by virtue of this Agreement and the Funding) an employee, contractor, partner, joint venture, or subsidiary of Council and the Recipient is not entitled to pledge the credit of Council nor act as its agent, except as expressly authorised by this Agreement.
- (b) The Recipient will be solely liable for all debts, losses, expenses and taxation on the Recipient's income.

5 REPORTING AND PERFORMANCE

5.1 Reporting:

- (a) The Recipient shall provide regular reports on its use of the Funding and other obligations under this Agreement in accordance with the Specific Terms or as otherwise as reasonably required by Council from time to time.
- (b) If Council is dissatisfied with any report provided by the Recipient, Council may, in its sole discretion, require more frequent/detailed reporting and/or refuse to make any further payments to the Recipient.

5.2 Notification of breaches: The Recipient will immediately notify Council if an event occurs which does or may:

- (a) constitute a material breach of any term of this Agreement or render any warranty contained in this Agreement incorrect or untrue in any respect; or
- (b) adversely impact in any way on the performance of the Recipient's obligations under this Agreement.

5.3 Records and information requests: The Recipient must keep full records and documentation in relation to the Funding and this Agreement ("**Records**") and provide copies of Records to Council on reasonable request, and immediately notify Council of any disclosure requests the Recipient receives (including under the Local Government Official Information and Meetings Act 1987).

5.4 Performance review: Council may monitor and review the performance and compliance of the Recipient under this Agreement, and the Recipient agrees to co-operate with Council as may be reasonably requested including by:

- (a) providing all information that is requested by Council;
- (b) attending such meetings that are reasonably requested by Council to discuss and review any aspects of this Agreement; and
- (c) allowing Council reasonable access to any sites under the control of the Recipient.

The foregoing shall also apply where Council has a reasonable concern about the Recipient's financial viability or ability to continue to operate.

6 CONFIDENTIAL INFORMATION AND IP

- 6.1 Confidentiality:** The parties acknowledge that some information provided by them in connection with this Agreement may be commercially sensitive or not for general publication. Where so, the party providing the information should specify which information they provide is confidential, and the party receiving the information agrees not to disclose it without the prior consent of the other party, except as required by law or where the information is already publically available (other than through a breach of this Agreement).
- 6.2 Intellectual property:** The Recipient acknowledges that the Council owns all intellectual property in respect of the Council name and logo ("**Council trademarks**"). All use of the Council trade marks (if permitted by this Agreement) shall comply with Council's logo and brand guidelines or otherwise as reasonably required by Council from time to time in writing. All goodwill associated with Council trademarks shall inure exclusively to the benefit of Council.

7 WARRANTIES

- 7.1 General warranties:** The Recipient represents and warrants and undertakes on a continuing basis that:
- (a) Entity status: The Recipient is:
 - (i) a duly constituted corporation, society or trust or other legal entity under the laws of New Zealand; and
 - (ii) registered with the Charities Commission if its activities are charitable or not-for-profit,and that status and registration will be maintained during the Funding Period.
 - (b) Enforceable: this Agreement is valid, binding and enforceable and it has taken all necessary action to authorise the execution and performance of this Agreement, and entry into this Agreement will not cause the Recipient to be in breach of any other agreement or obligation;
 - (c) No impediment: except as disclosed by the Recipient to Council in writing, the Recipient is not aware of any matter or event which does or may materially and adversely affect the ability of the Recipient to perform its obligations under this Agreement;
 - (d) Solvency: no Insolvency Event has occurred in respect of it;
 - (e) No inducements: no form of inducement or reward has been or will be directly or indirectly provided or offered by the Recipient to any of Council's employees, agents, officers or representatives in connection with this Agreement;
 - (f) Tax resident: Unless notified otherwise to Council prior to the date of this Agreement, the Recipient is a New Zealand tax resident;
 - (g) Correct information: all information and representations made by the Recipient (prior to or after the date of this Agreement, including in any contestable funding application process leading to this Agreement) are true, complete and correct and not misleading through non-disclosure; and
 - (h) No double funding: the Recipient has not sought or received any funding from any other person that "doubles up" on the Funding in excess of the Recipient's actual requirements for the funded activities in question.
- 7.2 Reliance:** the Recipient acknowledges that Council has, in entering into this Agreement, relied on the Recipient's representations in clause 7.1.

8 REFUND OF FUNDING

- 8.1** If the:
- (a) Funding (or any part of it) is not used for the Purpose; or

(b) Council terminates this Agreement pursuant to clause 9.1, then Council may refuse to make any further payments to the Recipient and the Recipient will refund (in the time and manner requested by Council) up to 100% of that portion of the Funding already paid to the Recipient as determined by Council. Funding that has been legitimately spent for the Purpose will not be required to be refunded.

9 TERMINATION

9.1 Termination: Council may immediately terminate this Agreement by written notice to the Recipient if:

- (a) the Recipient commits a material breach of this Agreement that is not, in the reasonable opinion of Council, able to be remedied;
- (b) the Recipient commits a material breach of this Agreement, and, where such breach is capable of remedy, the Recipient fails to remedy such breach within ten (10) Business Days following receipt of written notice from Council specifying the breach and requiring it to be remedied;
- (c) the Recipient suffers an Insolvency Event or a Probity Event occurs;
- (d) any warranty contained in this Agreement is untrue in any material respect; or
- (e) the Recipient breaches clause 12.2 (no assignment or legal changes without consent).

If provided in the Specific Terms, the Council may also terminate this Agreement without cause (in the Council's sole discretion) on given the period of written notice provided in the Specific Terms.

9.2 Consequences of termination: On termination or expiry of this Agreement:

- (a) the Recipient must return to Council any property, including Council's Intellectual Property, in the Recipient's possession or control; and
- (b) the Recipient will refund any portion of the Funding, as required in accordance with clause 8;

9.3 Accrued rights: Termination or expiry of this Agreement is without prejudice to the accrued rights of the parties, and any express rights under this Agreement are additional to any other right or remedy a party may have.

9.4 Probity events: For purposes of clause 9.1(c), "Probity Event" means:

- (a) Inducement: where any improper inducement, reward or benefit has been provided on behalf of the Recipient to any of Council's staff or other persons to influence their actions in relation to the Recipient or this Agreement; or
- (b) Offence or breach: where the Recipient commits any offence relating to fraud or dishonest acts, or breaches the Commerce Act 1986 in relation to this Agreement, or the Recipient defrauds, or attempts or conspires to defraud, Council;
- (c) Ethical wrongdoing: where the Recipient engages in governance, ethical or business practices which are fundamentally incompatible with Council's values or the local government accountability and legislative framework; or
- (d) Related party transactions: where the Recipient enters into or performs any financial transaction (including payments, koha or gifts) with related parties (such as trustees, staff or other associated persons), irrespective of whether the transaction is demonstrably at under-value, except for the following permitted transactions:
 - (i) koha or gifts that comply with policies and financial limits expressly disclosed to Council prior to entering into this Agreement;
 - (ii) arms-length services payments or remuneration; or
 - (iii) distributions that fall directly within the Recipient's charitable purposes or objects in its constituting documents,

and includes any of these things done for or on behalf of the Recipient or anyone it is responsible for.

9.5 Survival: Any provisions intended to survive expiry or termination of this Agreement (including clauses 5.3, 5.4, 6, 8, 9.2, 9.3 and 11.1 to 11.3, and any provisions incidental to or required in order to give effect to any surviving clauses) will remain in full force and effect.

10 DISPUTE RESOLUTION

10.1 Disputes: The parties will engage in good faith negotiations as soon as reasonably practicable to resolve any dispute or difference (a "**Dispute**") that arises under this Agreement. The Recipient must still comply with its obligations under this Agreement during any Dispute.

10.2 Proceedings: Neither party may commence any court proceedings related to the Dispute unless it has first complied with this clause 10. However, nothing in this clause 10 restricts or limits the right of either party to obtain urgent injunctive relief or to exercise any right under this Agreement (for example, to terminate).

11 INDEMNITY, LIABILITY AND INSURANCE

11.1 Indemnity: The Recipient indemnifies Council, its employees, agents and officers against all claims, demands, actions, proceedings, costs (including solicitor and own client costs), losses, expenses and damages which are made or brought against any of the above-mentioned indemnified parties or incurred or suffered by those parties in connection with the Recipient's breach of this Agreement, negligent act or omission of the Recipient or anyone it is responsible for, or any claim made by a third party in relation to the Recipient's activities.

11.2 Recipient's responsibility: Under no circumstances shall Council, or its employees or consultants or agents, be liable in contract, tort or otherwise to compensate the Recipient or any third party for any loss, injury or damage, direct or indirect, including, loss of profit or business or for any direct or indirect or consequential loss whatsoever arising from any act, permission, error, default or delay in respect of the performance or non-performance by Council (or in the case of a third party claim, the Recipient) of its obligations under this Agreement.

11.3 Trustee limitation: Officer's and director's limitation of liability: Despite anything stated or implied in this Agreement, the Council agrees that the officers and or directors of the Recipient enter into this Agreement as officers and directors of an incorporated society pursuant to the Incorporated Societies Act 1908 and not in any personal capacity. The Council acknowledges that the liability of the officers and or directors of the Recipient shall be limited to the assets of the Recipient from time to time unless such liability is occasioned by their wilful default or by their wilful acquiescence

11.4 Insurance: Where appropriate or required by Council, the Recipient will hold and maintain such insurance cover as may be reasonable to insure against any material risks in relation to the Recipient's activities (including in the Purpose).

12 GENERAL

12.1 Notices: Notices under this Agreement must be delivered in writing to the relevant party at its Contact Address marked for the attention of the Party Representative, and also copied by email to the Party Representative. Notice is deemed to have been received:

- (a) If notice is handed to the other party in person, it is considered received immediately.
- (b) If notice is delivered to the premises and either left in the letter box or attached to the door in a prominent position, it is considered to have been received 2 business days after the date it is delivered.
- (c) If the notice is posted to the address or the PO Box, it is considered to have been received on the 4th business day after the date it was posted.
- (d) If the notice was sent to the email address or fax number after 5pm, it is considered to have been received on the next business day after it was sent. If the email or fax was sent before 5pm, it is considered to have been received on that same day.

- 12.2 Assignments and transfers:** The Recipient must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Council. Any change in effective control or beneficial ownership of the Recipient shall be deemed an assignment for purposes of this clause 12.2. If Council consents the Recipient will pay Council's reasonable legal and other costs relating to consent and assignment.
- 12.3 Further acts:** Each party must sign all documents and do all things reasonably requested by the other party necessary or convenient to give effect to this Agreement according to its true intent and spirit.
- 12.4 Rights, benefits and obligations:**
- (a) **Benefits:** Except as expressly provided, this Agreement is not intended to confer benefits or enforceable rights on subcontractors or any persons other than the parties.
 - (b) **Joint liability:** If the Recipient is more than one person or entity (whether or not trustees) then this Agreement binds them jointly and severally.
 - (c) **Cumulative rights:** Provisions in this Agreement for the benefit of Council are cumulative.
- 12.5 Regulatory capacity:** Nothing in this Agreement affects or fetters any regulatory power of Council or any of its council-controlled organisations. The Recipient has no recourse under this Agreement with respect to the exercise (or not) of such powers, including on licensing or consenting matters.
- 12.6 Severability:** If any provision of this Agreement is or becomes unlawful or unenforceable it shall be treated as severable from the other provisions of this Agreement which shall remain in full force and effect.
- 12.7 Variation and waiver:** The provisions of this Agreement may only be varied or waived by written agreement signed by the parties. Any delay or failure to exercise any remedy is not a waiver.
- 12.8 Entire agreement:** This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.
- 12.9 Governing law and jurisdiction:** This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.
- 12.10 Counterparts:** This Agreement may be executed by facsimile or scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.