

AGREEMENT FOR THE PROVISION OF DISTRICT LICENSING COMMITTEE SERVICES

Name



Dated:

**Date once both parties have signed (Supplier to sign first)*

| Auckland Council (“Principal”) | |
|--------------------------------|--|
| Street address | 135 Albert Street Auckland CBD |
| Postal address | Private Bag 92300 Victoria Street West Auckland 1142 |
| Company No. | n/a |

| Name (“Supplier”) | |
|-----------------------|--|
| Street address | |
| Postal address | |
| Company No. | |

Supplier agrees to perform, and Principal agrees to pay for, the Services during the Term on the terms of this Agreement, which includes this Signing Page, the Specific Terms, General Terms and any Schedules.

Important: By signing this Agreement, Supplier acknowledges that:

- It has read and understood the terms of this Agreement
- It has had the opportunity to seek advice about this Agreement before signing it
- It is satisfied as to the amounts payable for performance of its obligations.

| Signed under delegated authority for and on behalf of Auckland Council by: |
|---|
| <p>_____</p> <p><i>Authorised signatory</i></p> <p>Name:</p> <p>Position:</p> <p>Date: _____</p> |

| Signed for and on behalf of Name by: |
|---|
| <p>_____</p> <p><i>Authorised signatory</i></p> <p>Name: Name</p> <p>Date: _____</p> |

SPECIFIC TERMS

Clause references are to the General Terms.

| Principal Representative | |
|--------------------------|--|
| Name | |
| Phone | |
| Mobile | |
| Email | |

| Supplier Representative | |
|-------------------------|--|
| Name | |
| Phone | |
| Mobile | |
| Email | |

| BACKGROUND |
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| <p>The Auckland District Licensing Committee (DLC) was established under the Sale and Supply of Alcohol Act 2012 (the Act). It functions under a regulatory framework as a semi-judicial commission of inquiry, making decisions that can be appealed.</p> <p>The functions of the DLC are set out in s187 of the Act. The DLC is responsible for considering and determining all opposed and unopposed licences (including special licences) and manager's certificate applications, renewals and temporary authorities. The DLC also considers and determines applications for temporary licences and for the variation, suspension, or cancellation of special licences. With the permission of the Alcohol Regulatory and Licensing Authority (ARLA) chairperson, the DLC may refer applications to ARLA and may be required to conduct inquiries and make reports as requested by ARLA.</p> |

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| 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 • Schedule One – Service Specifications • Schedule Two – Auckland Council Fees Framework and Expenses Policy for Appointed Members | |
| TERM (cl 2.1) | Commencement Date: | 1 July 2023 |
| | Expiry Date: | 30 June 2026 |
| | Extensions: (number, length, notice) | None |
| TERMINATION NOTICE PERIOD (cl 12.1) | This agreement may be terminated by either party with one week's (seven days) notice. | |
| SERVICES (cl 3) | The Supplier has been appointed as chairperson and member of Auckland's District Licensing Committee. The Principal will: <ul style="list-style-type: none"> • appoint DLC members to a panel to attend hearings for contested applications. • appoint DLC chairpersons to determine uncontested applications and temporary authority applications on-the-papers and to chair hearings for | |

contested applications or any other matters requiring a hearing. This includes issuing directions and making decisions on procedural matters associated with the hearing.

The Supplier will:

- attend hearings in venues across the Auckland region
- be available to provide chairperson and member services for up to a maximum of 40 hours per week, however there is no guarantee of minimum hours under this contract
- in accordance with the Act, and as instructed by the Principal, hear and make decisions as a District Licensing Committee chairperson or panel member on contested alcohol licence or manager's certificate applications or any other matters requiring a hearing
- in accordance with the Act, and as instructed by the Principal, consider and make decisions on-the-papers as a District Licensing Committee chairperson or panel member for uncontested alcohol licence or manager's certificate applications, temporary authorities and variations of licences
- carry out the Services in accordance with the Service Specifications set out in Schedule One.

District Licensing Committee Chairpersons

The Supplier will:

- provide a written decision via email (including electronic signature) to the Democracy and Engagement Hearings Team or DLC Administration Team in accordance with the following timeframes:
 - hearings - within 10 working days of the close of the hearing
 - on-the-papers applications – within three business days of receiving the application
 - waivers for late applications – within 24 hours of receiving the application

(If the Supplier requests further information, the above timeframes apply from the day that the information is received.)

- ensure that all decisions accurately and comprehensively meet the requirements of the Act or other relevant legislation and capture the reports, evidence and objections made on applications
- upload all decisions to the New Zealand Legal Information Institute (NZLII) database
- utilise decision templates, where available, as provided by the Principal.

District Licensing Committee members

The Supplier will:

- ensure all decisions accurately and comprehensively met the requirements of the Act or other relevant legislation and capture the reports, evidence and objections made on applications.

**KEY PERSONS
(cl 3.4(a))**

Name of supplier

**PRICE AND
DISBURSEMENTS
(cl 5.1)**

The fees paid under this Agreement are determined by the Minister of Justice in accordance with the Cabinet Fees Framework. District Licensing Committee members will also be reimbursed for reasonable expenses as provided for in the Auckland Council Fees Framework and Expenses Policy for Appointed Members. Any change to this document will be notified to the Supplier in writing. The rates and expenses are specified below

Hourly rate

The Principal will pay the Supplier at the rate outlined below:

- The rate for a DLC chairperson is \$78 per hour.
- The rate for a DLC panel member is \$51 per hour.

Travel

Mileage:

The Supplier will be entitled to claim for, and the Principal will pay for, mileage costs for travel from their home within any Auckland Council ward area to the hearing venue or site visit and return. Where the Supplier's home is outside the Auckland Council ward area, the mileage calculation is taken from the point at which the Supplier enters an Auckland Council ward boundary. The mileage rate is the same rate as the rate set, and adjusted from time to time, by the Inland Revenue Department (\$0.83 per kilometre as at 31 January 2023). The rate applies to a DLC member's travel when using a motor vehicle or a motorcycle.

Parking:

The Supplier will be entitled to claim for, and the Principal will pay for, parking costs incurred at a hearing venue or a members' workshop when the invoice is accompanied with the parking receipt.

GST and withholding tax

The Principal may engage DLC chairpersons or members acting in their own right or acting in their capacity as an employee of a company. However, the Principal's delegated authority for DLC services is to the individual named in this Agreement.

The Supplier will advise the Principal of his or her tax position to enable the correct application of GST and withholding tax for DLC services. The Principal's starting point is that:

- amounts payable by the Principal for DLC services should be expressed as "plus GST, if any", with payment of any GST conditional on the Principal's receipt of a valid tax invoice; and
- the Principal is expressly permitted to pay any such amount net of any applicable withholding tax, as determined by the Principal.

Invoicing

The Supplier will provide a monthly invoice to Democracy and Engagement within five days of the end of the month to which it relates. The invoice must contain details of the services provided, including:

- the relevant Auckland Council purchase order number (as provided by Democracy and Engagement)
- for hearings:

| | |
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| | <ul style="list-style-type: none"> - a 'timesheet' attached to the invoice of all hearings that have been dealt with that month and the number of hours spent on each component of the services: <ul style="list-style-type: none"> o reading agenda o site visit (where required) o attending hearing o deliberations o writing decision - mileage from home to hearing venue (and site visit if required) and return to be charged at the rate set by the Inland Revenue Department at 31 January 2023, or as advised by Democracy and Engagement - parking costs including a copy of the receipt. • for on-the-papers decisions: <ul style="list-style-type: none"> - a list of all applications that have been dealt with that month that indicates the number of hours spent on each application. <p>Training</p> <p>The Principal will pay for time attending any formal DLC training and workshops provided prior approval to attend any such training / workshop has been given by the Principal.</p> <p>Exclusions</p> <p>To provide clarity and without limitation, the Supplier will not be paid for:</p> <ul style="list-style-type: none"> • time spent travelling to and from hearing venues or training venues • overnight accommodation • office overheads, including home office expenses. <p>All incidental expenses must be approved in writing by the Hearings Manager prior to the expense being incurred. The Supplier must attach a GST receipt for incidental expenses to the monthly invoice or timesheet.</p> <p>Invoices must not contain any hand-written information.</p> |
| <p>BUSINESS CONTINUITY PLAN (cl 7.1(a))</p> | <p>Not required</p> |
| <p>HEALTH AND SAFETY (cl 7.3)</p> | <p>Clause 7.3 of the general terms to apply.</p> |
| <p>PERFORMANCE REQUIREMENTS AND REVIEW (cl 9.2)</p> | <p>The Supplier will ensure that:</p> <ul style="list-style-type: none"> • there are no legitimate complaints made about the Supplier's conduct. • at all times the Supplier displays exemplary behavioural standards by treating all persons with respect and courtesy, observing rights of natural justice and respecting the roles that others play in alcohol licensing and hearings processes |

| | |
|--|--|
| | <ul style="list-style-type: none"> • all hearings are operated in accordance with relevant statutes and within accepted best practice guidelines. • all decisions are made available in a timely manner. • services are performed to a standard of professionalism that may be reasonably expected by the Principal, i.e. reasons for decision, plus conditions which are robust, appropriate and will withstand scrutiny by the Alcohol Regulatory and Licensing Authority. • the Supplier respects and engages in mentoring and responds positively to and acts on feedback. • invoices and timesheets are received in accordance with the Price and Disbursements section above. |
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| INSURANCE (cl 11.1) | Public liability: | Not required – covered under Auckland Council's Insurance Programme |
| | Professional indemnity: | Not required – covered under Auckland Council's Insurance Programme |
| | Other: | Not applicable |

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| TRANSITION SERVICES (cl 12.6(a)) | Not applicable |
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GENERAL TERMS

1 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;

“Commencement Date” means the date given in the Specific Terms;

“Confidential Information” has the meaning given in clause 8.1;

“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;

“Disbursements” means the specific disbursements and expenses of Supplier set out in the Specific Terms (and as otherwise agreed in writing by Principal prior to expenditure) to be reimbursed by Principal under this Agreement;

“Expiry Date” has the meaning given in the Specific Terms;

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

“Insolvency Event” means, in relation to a person, anything that reasonably indicates that the person is (or that there is a significant risk of the person becoming) insolvent and unable to pay its debts when 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;

“Key Persons” means the key persons listed in the Specific Terms;

“Party Representative” means the Principal Representative and Supplier 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;

“Price” means the amounts payable for the Services under clause 5.1 as set out in the Specific Terms;

“Probity Event” has the meaning given in clause 12.8;

“Services” means the services to be performed by the Supplier as set out in the Specific Terms, and includes all deliverables set out in the Specific Terms;

“Term” means the term of this Agreement as provided in clause 2.1(a);

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);

Employees: where the context permits, references to Supplier include Supplier’s employees, agents and officers;

Good faith: an obligation of “good faith” does not prevent a party from acting in its commercial interest provided it communicates fairly with the other party;

GST: all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise;

Including: “including” and similar words do not imply any limitation;

Legislation: all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;

Material Breach: references to “material breach” include any series of breaches of a similar or recurring nature which taken together are material;

Negative obligations: an obligation on the Supplier not to do something includes a reference to the Supplier ensuring that its staff, subcontractors and anyone else it is responsible for do not do that thing;

Party: references to any “party” mean a party to this Agreement and include their respective successors and permitted assigns (as the case may be);

Persons: references to a “person” include a natural person, firm, corporation, association or other entity, whether incorporated or not and whether or not having a separate legal personality; and

Singular and plural: where the context permits, the singular includes the plural and vice versa.

- 1.3 Terms:** The Specific Terms prevail over these 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 APPOINTMENT & TERM

2.1 Commencement and term:

- (a) This Agreement commences on the Commencement Date and, subject to any extensions under clause 2.1(b), ends on the Expiry Date unless terminated earlier in accordance with this Agreement or at law (“**Term**”).
- (b) Principal may, in its sole discretion, extend the term of this Agreement for the number of times and periods as set out in the Specific Terms (if any) by written notice to Supplier prior to expiry of the then current term.

- 2.2 Exclusivity:** The appointment of the Supplier under this Agreement is non-exclusive. Principal may contract with others for services identical or similar to the Services or may perform any of the Services itself.

2.3 Services scope:

- (a) Prior services: Any services Supplier performs prior to the Commencement Date falling within the scope of the Services (and not subject to another agreement) are subject to this Agreement as part of the Services.
- (b) In-scope: The Services include all services falling within any general

specification or services description under this Agreement that Supplier would reasonably be expected to perform, whether or not further particularised, except to the extent any services are expressly provided as out-of-scope in this Agreement.

- 2.4 MFC:** Without limiting Supplier’s other obligations under this Agreement, Supplier shall treat Principal on a “most favoured customer” basis.

3 SERVICES

- 3.1 Principal’s obligations:** Principal will provide all relevant information, directions, assistance and co-operation as is reasonably required in order for Supplier to perform the Services in accordance with this Agreement.

- 3.2 Supplier’s obligations:** Supplier shall perform the Services and its obligations under this Agreement “in full, on time, on budget, and to specification” including:

- (a) promptly and efficiently, and in accordance with any agreed timetable;
- (b) with the level of care, skill, diligence and judgement that would be reasonably expected from an experienced supplier in the relevant field;
- (c) by only using appropriately qualified, skilled, and experienced personnel who hold all required licences and consents; and
- (d) in accordance with:
 - i. all laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements that are applicable to the Supplier, performance of the Services, and performance of Supplier’s obligations under this Agreement; and
 - ii. all specific requirements for the Services and Principal’s reasonable directions (including as to any of Principal’s applicable workplace policies); and
- (e) where possible, in a manner best likely to further the Principal’s Objectives for the Services (to the extent described in the Background of this Agreement).

- 3.3 Performance targets:** Without limiting Supplier’s obligations to provide Services to agreed specifications and service levels, Supplier shall also endeavour to meet or exceed all performance targets and KPIs.

3.4 Personnel:

- (a) Supplier shall use the Key Persons to perform the Services, and not any other persons except as Principal consents in writing (acting reasonably).
- (b) If Principal has any reasonable concerns with Supplier's personnel which cannot be resolved by discussion, then Supplier shall, on Principal's request, replace them with other personnel acceptable to Principal.
- (c) The Principal (or its representatives) may carry out audits of the Supplier to ensure compliance with all obligations set out under clause 3.4(c). The Supplier must:
 - i. actively cooperate and participate in any audits carried out by the Principal;
 - ii. provide all necessary access and information required by the Principal in relation to an audit; and
 - iii. take all reasonable steps to immediately rectify any issues raised by the Principal.

3.5 Responsibility: Supplier is solely responsible for the due and proper performance of the Services, and for meeting all its own costs and expenses necessary to do so (except as expressly provided in the Specific Terms), including:

- (a) personnel, capital equipment, disbursements and operating assets; and
- (b) all debts, losses, expenses, and all taxation on Price payments and Supplier's income (and Supplier shall reimburse Principal if Principal is assessed for any such tax).

3.6 Subcontracting:

- (a) Supplier may not subcontract any of its obligations under this Agreement except with the prior written approval of the Principal.
- (b) Supplier will remain responsible for all subcontracted obligations and be liable for acts and omissions of subcontractors as if they were acts or omissions of Supplier (including for the purposes of clause 12).
- (c) Principal shall not have any liability to subcontractors, and it is Supplier's sole responsibility to pay its subcontractors.

- (d) Principal reserves the right to pay subcontractors directly and deduct those sums from the amounts payable to Supplier where Supplier has failed to pay subcontractors without reasonable cause.

4 PARTIES' RELATIONSHIP

4.1 Good faith: The parties shall act in good faith with respect to their mutual rights and obligations under this Agreement, and to progress effective implementation of the purposes of this Agreement.

4.2 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.

4.3 No surprises: The Supplier shall communicate regularly with the Principal about performance of the Services, including promptly raising and escalating any issues relating to the Services, this Agreement or of likely concern to the Principal.

4.4 Publicity and reputation: Supplier acknowledges that its activities may affect the goodwill and reputation of the Principal, and accordingly:

- (a) Disrepute: Supplier must not do anything which brings, or would be likely to bring, the Principal into disrepute.
- (b) Public communication: Supplier shall not make, be involved in or permit any public communications (including statements, interviews, media coverage) concerning this Agreement, the Services or the Principal without the Principal's prior written consent.
- (c) Notice: The Supplier shall immediately alert the Principal to any potential media or publicity issues it becomes aware of.

4.5 Co-operation: In performing Services, Supplier will cooperate and coordinate to the fullest extent possible with the Principal, its staff, suppliers and service providers, and any other third parties required for orderly conduct of the Principal's activities.

4.6 Conflicts of interest:

- (a) Supplier undertakes that it has disclosed, and that it will disclose, to the Principal in writing any actual, potential or perceived conflict with the interests of the Principal under this Agreement or in any other material way.

- (b) Supplier shall manage any conflicts in consultation with Principal. If Principal considers that a conflict is not being, or cannot be, appropriately managed by Supplier, then Principal may immediately terminate this Agreement by written notice to Supplier.

4.7 Independent Supplier: Supplier acknowledges that it is an independent Supplier and neither it nor any subcontractor is by virtue of this Agreement an employee, agent, partner, joint venturer or subsidiary of Principal. Supplier shall not represent or do anything to the contrary, nor pledge the credit of Principal or make any representation on its behalf, except as expressly authorised under this Agreement.

5 PRICE AND PAYMENT

5.1 Price: In consideration of performing the Services, Principal shall pay Supplier the Price and reimburse Disbursements (if applicable) at the rates and/or amounts and at the times set out in Specific Terms and otherwise on the terms of this Agreement. Unless provided otherwise in the Specific Terms, payments shall be made monthly in arrears.

5.2 GST: The Price is exclusive of GST (unless provided otherwise in the Specific Terms). If the Supplier is obliged to account for GST in respect of the Services, Supplier must submit valid GST invoices, and Principal will pay the applicable GST.

5.3 Invoice requirements: Supplier shall punctually raise and submit tax invoices to Principal at invoices@aucklandcouncil.govt.nz specifying:

- (a) the Principal's purchase order number for the Services under this Agreement;
- (b) the amount payable by the Principal;
- (c) the Services supplied and dates of supply;
- (d) a breakdown the basis for calculating the payment amount, including (if applicable) the amounts and rates charged for specific personnel;
- (e) any other information the Principal reasonably requests from time to time; and
- (f) all information required for a valid GST tax invoice (subject to clause 5.2).

Invoices, and all information in them, must be printed and not hand-written. Principal shall not reimburse Disbursements until they are incurred and properly accounted for by written supplier invoice.

5.4 Payment timing: Subject to this clause 5 and there not being manifest errors or discrepancies, invoices will be paid on the 20th of the month following the date of the invoice if the invoice is received and able to be "goods-receipted" by Principal no later than the 5th of the month.

Example: For monthly Services provided in January:

- *An invoice dated 31 January and delivered by 5th February will be paid on 20th February.*
- *An invoice dated 1 February and delivered by 5th February will not be paid until 20th March.*

5.5 Invoice accuracy:

- (a) Supplier must ensure invoices and invoice information are accurate in respect of the Services performed, and the amounts payable are correctly calculated including with respect to service levels or other Price-relevant criteria.
- (b) Supplier shall use automated information collection and calculation systems, which systems and all relevant data shall be reviewable by Principal on request.

5.6 Payment conditions:

- (a) Disputed invoices: If any part of an invoice is disputed by Principal, Principal shall promptly notify the Supplier and may withhold payment until the dispute is resolved.
- (b) Payment not acceptance: No payment by Principal constitutes acceptance of the scope or quality of any aspect of the Services performed by Supplier or is an acknowledgement of the correctness of the amount payment.
- (c) Overpayments and set-off: Without limitation to any of Principal's other recourse, Supplier must immediately repay any overpayments if required by Principal, and Principal may pay any amount owing under this Agreement less any deduction, set-off, counterclaim arising under this Agreement (including in respect of any overpayments or claims of Principal whether liquidated or not).
- (d) Final invoice: On termination or expiry of this Agreement, the final invoice will only be paid after proper reconciliation and adjustment for any claims by Principal. Principal will expedite the

reconciliation and final payment as far as reasonably possible.

5.7 Payments audit: Supplier will cooperate with any audit of Services and payments for Services requested by Principal from time to time. Audits will be performed by Principal or its agent, and be at Principal's expense unless discrepancies of 2% or more are discovered in Principal's favour, in which case audit will be at Supplier's expense.

5.8 Total remuneration: The Price and Disbursements (if applicable) are the total remuneration and compensation payable to Supplier in respect of the Services and all other obligations of Supplier under this Agreement including all pre-Commencement Date work such as scoping, recruitment and mobilisation.

5.9 No other payment: Supplier shall not seek or accept payment or benefit from any other person in respect of any of the Services or of other obligations and activities performed by Supplier pursuant to this Agreement (and shall not charge any mark-up or margin on disbursements or pass-through costs) without Principal's prior written consent.

6 VARIATIONS

6.1 Request for variations: Principal may, at any time, request in writing that the Services be varied in any respect during the Term.

6.2 Price consequences: Within five (5) Business Days of receipt of Principal requesting a variation, the Supplier (acting reasonably) must advise Principal in writing of the extent to which Supplier proposes the variation would:

- (a) increase or decrease the Price and the basis of its valuation of any increase or decrease; and
- (b) affect the quality or timing of the provision of the Services.

Principal may accept or decline Supplier's proposed terms of the variation in its discretion.

6.3 Signing: No variation (including any variation proposed by Supplier) is effective unless it is in writing and signed by each party to this Agreement. Principal is not required to agree to any variation, but Supplier will not unreasonably withhold its consent to variations including any arising from contract review under clause 9.2(b).

6.4 No payment: Principal is not liable to pay for any unapproved variations work.

7 RISK MANAGEMENT AND RECORDS

7.1 Risk management:

(a) **Business continuity:** Supplier must ensure that it maintains business continuity management systems that are consistent with good industry practice in New Zealand, including in accordance with any requirements for a business continuity plan in the Specific Terms (if any) or as otherwise reasonably required by Principal.

(b) **Quality assurance:** Supplier shall maintain quality assurance measures and procedures appropriate for its business, and in accordance with this Agreement or as reasonably required by the Principal, and provide information about these to the Principal on request.

(c) **Financial review:** Where Principal has a reasonable concern about Supplier's financial viability or ability to continue properly to perform the Services, the Supplier will promptly provide all relevant information to the Principal and cooperate fully in taking steps to mitigate the situation.

7.2 Computer systems: Supplier personnel must comply with Principal's computer and information systems policies as applicable. Passwords must be kept confidential and not be disclosed or used other than in accordance with Principal's written instructions.

7.3 Health and safety: Without limiting any additional obligations set out in the Specific Terms, the Supplier must at all times:

- (a) **Compliance:**
- i. comply with all health and safety legislation, regulations, applicable codes of practice and standards, Principal's health and safety policies and procedures, and any standard operating procedures;
 - ii. ensure that it takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including Principal, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Supplier;
 - iii. immediately provide the Principal with information about any health and safety matters relating to the Services, if requested; and

iv. comply with all reasonable directions given by the Principal in relation to health and safety in connection with this Agreement.

(b) **Information requests:** The Supplier will, upon request, at all times during the Term immediately provide the Principal with information about any health and safety matters relating to the Services.

(c) **Cooperation:** The Supplier must:

- i. so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with the Principal in relation to the Services;
- ii. facilitate engagement between the Parties (and/or its designees) in relation to work health and safety matters; and
- iii. ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

(d) **Principal Site:** If the Supplier is carrying out the Services at Principal (or CCO) owned or controlled site then the Supplier must:

- i. participate in the Principal's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested);
- ii. participate in the Principal's worker participation practices if requested (if requested); and
- iii. identify and address any special needs requirements.

(e) **Incidents and investigations:** The Supplier must immediately notify the Principal of any:

- (i) "notifiable event" (as defined in the Health and Safety at Work Act 2015);
- (ii) near miss or exposure the Supplier becomes aware of in the course of undertaking the Services,
- (iii) any WorkSafe inspection, investigation or information request in connection with the Supplier's performance of the Services; and/or
- (iv) breach of this clause 7.3; and provide the Principal with such assistance and information as the

Principal requires in relation to any of these matters.

(f) **Non-compliance (defective services)**
Without limitation to the Principal's other rights and remedies at law or under this Agreement, the Principal may immediately withhold a proportion of monthly or lump sum payments as specified in the Specific Terms if the Supplier is in breach of any of its obligations under this clause.

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

8 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

8.1 **Confidential information:** This clause applies to each party in respect of the other party's "Confidential Information" (however it comes known to a party), namely information which is marked or indicated as confidential or which would reasonably be considered confidential:

- (a) **Confidentiality:** Each party must keep confidential the Confidential Information, however it comes in the party's knowledge, and not copy, use or disclose it to any person except as reasonably required for purposes of this Agreement.
- (b) **Security:** Each party must maintain effective security measures to protect the Confidential Information, and ensure all persons having access to the Confidential Information comply with the party's confidentiality obligations (and sign any non-disclosure agreement reasonably requested by the Principal).
- (c) **Disclosure:** Each party may use or disclose Confidential Information to the extent necessary to comply with any law or court order (subject to escalating the matter to the other party first), or obtain professional advice in relation to this Agreement.
- (d) **Records:** Each party may keep copies of Confidential Information necessary for internal record keeping and audit purposes.

Information relating to the Services, including any data or information generated from or as

part of the Services, is the Confidential Information of Principal. The Principal may share Confidential Information with any of Auckland Council's council-controlled organisations. This clause 8.1 does not limit a party's rights or obligations at law or equity with regard to confidential information.

8.2 Intellectual Property:

- (a) Pre-existing IP: All intellectual property owned by either party and existing prior to the Commencement Date will remain the exclusive property of that party during the Term and afterwards.
- (b) New IP: Any new intellectual property developed as a specific deliverable or output under this Agreement, including data and information relating to the Services, shall be owned by Principal. Supplier shall ensure all moral rights are waived in such intellectual property.
- (c) Licenses: Without limiting clause 8.2(a) and (b):
 - i. Principal has a continuing free right to use all Supplier intellectual property (whether or not included in the Services) which is necessary for the Principal's use of the Services as contemplated by this Agreement; and
 - ii. each party has a continuing free right to use, for any purposes, any general methodologies, skills and know-how arising from the Services or under this Agreement.

8.3 Publishing of information: Auckland Council regularly publishes information on its procurement activities, spending and contracting as part of its public information programme ("**the Programme**"). Notwithstanding anything else in this Agreement/ Contract, the Supplier consents to Auckland Council disclosing information about this Agreement/ Contract in its Programme publicly, including, but not limited to

- (a) a description of the Services being supplied;
- (b) the name of the Supplier;
- (c) the Term of the Agreement/Contract;
- (d) the value of the Agreement/ Contract
- (e) the total spend by the Supplier regarding all agreements or contracts with Auckland Council.

9 PERFORMANCE MANAGEMENT AND AUDIT

9.1 Reporting: Supplier shall provide regular reports on the performance of the Services and its other obligations under this Agreement, in accordance with the Specific Terms or as reasonably required by Principal.

9.2 Performance management: During the Term, the Supplier shall cooperate in periodic reviews at the Principal's reasonable discretion, as follows, and as otherwise required in the Specific Terms:

- (a) Performance review (outputs): Review of the Supplier's performance under this Agreement, including compliance with specifications and service levels, achievement of targets and KPIs, and other Supplier obligations. Issues identified may be relevant to Price payments, remedies for breach, or contract reviews.
- (b) Contract review (outcomes): Review of the Agreement's alignment to the Principal's ongoing requirements for the Services, including:
 - (i) continuous improvement and efficiency;
 - (ii) Auckland Plan objectives and Mayoral vision for Auckland as the world's most liveable city;
 - (iii) environmentally sustainable working and business practices; and
 - (iv) any other areas of mutual advantage.

Supplier shall engage constructively with Principal on any proposed amendments to this Agreement resulting from contract reviews.

10 WARRANTIES

10.1 General warranties: Supplier represents and warrants and undertakes on a continuing basis that:

- (a) Enforceable: this Agreement is valid, binding and enforceable and it has taken all necessary action to authorise the execution and performance of this Agreement;
- (b) Solvency: no Insolvency Event has occurred in respect of Supplier;
- (c) No inducements: no form of inducement or reward has been or will be directly or indirectly provided or offered by Supplier to any of the Principal's employees, agents, officers or representatives in

connection with this Agreement or the Services; and

- (d) Tax resident: Unless notified otherwise to Principal prior to the date of this Agreement, Supplier is a New Zealand tax resident.

10.2 Performance of the Services: Supplier represents, warrants and undertakes on a continuing basis that:

- (a) Skills: Supplier has, and its personnel have, the requisite skill, judgment, ability, capacity and experience necessary to perform the Services;
- (b) Amount of price: Supplier has satisfied itself as to the correctness and sufficiency of the Price for performing its obligations under this Agreement;
- (c) Fit for purpose: all goods, equipment and systems used by Supplier to perform the Services will be fit for purposes of performing the Services;
- (d) No breach: performance of the Services by Supplier, and use of the Services by Principal, will not cause Supplier or Principal to be in breach of any law or third party rights, including intellectual property laws; and
- (e) Correct information: all information and representations made by the Supplier (prior to or after the date of this Agreement, including in any contestable procurement process leading to this Agreement) are true, complete and correct and not misleading through non-disclosure.

10.3 Reliance: Supplier acknowledges that Principal has, in entering into this Agreement, relied on Supplier's representation in clauses 10.1 and 10.2.

11 INSURANCE AND LIABILITY

11.1 Supplier's insurance: Supplier must effect and maintain insurance of the types and amounts (for any single occurrence and in aggregate) set out in the Specific Terms during the Term, on terms and with insurers reasonably acceptable to the Principal including on the following basis:

- (a) All public liability insurance must provide cover for the vicarious liability of the Principal.
- (b) Supplier must keep the required professional indemnity insurance in force for six (6) years after expiry or termination of this Agreement.

- (c) Supplier shall require its insurer to sign Principal's standard insurance certificates (as attached to this Agreement or as provided by Principal) on execution of this Agreement and each year in which insurance is required under this Agreement, and promptly deliver them to Principal. Broker's certificates will be acceptable only in Principal's sole discretion.

- (d) Supplier will ensure that its subcontractors have insurance which is reasonably acceptable to Principal.

11.2 Defective services: If Principal reasonably considers that any Services are non-compliant or defective, Principal may require the Supplier to rectify the non-compliance or defect, and (if not promptly rectified) Principal may at its discretion and without limiting its other rights:

- (a) reduce the Price payable for such Services; and/or
- (b) rectify or engage another person to rectify the Services, whereupon the cost of this work will be a debt due from Supplier to the Principal payable on demand.

11.3 No approval: No approval, inspection or review of the Services by the Principal will relieve Supplier of any of its obligations under this Agreement.

11.4 Liability to Principal: Without limiting specific rights and remedies under this Agreement or the Contractual Remedies Act 1979, Supplier's liability to Principal arising under or in connection with this Agreement shall be limited to losses caused directly by breach, foreseeable losses, and any other liability arising under common law principles or applicable statutory provisions.

11.5 Third party liability: Supplier's liability to any third party is between Supplier and that third party.

12 TERMINATION AND EXPIRY

12.1 Termination at will: If provided in the Specific Terms, Principal may terminate this Agreement in its sole discretion (and without cause) by giving the required period of written notice to Supplier.

12.2 Suspension/Termination by Principal: Principal may immediately terminate (or suspend Supplier's performance of) this Agreement in whole or in part by written notice to Supplier if any of the following applies:

- (a) Supplier commits a material breach of this Agreement and fails to remedy the

breach within ten (10) Business Days of written notice of the breach from Principal. Breach of any of clauses 3.2(d)(i) or 11.1 is a material breach for purposes of this clause 12.2(a); or

- (b) Supplier suffers an Insolvency Event or a Probity Event occurs; or breaches any of its obligations under clause 7.3;
- (c) (without limiting clause 12.2(a)) Supplier breaches any of clauses 3.4(a), 3.6(a), 4.6(a), 8.1, or 15.2, or Supplier has breached clause 10.2(e) in respect of any material misrepresentation or non-disclosure prior to the date of this Agreement.

No other provision of this Agreement (including KPI regimes or performance-based payment terms) limits Principal's rights under this clause 12.2. Any contract suspension is not to the Principal's financial account.

12.3 Termination by Supplier: Supplier may immediately terminate this Agreement by written notice to Principal if:

- (a) Principal commits a material breach of this Agreement and fails to remedy the breach within ten (10) Business Days of written notice of the breach from Supplier; or
- (b) Principal suspends performance of this Agreement for more than six (6) months.

12.4 Running on: Any continuation of the performance of this Agreement by the parties after expiry shall be on a monthly basis, otherwise on the terms of this Agreement, terminable by either party on one month's prior written notice to the other.

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

- (a) Principal must pay Supplier for Services validly performed to the date of expiry or termination;
- (b) this Agreement shall continue to apply to any outstanding Services nominated by Principal which Principal requests Supplier to complete until completed; and
- (c) Supplier must cease using and (as applicable) return to the Principal any property, including the Principal's intellectual property, Confidential Information or equipment of the Principal which is in Supplier's possession or control.

12.6 Handover and transition:

- (a) Transition services: Supplier shall perform, and Principal shall pay for, the transition services (if any) as set out in the Specific Terms.
- (b) Handover: If no transitional services are required, but the Services are of a type required by Principal on a continuing basis, Supplier shall still cooperate as reasonably required by Principal, at Supplier's cost, on the orderly and efficient handover of the Services to Principal or any new supplier prior to expiry or (where known in advance) termination, and in the month following expiry or termination.
- (c) Data migration: At Principal's request any time during or after the Term, Supplier will fully and promptly cooperate with export to Principal's nominated platform of all Services data owned jointly or exclusively by, or confidential to, Principal under this Agreement. Supplier will permit Principal and its agents full access to Supplier's IT systems for this purpose, and will not be entitled to any additional compensation (clause 5.8 applying to such work).

12.7 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.

12.8 Probity events: For purposes of clause 12.2(b), "Probity Event" means:

- (a) Inducement: where any improper inducement, reward or benefit has been provided on behalf of Supplier to any of Principal's staff, suppliers or representatives to influence their actions in relation to Supplier or this Agreement; or
- (b) Offence or breach: where Supplier commits any offence relating to fraud or dishonest acts or which in Council's opinion reflects adversely on Council, or breaches the Commerce Act 1986 in relation to this Agreement, or Supplier defrauds, or attempts or conspires to defraud, Principal; or
- (c) Ethical wrongdoing: where Supplier engages in governance, ethical or business practices which are fundamentally incompatible with Principal's values or the local government accountability and legislative framework,

and includes any of these things done for or on behalf of Supplier or anyone it is responsible for, including subcontractors.

12.9 Survival: Any provisions intended to survive expiry or termination (including clauses 7.3(e) and (f), 8 and 12, together with those other provisions of this Agreement which are incidental to, and required in order to give effect to those clauses) will remain in full force and effect following expiry or termination.

13 DISPUTE RESOLUTION

13.1 Process: If any dispute arises in connection with this Agreement or its subject matter, either party may trigger the provisions of this clause 13.1 by giving written notice of the dispute ("**Dispute Notice**") to the other party, and the following shall apply:

- (a) **Negotiation:** The parties shall endeavour to resolve the dispute within ten (10) Business Days of the Dispute Notice through negotiations between the Party Representatives and senior managers if required.
- (b) **Mediation:** If the dispute is not so resolved, either party may within twelve (12) Business Days of the Dispute Notice request mediation which shall be conducted in Auckland on the following basis:
 - (i) If the parties cannot agree a time, place and mediator, then the President of the New Zealand Law Society (or his or her nominee) shall decide.
 - (ii) The mediator will determine the procedure and timetable for the mediation.
 - (iii) The costs of the mediation will be shared equally by the parties, with each party meeting its own costs.
 - (iv) All proceedings and disclosures in the course of the mediation will be conducted and made without prejudice to the rights and position of the parties in any subsequent legal proceedings.

13.2 Supplier to continue: Supplier must continue to perform the Services during any dispute until it is resolved, unless Principal directs otherwise, and the Principal shall continue to pay for the Services (other than any payments in relation to the dispute).

13.3 Legal proceedings: Neither party may commence any legal proceedings in relation to a dispute until the process in clause 13.1 is

exhausted, provided that nothing in this clause 13 restricts or limits the right of either party to seek urgent injunctive relief, or limits or restricts Principal's rights to terminate or suspend this Agreement as provided in clause 11.

14 UNFORESEEN CIRCUMSTANCES

A party is not liable for any act, omission or failure under this Agreement (except failure to meet an obligation to pay money) if that act, omission or failure arises directly from circumstances beyond the reasonable control of that party, including extreme weather conditions, civil disruption or industry-wide industrial action, provided that the party seeking to rely on this clause 14 will:

- (a) notify the other party in writing, including reasons and perceived impacts, that such an event has or is likely to occur; and
- (b) take all reasonably practicable steps to limit the effects of that event on the performance of its obligations under this Agreement and continue to carry out its obligations under this Agreement to the extent possible.

If normal performance of this Agreement cannot be resumed within three (3) months, Principal may in its discretion require an appropriate variation or terminate this Agreement.

15 GENERAL

15.1 Notices: Notices under this Agreement must be delivered in writing to the relevant party at its Contact Address (by facsimile, post or courier delivery), marked for the attention of the Party Representative, and also copied by email to the Party Representative. Notices are deemed delivered:

- (a) In the case of email, as soon as the sender receives an express acknowledgement by the relevant Party Representative that it has received an email copy of the notice; and
- (b) In the case of post or courier delivery, when the notice is delivered to the correct Contact Address.

Express acknowledgement by the relevant Party Representative that it has received an email copy of the notice constitutes delivery. Notices delivered after 5pm on a Business Day, or on a non-Business Day, will be deemed received on the next Business Day.

15.2 Assignments and transfers: Supplier must not assign or transfer any of its rights or obligations under this Agreement without the

prior written consent of the Principal. Any change in effective control or beneficial ownership of the Supplier shall be deemed an assignment for purposes of this clause 15.2. If Principal consents, Supplier will pay Principal's reasonable legal and other costs relating to consent and assignment.

15.3 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.

15.4 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 Supplier 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 Principal are cumulative.
- (d) Council group: Principal may, in its discretion, share any benefits or rights under this Agreement with any of Auckland Council's council-controlled organisations.

15.5 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.

15.6 Regulatory capacity: Nothing in this Agreement affects or fetters any regulatory power of Auckland Council or any of its council-controlled organisations. Supplier has no recourse under this Agreement with respect to the exercise (or not) of such powers, including on licensing or consenting matters.

15.7 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.

15.8 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.

15.9 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.

15.10 Counterparts: This Agreement may be executed by email or scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.

Schedule One – Service Specifications

Each alcohol licence or manager's certificate application or other matter described in the Services constitutes a separate piece of work (a "Job").

1. Service responsibilities:

In providing the above Service, the Supplier will:

- a. make every effort to be available for a hearing when appointed and to be free to determine uncontested applications;
- b. maintain a comprehensive understanding of all relevant legislation, and any local alcohol policy, necessary to provide a quality service to the Principal and its customers;
- c. complete a disclosure of interest form for every hearing. As a panel member, any perceived conflict of interest whether known or raised by others shall be identified and discussed with the chairperson. The chairperson after full consideration of the potential conflict identified may ask, prior or during a hearing, that the appointed panel member stand down from the hearing. If prior to the hearing, an alternate panel member on request of the chairperson may be arranged;
- d. notify the Principal of any changes to the Supplier's contact details and to give at least two weeks' prior notice of unavailability of the Supplier;
- e. notify the Principal as soon as practicable of sickness, sudden emergency or similar, that would mean the Supplier is unable to attend a scheduled hearing;
- f. notify the Principal, as soon as is practicable, of any event or circumstance that may lead to the agreed completion deadline of any Job not being met by the Supplier;
- g. correspond directly with the Principal to solve any problems associated with a Job and for any requests for legal opinions;
- h. use best endeavours to minimise costs to the Principal and its customers arising from Jobs performed by the Supplier under this Agreement;
- i. not contact any party involved in a Job directly such as the applicant, objectors or reporting agencies (except where the Supplier must consult with the Police and Medical Officer of Health and notify the inspector under section 137(3) of the Act). All communications are directed through the Principal;
- j. engage with panel members to arrange and attend a site visit if the chairperson determines that this is required;
- k. take handwritten legible notes throughout every hearing. Legible notes are for the Supplier to refer back to when deliberating and/or writing or contributing to a decision and a scanned copy of the legible notes must be provided to Democracy and Engagement at the time of issuing a decision.
- l. if appointed as a member, provide feedback to the chairperson during deliberations on the decision and contribute to the written decision where requested by the chairperson.

In addition to the above, the Supplier will:

- m. keep accurate and separate records and accounts in respect of work performed for these services;
- n. receive and return files electronically including the use of electronic signatures;
- o. keep all matters relating to this agreement, and any information supplied or accessed as part of this agreement, confidential and not divulge such matters and information in any way to any third party without the prior written approval of both parties to this agreement, unless either party is required by law to release the information or either

party needs to use the information for the purpose of any dispute in which it needs to be involved;

- p. refer any requests for information, including those under the Local Government Official Information and Meetings Act 1987, to Democracy and Engagement for instruction and/or action;
- q. refer any media matters related to any contracted services immediately to Democracy and Engagement and not engage in any media discussion or response on any such matters, unless authorised in advance in writing by Democracy and Engagement;

2. Principal's responsibilities:

The Principal will:

- a. maintain and amend a hearings and application roster as required and ensure Supplier is not appointed to sit on a hearing when they have informed the Principal that they will not be available;
- b. endeavour to ensure the Supplier is not appointed to a hearing where a conflict of interest is known and reappoint members as soon as reasonably practicable where a conflict is later determined;
- c. distribute agendas via email or Nexus at least five working days prior to hearings;
- d. provide current decision templates to the Supplier if requested;
- e. ensure hearings venues are set up appropriately;
- f. welcome parties as they arrive at the hearing venue;
- g. arrange catering for the Supplier at hearings where the duration is expected to be longer than 2 hours;
- h. provide feedback to the Supplier on a regular basis to ensure region-wide consistency;
- i. provide the Supplier with a disclosure of interest form to be completed for every hearing;
- j. provide the Supplier with a copy of appeal decisions for matters that the Supplier determined;
- k. take administrator notes and audio record that hearings and make such notes and recordings available to the Supplier to assist in writing the decision.

3. Conflict of Interest

- a. For the avoidance of doubt and without limitation in any way, it is a conflict of interest for the Supplier to sit on a hearing in an area where they or an immediate family member is a local board member.

4. Local Government Official Information and Meetings Act 1987

- a. For the avoidance of doubt, all correspondence, records or any other information, by or held by the Supplier in connection with the Services or this Agreement is subject to the Local Government Official Information and Meetings Act 1987 and may be released on request.

Schedule Two – Fees Framework and Expenses Policy for Appointed Members

See PDF document attached.