



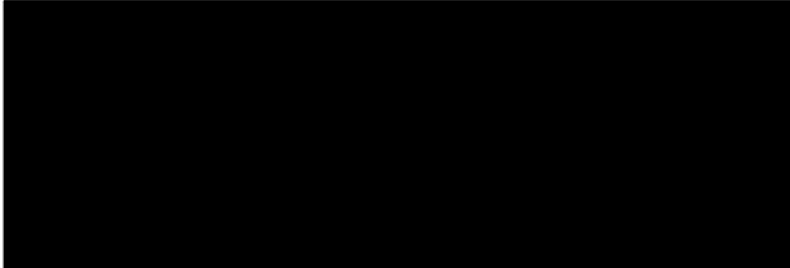
Ref: [REDACTED]

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30 October 2024



**OFFICIAL INFORMATION REQUEST FOR COPY OF CURRENT VENUES CONTRACT
SIGNED BY NCC AND CLM**

I refer to your official information request dated 02 October 2024 for: *"...The Contract entered into between the Council and successful tenderer as a consequence of the 2023 RFP..."*.

The information you have requested is enclosed. Redactions to some of this material have been applied in reliance of the following reasons, prescribed by the Local Government Official Information and Meetings Act 1987 (LGOIMA) where the withholding of the information is necessary to:

- protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information – section 7(2)(b)(ii)

Redactions are shown in the attached pdf with red on black overlay text. We do not consider the public interest outweighs the above reason to withhold this information.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or Freephone 0800 802 602.

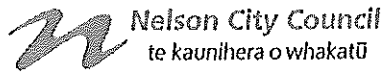
If you wish to discuss this decision with us, please feel free to contact me.

Yours sincerely

Hannah Curwood
Manager Parks and Facilities
Kaiwhakahaere papa rehia me whakaurunga

Encl: [REDACTED] - NCC - Trafalgar Centre – Contract 02October Redacted

Internal Document ID: [REDACTED]



SERVICES CONTRACT

NELSON CITY COUNCIL

COMMUNITY LEISURE MANAGEMENT LIMITED

**CONTRACT FOR
VENUES MANAGEMENT, NELSON CITY COUNCIL
VENUES
(CONTRACT NUMBER 180008)**

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PARTIES

Nelson City Council (**Council**)

Community Leisure Management Limited (**Contractor**)

BACKGROUND

- A. The Council is a local authority under the Local Government Act 2002.
- B. It is a function of Council to encourage venues, activities and events that celebrate the City of Nelson and support the City of Nelson's business sector. To achieve this, Council invests in a range of community facilities and spaces for locals and visitors to enjoy.
- C. The Contractor has expertise and experience in the management, maintenance and marketing of commercial and community facilities.
- 1.1.1 The Council and the Contractor have agreed to enter into this Contract setting out the basis on which the Contractor will provide the Services over the term of this Contract.

OPERATIVE PROVISIONS

2. SCOPE OF SERVICES

2.1 Obligations of Parties

- 2.1.1 The Contractor shall perform the Services in accordance with, and shall fulfil all of its obligations under this Contract.
- 2.1.2 The Council shall make payment to the Contractor as set out in clause 20.1.1 and shall fulfil all of its obligations under this Contract.

2.2 Contract

- 2.2.1 This Contract is a lump sum contract (with provision for reimbursement of expenses and the sharing of certain income from the Services) including a system of incentivised price adjustments based on deductions for failing to reach specified performance standards in accordance with clause 20.6.
- 2.2.2 The Contract employs a 'partnering' style of contract management with regular partnering meetings between the parties to discuss the provision of the Services.

3. TERM

3.1 Term

- 3.1.1 This Contract commences on the Commencement Date and expires on the Expiry Date (**Term**) or earlier termination in accordance with this Contract or by operation of law.

-
- 3.1.2 The Contract shall continue beyond the Expiry Date or its termination for the purpose of giving effect to obligations which arose during its currency or are expressly to be carried out after the Expiry Date or termination.
- 3.2 Services commencement**
- 3.2.1 The provision of the Services will commence on the Services Commencement Date.
- 3.2.2 The parties acknowledge that there are obligations under this Contract which will be required to be performed prior to the Services Commencement Date.
- 3.3 Extension of Term**
- 3.3.1 The Term may be extended beyond the Expiry Date for a further period as specified in Schedule 1 – Reference Schedule in Council's complete discretion (or any other period agreed between the Council and the Contractor) on either the same or amended terms and conditions.
- 3.3.2 The Council may initiate extension of Term discussions with the Contractor at any time but shall initiate such discussions (where appropriate) not later than 12 months prior to the Expiry Date.
- 3.3.3 If Council decides prior to that 12 months period not to offer an extension of the Term to the Contractor, the Council will advise the Contractor of that decision not later than 12 months prior to the Expiry Date.
- 3.3.4 Should the Council wish to extend the Term the Council shall provide a written extension proposal setting out the proposed terms and conditions of the extension.
- 3.3.5 If the Contractor wishes to extend the Contract on the basis tabled by the Council it shall signify accordingly by written notice to the Council within one month of receipt of the Council's proposal.
- 3.3.6 If the Council's extension of Term proposal is not acceptable to the Contractor, the Contractor shall give written notice to the Council as soon as is practicable but not later than one month after receipt of the Council's proposal.
- 3.3.7 If the Council's proposal is not acceptable to the Contractor, the parties may continue further negotiations in an endeavour to determine a mutually acceptable basis for an extension. Either party may discontinue such negotiations at any time.
- 3.3.8 If no agreement is reached as to an extension of Term within three months of the date of Council's proposal the Council shall have the right, in its absolute discretion, to discontinue negotiations and re-tender (or negotiate with others) for the Services.
- 3.3.9 Neither party shall be bound to enter into an agreement to extend the Term.
- 3.3.10 The Contract shall not be extended until both parties have entered into a formal extension of term agreement.

3.3.11 Each party shall bear their own costs in relation to extension of Term negotiations and the documenting and signing of any extension of term agreement.

3.3.12 For the extended Term:

- (a) The Expiry Date shall be amended to the new Expiry Date agreed by the parties pursuant to this clause; and
- (b) clause 3.3.1 shall not apply to the intent that the total Term, including all extensions, shall not exceed the Maximum Term set out in Schedule 1 – Reference Schedule in the aggregate from the Commencement Date.

4. SERVICES

4.1 Services scope

4.1.1 The Services to be provided under this Contract generally comprise the following tasks (which are more particularly set out in Schedule 2 – Services Specifications):

- (a) Management of the specified venues;
- (b) Maintenance of the specified venues; and
- (c) Marketing of the specified venues.

4.2 Provision of the Services

4.2.1 The Contractor shall provide the Services and fulfil its other obligations in accordance with the requirements of this Contract and, other than where inconsistent with the requirements of this Contract, in accordance with the Proposal.

5. CONTRACTOR'S OBLIGATIONS

5.1 Comply with instructions

5.1.1 The Contractor shall comply with all reasonable directions given by the Council Representative in relation to the provision of the Services.

5.1.2 If compliance with any such directions reasonably requires the Contractor to undertake operations which are additional to the Services or to incur costs which are additional to the costs a contractor would reasonably expect to incur in performing the Services as at the date of execution of this Contract, such directions shall be treated as a Variation request under clause 16 of this Contract.

5.2 Comply with legislation and standards

5.2.1 In the provision of the Services the Contractor shall comply with:

- (a) all applicable legislation and regulations;

5.2.2 all consents permits, approvals and requirements of all competent authorities;

- (a) all applicable standards and best industry and trade practice.

5.3 Comply with privacy obligations

5.3.1 Without limiting clause 5.2, where the Contractor has access to, collects and/or holds Personal Information pursuant to or in connection with this Contract, the Contractor shall (and shall ensure its subcontractors):

- (a) comply with the provisions of the Privacy Act 2020 in relation to such Personal Information;
- (b) only collect, store, process, transfer, publish or use such Personal Information to the extent required to provide the Services;
- (c) ensure that all Personal Information collected and/or held by the Contractor or the Contractor's subcontractors is protected against loss and/or unauthorised access, use, modification, disclosure or other misuse;
- (d) do not do anything that would constitute a breach by the Council of the Council's obligations under the Privacy Act 2020.

5.3.2 Should a Privacy Breach occur (or be suspected by the Contractor to have occurred) in relation to Personal Information collected, held or transmitted by the Contractor under or in connection with this Contract, the Contractor shall:

- (a) immediately provide written notification to the Council setting out the details of the Privacy Breach as known at that time;
- (b) take all reasonably practicable steps required to:

5.3.3 identify the person(s) that the Personal Information relates to;

- investigate the causes and effects of the Privacy Breach (including all steps reasonably requested by the Council); and
- prevent the continuation and/or recurrence of the Privacy Breach;
- (b) provide follow up written notification to the Council providing a detailed analysis of the Privacy Breach and its effects and the Contractor's proposal to remedy or mitigate the effects of the Privacy Breach;

and shall not initiate any actions to reduce, mitigate or publish information relating to the Privacy Breach without the prior written approval of the Council.

5.3.4 The parties acknowledge the Council has obligations in relation to a notifiable Privacy Breach as to the Personal Information collected on behalf of Council by the Contractor under section 115 of the Privacy Act 2020. Without limiting the Contractor's obligations and liability in relation to any Privacy Breach under this Contract or at law, the Contractor shall, at the Contractor's cost, take such action as the Council shall reasonably request to comply with the Council's obligations under section 115.

5.3.5 This clause 5.3 does not limit the Contractor's obligations under clause 28.4 of this Contract or at law. Disclosure of Personal Information under clause 28.4 shall be subject to this clause 5.3.

5.3.6 To the extent permitted by law the Contractor shall indemnify the Council against all costs, losses, fines and damages incurred by the Council at law and/or under the Privacy Act 2020 arising due to a breach by the Contractor of its obligations under this clause 5.3.

5.3.7 The Contractor shall take all steps required to comply with any Compliance Notice issued in relation to Personal Information collected and/or held by the Contractor pursuant to this Contract.

5.4 Change in law

5.4.1 Should any changes in applicable legislation, regulations or bylaws result in an increase or decrease in the scope of the Services or cause the Contractor (acting reasonably) to incur costs which are additional to (or reduce) the Contractor's costs reasonably incurred in performing the Services, then such increase or decrease shall be treated as a Variation request in accordance with clause 16 of this Contract.

5.5 Information technology

5.5.1 The Contractor shall take all reasonable steps to protect its electronic information and records from loss, corruption or harm including (without limiting the foregoing):

- (a) preventing unauthorised access or amendment;
- (b) employing appropriate off-site back-up and recovery processes (as are approved by the Council Representative);
- (c) minimising the risk of accidental damage, including the introduction of errors; and
- (d) maintaining compatibility to the Council information systems.

5.5.2 The Contractor shall comply with the Council's information technology rules relating to such access as set out in Schedule 3 – Council Information Technology Requirements.

5.5.3 The Contractor shall ensure that all necessary procedures required to interface with Council's information technology systems for the purpose of data retrieval and conversion, and Council access to data, are carried out in accordance with Council's specific information technology rules as set out in Schedule 3 – Council Information Technology Requirements.

5.6 Policies and procedures

5.6.1 The Contractor shall provide the Services in accordance with the Policies and Procedures as set out in Schedule 4 – Policies and Procedures.

5.6.2 The Council may, on written notification to the Contractor, make amendments to the Policies and Procedures as it shall require during the Term. All such amendments that fall within the scope of the existing Policies and Procedures are included in the Contract Price. Any Policies and Procedures amendment that materially alters the Contractor's costs or overheads shall be treated as a Variation under section 16.

5.7 Performance standards

- 5.7.1 The Contractor shall, in the provision of the Services, meet or exceed the Performance Standards.
- 5.7.2 The Contractor warrants that it possesses the necessary skills, personnel, organisation and equipment to provide the Services in accordance with this Contract and agrees that it shall:
- 5.7.3 exercise all reasonable skill, care and diligence in providing the Services; and
- 5.7.4 provide timely and efficient service to the Council.

5.8 Equipment and materials

- 5.8.1 The Contractor shall provide all equipment, tools, materials and supplies required to perform the Services unless otherwise specified in this Contract.

5.9 Co-operation with other contractors

- 5.9.1 The Contractor shall co-operate with the Council, and other contractors engaged by the Council to provide services that relate to the Services.
- 5.9.2 Council has an ongoing relationship with parties with whom the Contractor will need to interface for the purpose of providing the Services.
- 5.9.3 The Contractor agrees to develop and maintain an effective and harmonious working relationship with third parties with whom the Contractor will need to interface as described in Schedule 2 – Services Specifications. In such cases the Contractor will do everything reasonably necessary to ensure that those employees or subcontractors for whom the Contractor has responsibility will at all times be persons who are appropriate to interface with third parties. The Contractor shall take all reasonable steps within its control to ensure that the Services are at all times co-ordinated with the Council's other contractors.
- 5.9.4 Unless otherwise specified the Contractor shall not be entitled to any additional remuneration with respect to the requirements of this clause 5.9.

5.10 Council's facilities

- 5.10.1 The Contractor and its personnel shall not use any Council facilities unless provided under this Contract or with the prior written consent of the Council Representative.

5.11 Problems

- 5.11.1 If in the course of this Contract any significant problems, issues, complaints, threats to the Contractor or to Council or anything similar shall arise the Contractor shall at the first reasonable opportunity give written notice to the Council Representative that such a situation has arisen.
- 5.11.2 The purpose of such notice shall be to:
 - (a) prompt consultation between the Council and the Contractor as to the effect and management of the problem; and

- (b) enable Council to take such remedial or protective action as Council shall see fit.

- 5.11.3 As well as giving notice to Council, the Contractor will take all reasonable steps itself to remedy the situation which has arisen.

5.12 Collection of money

- 5.12.1 Part of the Services under this Contract is to collect payments on behalf of Council. The Contractor agrees that any such payments made either to the Contractor directly or to the Contractor's subcontractors shall be held by the Contractor on the basis set out in this Contract from the date of receipt of such payments.
- 5.12.2 All payments collected by the Contractor or the Contractor's subcontractors on behalf of the Council shall be held on trust by the Contractor or the Contractor's subcontractors for the Council and shall be promptly deposited in or credited to the Collection Account in accordance with Schedule 5 – Money Collection Requirements on receipt.
- 5.12.3 The Contractor shall ensure that such payments are not deposited into any account other than the Collection Account.
- 5.12.4 The Contractor shall bear the cost of all credit card transaction fees and all other charges (other than bank fees) in respect of the payments collected.
- 5.12.5 The Contractor shall make payments to the Collection Account as provided for in Schedule 5 – Money Collection Requirements and otherwise as directed by Council. All such payments made to the Collection Account shall be made without deduction or set off of any nature (except as required by law).
- 5.12.6 The Contractor shall not be liable for any error or default by the Council's bankers in operating the Collection Account.

5.13 Protection of credit card data

- 5.13.1 The Contractor shall ensure that all data collected and/or stored by the Contractor or the Contractor's subcontractors relating to bank account and credit card details and other personal information in connection with the Services is protected against loss, and/or unauthorised access, use, modification, disclosure or other misuse.

5.14 Accounts and records

- 5.14.1 The Contractor shall maintain and keep up to date full and accurate records and accounts in respect of its performance of the Services.
- 5.14.2 The records and accounts shall include receipts, bank statements, invoices and such records relating to the Services as may be required by the Inland Revenue Department and/or as may be required by applicable accounting and/or management standards and practices from time to time.
- 5.14.3 Such records must be in hard copy form or in readily recoverable electronic form or a combination of both as determined by the Contractor or (where a specific instruction is given) as directed by the Council.

-
- 5.14.4 The Contractor shall ensure that its subcontractors maintain sufficient and up to date records and accounts in respect of the Services.
- 5.14.5 Upon request by the Council, following notice that is reasonable in the circumstances and during normal business hours, the Contractor shall permit any person authorised in writing by the Council Representative to inspect such records and accounts related to the Services as may be required to enable the Council to satisfy itself that the Contractor has complied with the provisions of this Contract.
- 5.14.6 The Contractor shall ensure that Council has access, for inspection purposes under clause 5.14.5, to the records and accounts of its collection subcontractors relating to the provision of the Services.
- 5.14.7 If the Council reasonably considers that there is any material irregularity in the Contractor's records or the records of the Contractor's subcontractors, the Council may require the Contractor or the Contractor's subcontractors to have its records and accounts audited by an independent auditor nominated by the Council at the Council's expense, provided however that if such independent auditor discovers some material irregularity in the Contractor's or the Contractor's subcontractor's records, the Contractor shall, without prejudice to any of the Council's other rights and remedies, pay such auditor's reasonable costs.
- 6. CONTRACTOR'S PERSONNEL**
- 6.1 Personnel**
- 6.1.1 The Contractor shall provide sufficient qualified, experienced and competent staff to enable it to meet its obligations under this Contract. Personnel utilised in the provision of the Services shall be as detailed in the Proposal.
- 6.1.2 The Contractor shall ensure that sufficient technical and secretarial support personnel are available to ensure the timely completion and submission of all reports and other information required to be provided under this Contract.
- 6.2 Site procedures**
- 6.2.1 The Contractor shall ensure that all personnel comply with the Council's security procedures, building regulations, health and safety requirements and staff and personnel codes of conduct applicable to Council sites or premises accessed by the Contractor's personnel in the provision of the Services set out in Schedule 4 – Policies and Procedures and/or as notified by the Council from time to time. Where no conditions of access are specified the Contractor's personnel shall undertake their tasks in a proper, diligent, and competent manner having due regard for the Council's premises, personnel and the confidentiality requirements of this Contract.
- 6.3 Staff presentation and identification**
- 6.3.1 The Contractor must ensure that all staff and subcontractors performing the Services are appropriately attired.
- 6.3.2 The Contractor shall ensure all staff employed in the provision of the Services have and demonstrate high standards of:

- (a) behaviour – show courtesy and respect to customers and members of the public;
- 6.3.3 demeanour – friendly and helpful at all times;
- (a) language – good command of the English language;
- 6.3.4 verbal and written communication skills – effective, clear and unambiguous;
- (a) appearance – neat and tidy dress and general appearance; and
- (b) honesty and trustworthiness.

6.4 Public interface

- 6.4.1 The Contractor shall ensure that all personnel that are involved with customers or who work in the public arena and when providing the Services:
 - (a) communicate and deal with members of the public in a polite and businesslike manner;
- 6.4.2 do all things reasonably possible to foster good relationships between the Council and the public;
 - (a) are skilled and competent in customer relationship management;
- 6.4.3 wear an appropriate uniform which has been approved by the Council (such approval not to be unreasonably withheld); and
 - (a) have suitable identification including the Contractor's name and the person's name.

6.5 Removal of personnel

- 6.5.1 The Contractor shall remove from the provision of the Services any personnel that materially misconducts themselves or acts in such a way as to constitute a danger to any person, reflect adversely on the public image of Council or is negligent or incompetent in the performance of duties. Any such person shall not be utilised in the provision of the Services without the Council's prior written approval.

6.6 Key Personnel

- 6.6.1 The Contractor shall utilise the Key Personnel in the positions nominated.
- 6.6.2 The Contractor shall not remove Key Personnel from the Services, vary the duties of Key Personnel as they specifically relate to this Contract, or replace any Key Personnel nominated for the Services without the prior written approval of the Council. Any replacement of Key Personnel proposed by the Contractor shall require the Council's written approval (such approval shall not be unreasonably withheld or delayed). Wherever possible the Contractor shall allow for an appropriate period of overlap to prevent any loss of continuity in performance of the Services. All costs of replacing assigned personnel including the costs of information transfer between the Contractor's personnel shall be borne by the Contractor.

- 6.6.3 The Council shall be entitled on reasonable grounds to give notice (including reasons) to the Contractor requiring that any of the Key Personnel be no longer employed in providing the Services provided that where practicable, before giving that notice, the Council has advised the Contractor of its concerns and has given the Contractor reasonable opportunity to address them. The Contractor shall take all necessary action to comply with such request.

7. CHILDREN'S ACT

7.1 Compliance with Children's Act and policies

- 7.1.1 The Contractor and the Council acknowledge that the Services include services that are 'regulated services' under Part 3 of the Children's Act 2014 (**Regulated Services**).
- 7.1.2 The Contractor shall:
- (a) comply with its obligations under the Children's Act 2014 in relation to all such Regulated Services; and
- 7.1.3 provide such Regulated Services in accordance with all policies, procedures and guidelines relating to the provision of Regulated Services as are set out in Schedule 4 – Policies and Procedures as shall be modified by notice from the Council from time to time.

7.2 Safety checks

- 7.2.1 For the purposes of this clause the terms 'Children's Worker', 'Safety Checked' and 'Core Worker' each have the meaning set out in the Children's Act 2014.
- 7.2.2 Without limiting clause 7.1.2, the Contractor shall:
- (a) ensure that all Children's Workers involved in the provision of the Regulated Services have been Safety Checked (and on an ongoing basis periodically Safety Checked) as required by Part 3 of the Children's Act 2014;
- 7.2.3 provide such evidence to the Council as shall be reasonably required by the Council that all such safety checks have been completed;
- (a) not engage or use any person who is prohibited under section 28 of the Children's Act 2014 as a Core Worker and otherwise comply with all obligations in relation to any such persons as set out in section 28 of the Children's Act 2014.

8. CONTRACTOR PLANS

8.1 Transition Plan

- 8.1.1 The Contractor shall prepare a draft Transition Plan in accordance with its Proposal and the requirements of this Contract. The Contractor shall submit the draft Transition Plan to the Council Representative for approval (such approval shall not be unreasonably withheld or delayed) not later than 20 Working Days prior to the Services Commencement Date.
- 8.1.2 The Transition Plan shall detail the measures required to ensure an efficient and timely transfer of the Services to the Contractor.

8.1.3 The approved Transition Plan shall be the Transition Plan for the purposes of this Contract.

8.1.4 The Contractor shall comply with the Transition Plan.

8.2 Risk Management Plan

8.2.1 The Contractor shall prepare a draft Risk Management Plan in accordance with its Proposal and the requirements of this Contract. The Contractor shall submit the draft Risk Management Plan to the Council Representative for approval (such approval shall not be unreasonably withheld or delayed) not later than 20 Working Days prior to the Services Commencement Date.

8.2.2 The Risk Management Plan shall include a risk assessment for the provision of the Services and detail the Contractor's risk management procedures and plans as required to properly manage all identified risks.

8.2.3 The approved Risk Management Plan shall be the Risk Management Plan for the purposes of this Contract.

8.2.4 The Contractor shall comply with the Risk Management Plan.

8.3 Quality assurance and Quality Plan

8.3.1 The Contractor shall have and comply with a reasonable quality assurance process.

8.3.2 The Contractor shall submit a Quality assurance plan (Quality Plan) in accordance with the requirements of this Contract and its Proposal to the Council Representative for approval (such approval shall not be unreasonably withheld or delayed) not later than 20 Working Days prior to the Services Commencement Date.

8.3.3 The Quality Plan shall detail the following:

- (a) compliance with all requirements of this Contract;
- (b) compliance with the Services quality and other requirements, including but not limited to:
 - reliability and timeliness in provision of the Services;
 - overall management of the provision of the Services;
 - customer service and public relations;
 - compliance with confidentiality requirements;
 - accuracy in all documentation and verbal communications;
 - complaints procedures;
 - procedures protecting against theft, fraud, employee dishonesty;
 - monitoring and audit requirements;

- reporting procedures; and
- (c) compliance with all health and safety procedures.

8.3.4 The Contractor shall comply with the approved Quality Plan.

9. HEALTH AND SAFETY

9.1 Compliance with Health and Safety at Work Act 2015 (HSW Act)

9.1.1 The Contractor will comply with its obligations and ensure that its subcontractors comply with their obligations under the HSW Act and all regulations made under the HSW Act and all approved codes of practice under the HSW Act.

9.2 Health and safety plan

9.2.1 The Contractor shall prepare a written health and safety plan (Safety Plan) for the Contract. The Safety Plan will address how the Contractor will comply with the HSW Act and its health and safety obligations under this Contract. The Contractor will maintain the Safety Plan and ensure that it is comprehensive and takes into account any changes in the HSW Act and any regulations made under the HSW Act. Hazards associated with the Services known to the Council which a competent contractor may not reasonably be taken to know of are listed in Schedule 2 – Services Specifications.

9.2.2 The Contractor will provide a copy of its Safety Plan to the Council Representative not later than 20 Working Days prior to the Services Commencement Date. The Contractor will provide any updates or revisions of the Safety Plan to the Council Representative within 10 Working Days of making any such changes.

9.2.3 The Contractor shall incorporate the following into its Safety Plan together with all other matters that are required to be covered in the plan in order to comply with its obligations under this Contract:

- (a) the prior identification of hazards and assessment of risks arising in connection with the Services and the steps proposed to eliminate or minimise risks so far as is reasonably practicable;
- (b) procedures for the identification of new hazards and management of risks arising during the carrying out of the Services;

9.2.4 procedures for the management of safety in relation to the Services and this Contract generally, including the allocation of responsibility within the Contractor's personnel;

9.2.5 procedures for ensuring that the Contractor contracts with subcontractors having the required health and safety competence, that all subcontractors have proper safety plans and will comply with the requirements of the HSW Act and this Contract;

- (a) the need for and provision of correct protective equipment and training and the use of protective equipment if necessary;
- (b) standard work procedure methodologies to eliminate or minimise risks to health and safety arising from the delivery of the services;

- (c) procedures for the training and supervision of the Contractor's personnel engaged in carrying out the Services;
- (d) procedures for consultation, co-operation co-ordination and communication with each other Person having duties as a PCBU in relation to the provision of the Services
- (e) the process for monitoring the Contractor's work to ensure compliance with health and safety procedures and with the safety requirements of the HSW Act and this contract;
- (f) engagement with workers and the promotion of health and safety principles and encouraging of commitment to health and safety by the Contractor's personnel;
- (g) notification of notifiable events and the keeping of records in relation to notifiable events.

9.2.6 The Contractor shall implement and comply with its Safety Plan.

9.3 HSW requirements

9.3.1 The Contractor shall comply with all health and safety protocols and instructions of Council and/or the operator of any Council facilities or sites accessed by the Contractor's personnel in the provision of the Services.

9.3.2 The Contractor shall appoint a single person as the Safety Officer for the Services. The Safety Officer shall be the primary point of contact on all health and safety matters. The Contractor will give written notice of the name and contact arrangements for the Safety Officer to the Council Representative.

9.3.3 The Contractor will notify (verbal confirmed in writing) the Council promptly after the occurrence of any of the following:

- (a) a notifiable accident or an incident;
- (b) a significant hazardous situation of which the Contractor becomes aware; and
- (c) a provisional improvement notice, improvement notice, prohibition notice, abatement notice, non-disturbance notice or suspension notice, warning, notice of proceedings or other formal notification under the HSW Act is issued to the Contractor in relation to the provision of the Services. The Contractor shall promptly provide to the Council copies of:
 - all such notices received; and
 - all enforceable undertaking provided by the Contractor under the HSW Act.

9.3.4 Where the Contractor has sole possession of all or part of any Site, the Contractor shall, for the purposes of s.37(1) of the HSW Act, be the PCBU who manages or controls that Site or part of the Site.

9.3.5 For the purposes of s.38(1) of the HSW Act and in relation to the provision of the Services the Contractor is the PCBU who manages or controls the fittings, fixtures and plant (as the term 'plant' is defined in the HSW Act) on the Site(s).

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- 9.3.6 The Contractor is the PCBU who manages or controls all other fittings, fixtures and on Site and has the primary duty as to the matters covered in s.38(1) in relation to such fittings, fixtures and plant.
- 9.3.7 The Contractor will consult with each other Person that has duties as a PCBU in relation to the provision of the Services and/or any Site where the Services are provided.
- 9.3.8 The Contractor shall:
- (a) maintain a register of accidents and serious harm;
- 9.3.9 investigate accidents and identify their cause;
- (a) ensure that all persons under its control are appropriately supervised; and
- 9.3.10 provide written notification (and copy to the Council) to the regulator of all notifiable events in accordance with section 56 of the HSW Act.
- 9.3.11 The Contractor shall give to the Council a copy of any report that it is required to make to a public authority on any accident which is associated with the provision of the Services and results in serious harm to any person.
- 9.3.12 The Contractor will implement and carry out an audit and inspection regime as shall be required to ensure compliance by all its personnel with the Contractor's Safety Plan and compliance with the Contractor's health and safety obligations under this Contract.
- 9.3.13 The Council may itself or through an agent audit the Contractor's compliance with its health and safety procedures and obligations under the HSW Act and this Contract.
- 9.3.14 The Contractor will co-operate with the Council in any audit undertaken by the Council or its agent(s). The Contractor will allow the Council or its agent access to all aspects of the provision of the Services and/or to any Site on which the Services are carried out, to carry out such audits.
- 9.3.15 The Council may require the Contractor to cease the provision of the Services (or any part of the Services) where in the Council's reasonable view the continued carrying out of the Services would (or be likely to) constitute a breach of the HSW Act, the health and safety provisions in this Contract or be a danger to persons or property.

10. SUBCONTRACTING

10.1 Subcontractors

- 10.1.1 The Contractor may only engage subcontractors as have been approved in writing by the Council (such approval shall not be unreasonably withheld or delayed and may be granted with conditions) to carry out a material part of the Services under this Contract. The Contractor shall not subcontract all of the Services to be provided by it under this Contract. The Contractor will be responsible for the payment of the subcontractors' payments.
- 10.1.2 The Council may require, as a condition of its approval of a subcontractor proposed by the Contractor for significant portions of the Services, that the form

of subcontract be approved by the Council. Any contract with a subcontractor that has been approved by the Council shall not be varied in any material way or terminated without prior written consent of the Council, which shall not be unreasonably withheld or delayed.

- 10.1.3 The Contractor acknowledges that upon the termination of this Contract, the Council may negotiate with any of the Contractor's subcontractor directly for the provision of further services.

11. REPORTING

11.1 Reporting requirements

- 11.1.1 The Contractor shall provide all the reports required by Council as detailed in Schedule 7 – Reporting.
- 11.1.2 The Contractor shall keep all other reports and records that the Council may reasonably consider are required in relation to the Services and deliver these reports to the Council at the time(s) and frequency specified by the Council. Any additional reports not contained in Schedule 7 – Reporting shall be treated as a Variation in accordance with section 16 of this Contract.
- 11.1.3 All reports shall be accurate and comprehensive and provided within the time requirements set out in Schedule 7 – Reporting.

12. AUDIT

12.1 Contractor self audit

- 12.1.1 The Contractor is responsible for monitoring the quality of the Services provided under this Contract and its compliance with the requirements of this Contract. The Council's primary focus will be on ensuring that the Contractor carries out this self-monitoring and accurately reports the results to Council in accordance with Schedule 7 – Reporting.
- 12.1.2 The objective of this self-monitoring regime is to implement a continuous improvement approach, taking remedial action where service quality deficiencies have occurred.

12.2 Council audits

- 12.2.1 Council may monitor and audit the performance of the Contractor from time to time. An audit may take the form of spot checks and/or a more formal audit. The objective of such audit shall be to ascertain the level of compliance by the Contractor with the requirements of this Contract, with a particular focus on the quality of the Services and compliance with legislation, consents and standards.
- 12.2.2 The Contractor shall co-operate with Council and its auditors to provide access to such information, premises and employees of the Contractor and its subcontractors as shall be reasonably necessary to facilitate such audits.
- 12.2.3 The Council will give the Contractor reasonable notice if a formal audit is to be undertaken.

- 12.2.4 The Council Representative (or any person(s) authorised in writing by the Council Representative) may at all times access and inspect the Contractor's facilities, vehicles, plant and equipment, the Contractor's records and the provision of the Services to audit the Contractor's compliance with the requirements of this Contract.

13. CONFLICTS OF INTEREST

13.1 Conflict of Interest management

- 13.1.1 The Contractor must:
- 13.1.2 avoid all possible conflicts of interest whether direct or indirect and must disclose in writing to Council any actual or potential conflict of interest as soon as it arises; and
- 13.1.3 in the provision of the Services comply with all reasonable policies or protocols relating to conflict of interest disclosure and management as notified by the Council.
- 13.1.4 The Contractor and the Council shall consult as to the management of any conflicts of interest that arise.
- 13.1.5 The Contractor must do all reasonable things as may be required of it by the Council to remove or mitigate any actual or potential conflicts of interest whether direct or indirect.
- 13.1.6 If the Contractor is unable or unwilling to take the action(s) to remove or mitigate any such conflict required by the Council pursuant to clause 13.1.5 within such reasonable time period as is notified by the Council then the Council may by written notice (and in the Council's complete discretion) either:
- (a) terminate this Contract; or
 - (b) remove the applicable portion of the Services from the Contract. In that event the Council shall be entitled to deduct or withhold from the Contract Price payments due to the Contractor the sum necessary to purchase the alternative supply.

14. COUNCIL OBLIGATIONS

14.1 Information and material

- 14.1.1 The Council shall ensure that the information and other material set out in Schedule 9 – Council Information and Facilities is provided promptly and accurately to the Contractor at the times set out in that Schedule.

14.2 Council facilities

- 14.2.1 The Council shall make the facilities set out in Schedule 9 – Council Information and Facilities (if any) available to the Contractor at the times and in the manner set out in that Schedule. The Contractor's use of and/or access to such facilities shall be subject to the conditions set out in the Schedule or such other conditions that Council shall reasonably require.

15. INTELLECTUAL PROPERTY AND CONTRACT INFORMATION

15.1 Intellectual Property

- 15.1.1 Each party shall continue to own Intellectual Property held by it prior to the commencement of this Contract.
- 15.1.2 The Council shall own the Intellectual Property in systems and procedures developed by the Contractor for the provision of the Services under this Contract.
- 15.1.3 The Council may utilise the systems and procedures used by the Contractor for the provision of the Services under this Contract in the carrying out of the Services after the Expiry Date or termination of this Contract.
- 15.1.4 The Contractor hereby grants a non-exclusive to the Council, on early termination of this Contract for default by the Contractor, to utilise all Intellectual Property utilised or produced by the Contractor in relation to the Services (but for the avoidance of doubt excluding the computer system, information technology and software used by the Contractor in providing the Services). The licence granted shall benefit the Council, its agents or contractors in relation to the Services. The Council, its agents or contractors shall only use such Intellectual Property for the carrying out of the Services or any replacement Services and for up to 12 months from such early termination.
- 15.1.5 The Contractor warrants that it holds the copyright in all Intellectual Property utilised or provided as part of the Services and has the power to grant the non-exclusive licence referred to in this clause.
- 15.1.6 The Contractor warrants that the Intellectual Property utilised or provided by the Contractor in the provision of the Services does not infringe the Intellectual Property rights of any other person.

15.2 Intellectual Property indemnity

- 15.2.1 The Contractor will indemnify the Council against and will at its cost defend or settle any claim, suit, action or proceeding (collectively called 'Action') brought against the Council to the extent that the Action is based on a claim that the provision of the Services by the Contractor or Council's use of any Intellectual Property provided by the Contractor under this Contract constitutes a breach of any patent, copyright, trade secret or other proprietary right.
- 15.2.2 The Council shall fully co-operate with the Contractor in defending or settling the Action and shall make its employees available to give statements, advice and evidence as the Contractor may reasonably request.
- 15.2.3 The Council shall notify the Contractor promptly in writing of any Action and shall give all necessary authority and information required for the conduct of the defence or settlement of the Action.
- 15.2.4 The Contractor shall consult with the Council as to the conduct of any Action and all negotiations for its settlement or compromise and shall not settle or compromise any Action without the prior written approval of the Council.

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- 15.2.5 The Contractor will reimburse the Council's reasonable out of pocket expenses incurred in assisting the Contractor.
- 15.3 Contract Information**
- 15.3.1 The Contract Information is owned by the Council.
- 15.3.2 The Contractor may use Contract Information for the purposes of this Contract only.
- 16. VARIATIONS**
- 16.1 Change to scope of Services**
- 16.1.1 A Variation is:
- 16.1.2 any increase, decrease or addition to the Services provided any additional services are within the type of services offered generally by the Contractor;
- (a) any change in the way in which the Services are to be provided by the Contractor; and/or
- (b) any change in the timing of the provision of the Services.
- 16.1.3 The Council Representative may request the Contractor to provide a submission as to a proposed Variation.
- 16.1.4 As soon as reasonably practicable after receiving such a Variation submission request the Contractor shall submit the following to the Council Representative:
- (a) the cost of the Variation;
- (b) where not specified in the request, the commencement date for the Variation;
- 16.1.5 such other supporting information and/or conditions as shall be reasonably required by the Council or that the Contractor reasonably requires to be included in the Variation.
- 16.1.6 The Contractor shall be entitled to reasonable costs and expenses in providing a Variation submission.
- 16.1.7 The Contractor shall be entitled to present a Variation request to Council. The Contractor shall, when submitting such a request, provide the information required under clause 16.1.4. The preparation of any such submission shall be at the Contractor's cost.
- 16.1.8 The Council is not obliged to proceed with any Variation sought under clauses 16.1.1 and 16.1.7. If the Variation is to proceed the Council Representative will notify the Contractor in writing of that decision and will provide a written Variation Order.
- 16.1.9 The Council Representative may instruct a Variation, without the Contractor having to supply the information required under clause 16.1.4. Such notice shall be referred to as a Mandatory Variation and shall be instructed by a Variation Order.

16.1.10 The Contractor shall comply with and carry out Variation ordered under clause 16.1.8 and Mandatory Variations under clause 16.1.9.

16.1.11 The Contract Price shall be adjusted for a Variation ordered under clause 16.1.8 and Mandatory Variations under clause 16.1.9 as set out in Schedule 8 – Payment Schedule.

16.2 Variation Orders

16.2.1 The Contractor shall not vary the Services without an instruction in writing from the Council Representative unless the Council Representative has verbally advised that the Variation is required as a result of an emergency. In that instance the Contractor will carry out the Services required by the Variation. In an emergency situation, the Council Representative will provide a written Variation Order within five Working Days of the verbal instructions.

16.2.2 Where a direction is given by Council Representative which is not in writing or is not expressly stated to be a Variation or a matter to be treated as a Variation that the Contractor considers is a Variation (or a matter to be treated as a Variation), it shall, within 15 Working Days of receiving the direction, give written notice to the Council Representative that it considers the direction to entitle the Contractor to a Variation claim. Unless the Council Representative, by written notice within a reasonable time, rejects the Contractor claim, it shall be treated as if it was a Variation which shall be formalised as provided for in clause 16.2.1. If the Contractor does not give such written notice within the required time, the direction shall not be a Variation.

17. COMMUNICATIONS

17.1 Contractor Representative

17.1.1 The Contractor shall at all times during the Term appoint a competent person acceptable to the Council to be the Contractor Representative. As at the date of this Contract the Contractor Representative is the person referred to in Schedule 1 – Reference Schedule.

17.1.2 The Contractor Representative shall be authorised to receive all directions and instructions in connection with provision of the Services on behalf of the Contractor.

17.1.3 The Contractor Representative or substitute person nominated by the Contractor Representative shall be contactable by the Council at all reasonable times (including by telephone, mobile telephone, pager or other suitable communication device).

17.1.4 The Contractor may appoint a replacement Contractor Representative with the Council's written consent (such consent will not be unreasonably withheld or delayed).

17.1.5 The Council may at any time by notice in writing to the Contractor object on reasonable grounds to the continuance of any person as the Contractor Representative. The Council's notice shall state the grounds upon which the objection is based. The Contractor shall, subject to clause 17.1.4, as soon as practicable appoint a replacement person to that position.

17.2 Council Representative

- 17.2.1 The Council shall at all times during the term of this Contract appoint a competent and authorised representative to be the Council Representative under this Contract. As at the date of this Contract the Council Representative is the person referred to in Schedule 1 – Reference Schedule.
- 17.2.2 The Council Representative is authorised by the Council to give and receive all directions and instructions in connection with the Services on behalf of the Council.

17.3 Assistant Council Representative

- 17.3.1 The Council Representative may, by written notice to the Contractor, appoint one or more Assistant Council Representatives. An Assistant Council Representative may exercise such Council Representative powers as the Council Representative shall specify.

17.4 Communications

- 17.4.1 All contract administration and higher level communications between the Contractor and the Council shall, as is practicable and subject to any express contrary provision in this Contract, be between the Council Representative and the Contractor Representative. The parties acknowledge the need for discussion and dialogue and that the parties' Representatives will regularly talk together. However material and significant advice, communications or instructions should be recorded in writing (email is acceptable for routine communications).

17.5 Liaison meetings

- 17.5.1 The Contractor Representative and the Council Representative shall engage in regular monthly partnering meetings or at any other time reasonably requested by the Council Representative to review the Services and discuss any issues relating to the performance of the Services and Council's requirements.

18. PARTNERING

18.1 Partnering philosophy

- 18.1.1 'Partnering' is a method of operating a contractual relationship to promote prompt and constructive communication and a problem solving approach between the parties. Partnering has four primary objectives:
- 18.1.2 ensuring that the contract operates smoothly;
- (a) facilitating open 'no surprises' contract communication;
 - (b) exploring opportunities to deliver mutual benefits to the parties under this Contract; and
 - (c) facilitating the prompt and constructive resolution of disputes.

18.2 Partnering obligations

- 18.2.1 The parties agree to implement partnering in this Contract in accordance with Schedule 11 – Partnering.

18.3 Partnering and the Contract

- 18.3.1 The use of partnering techniques and the adoption of the partnering procedures as promoted in this Contract does not in any way imply any fiduciary obligations, partnership or joint venture between the parties.
- 18.3.2 The partnering obligations set out in Schedule 11 – Partnering and any partnering charter and protocol developed by the parties are subordinate to the provisions of this Contract and shall not be construed as overriding, amending or waiving any contractual rights or obligations.

19. TRANSITION ON CONTRACT COMING TO AN END

19.1 Handover Report

- 19.1.1 On termination of this Contract for any reason the Contractor shall provide a Handover Report to Council. The report shall contain all the details as set out in Schedule 10 – Handover Report Requirements and any other information reasonably required by Council as directed by the Council Representative.
- 19.1.2 The Contractor shall bear the cost of the Handover Report if termination arises as a result of default by the Contractor or on expiry of the Contract. The Council shall bear the cost of the Handover Report if termination occurs as a result of default by Council or as a result of a Force Majeure Event.

19.2 Return of information and data

- 19.2.1 On termination of this Contract for any reason:
- (a) the Contractor shall immediately provide to the Council all Contract Information held by the Contractor and any other property or equipment of the Council's in the possession or control of the Contractor in relation to this Contract;
 - (b) the Contractor may retain a copy of the Contract Information. Such data and information shall remain confidential and shall not be released to any third party without the written approval of the Council; and
- 19.2.2 if the Council asks, the Contractor shall also supply reasonable comment or explanation in connection with the Contract Information that is reasonably required to provide the Services. Such comment or explanation shall be supplied within a reasonable time of the request. Other than when the Contract is terminated due to the default of the Contractor, the Contractor's reasonable expenses in providing such comment or explanation shall be payable by the Council.

19.3 Cooperation on termination

- 19.3.1 On termination of this Contract for any reason, and in order to provide a seamless transition of the Services, the Contractor shall co-operate fully with the Council and/or any incoming contractor engaged by the Council to perform the Services or any part of the Services.

- 19.3.2 The Contractor shall co-ordinate with the Council and/or the incoming contractor in connection with the transfer of data as is required (if any) from the Contractor's system to the Council's system or the system of the incoming contractor, whether prior to or after the termination date.

19.4 Council logo

- 19.4.1 On termination of this Contract for any reason the Contractor shall:
- (a) at the Council's direction, either return to the Council or destroy all stationery and other items which include the Council's logo or other Council corporate identity held by the Contractor; and
 - (b) cease using any Council logo or corporate identity and remove such logo and corporate identity from all Contractor vehicles, plant and equipment and personnel uniforms.

19.5 Accounting for moneys held

- 19.5.1 On termination of this Contract for any reason the Contractor shall ensure that all moneys collected on behalf of Council either by the Contractor directly or by the Contractor's subcontractors are held to Council's account in accordance with clause 5.12.2 and paid out in accordance with Council's instructions without deduction or set off (except as required by law).

20. PAYMENTS AND CHARGES

20.1 Payment for Services

- 20.1.1 The Council shall pay the Contract Price in accordance with Schedule 8 – Payment Schedule.
- 20.1.2 Payments may be withheld or delayed if insufficient information is supplied to enable a claim to be verified. No interest pursuant to clause 20.11.1 will be paid on payments withheld under this clause.
- 20.1.3 Contractor income from certain elements of the Services shall be shared between the Council and the Contractor as specified in Schedule 2 – Services Specifications and Schedule 8 – Payment Schedule.

20.2 Goods and Services Tax (GST)

- 20.2.1 In addition to the Council's obligation to pay the Contract Price, the Council agrees to pay GST to the Contractor for the Services supplied under this Contract that are a taxable supply under the GST Act.
- 20.2.2 GST will be payable by the Council on the dates payment for the relevant supply is due under clause 20.1.1 provided the Contractor has provided all required Taxable Supply Information.

20.3 Taxable Supply Information

- 20.3.1 When submitting a claim, the Contractor shall ensure that it provides Taxable Supply Information for all parts of the claim subject to GST under the GST Act in accordance with section 19E of the GST Act. Pursuant to section 19E), the Taxable Supply Information shall include the following details:

- (a) the words 'Taxable Supply Information' in a prominent place;
- (b) the name and registration number of the supplier;
- (c) the name and address of the recipient;
- (d) the date of the supply;
- (e) a description of the goods or services supplied; and
- (f) either:
 - the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for the supply; or
 - where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of that tax.

20.4 Invoice content

- 20.4.1 Contractor invoices must include the invoice content set out in Schedule 8 – Payment Schedule (if any).

20.5 Taxes and schedular deductions

- 20.5.1 The Council shall not (except as set out in this Contract) be liable for any corporate, personal, schedular or withholding taxes or other taxes and levies in respect of (or in respect of any payment to) the Contractor, its employees or subcontractors under this Contract. The Contractor shall indemnify the Council for any claim upon it by the Inland Revenue Department for any such corporate, personal, schedular or withholding taxes or other taxes or levies which should have been paid in respect of the Contractor, its employees or subcontractors under this Contract.
- 20.5.2 The Contractor warrants that it is a New Zealand resident for the purposes of the New Zealand schedular payments tax regime and that the Council is not required to make schedular tax deductions under that regime in relation to payments made under this Contract.

20.6 Adjustments for performance standards failure

- 20.6.1 The Contract Price shall be adjusted in accordance with the Contractor's levels of achievement of the Performance Standards. The adjustments shall be in accordance with Schedule 6 – Performance Standards.
- 20.6.2 The parties acknowledge that the Contract Price reductions set out in Schedule 6 – Performance Standards reflect the diminished value of the Services to the Council where the Contractor has failed to achieve the Performance Standards.
- 20.6.3 The Council's right to adjust the Contract Price under this clause does not limit the Council's rights and remedies under the remaining parts of this Contract or at law. In particular the Contract Price adjustments are not in substitution for and do not limit the Council's rights to recover damages arising from any breach of the Contractor's obligations under this Contract.

20.7 Non-payment for Services failure

- 20.7.1 The Council may withhold payment under this Contract if and only to the extent to which:
- 20.7.2 the Contractor has either in providing any Services, failed to comply with the requirements set out in this Contract or has failed to provide any Services; and
- (a) such failure is not directly attributable to any act or omission by the Council under this Contract.
- 20.7.3 The amount(s) withheld under this clause shall not exceed the value of the service which the Contractor failed to perform.
- 20.7.4 Clauses 20.7.1 and 20.7.3 do not limit the Council's further remedies under this Contract or at law.

20.8 Reimbursement of expenses

- 20.8.1 The Contract Price includes all expenses incurred in connection with the Services except reimbursement expenses payable by the Council as set out in Schedule 8 – Payment Schedule.
- 20.8.2 Council shall pay reimbursement expenses in accordance with Schedule 8 – Payment Schedule plus GST (if any).
- 20.8.3 Any purchase by the Contractor of goods or services, materials or equipment in connection with the Services not expressly authorised by the Council Representative as a reimbursement expense shall be a cost to the Contractor.

20.9 Escalation

- 20.9.1 The Contract Price shall be adjusted during the Term in accordance with Schedule 8 – Payment Schedule.

20.10 Set off

- 20.10.1 The Council may and is hereby authorised by the Contractor to deduct any moneys
- 20.10.2 payable by the Contractor to the Council from any moneys payable by the Council to the Contractor under this Contract.

20.11 Interest

- 20.11.1 Each party shall pay interest to the other on any amount due and unpaid from the due date for payment until payment is actually made. Interest shall be payable at a rate of 4% per annum over the receiving party's overdraft rate adjusted quarterly.

21. INDEMNITY AND LIABILITY

21.1 Contractor indemnity

- 21.1.1 The Contractor shall be liable for and shall indemnify the Council in respect of any damages, costs, loss or expenses incurred by the Council as a result of any

breach by the Contractor of any of its obligations or warranties under this Contract, or as a direct result of any other negligent or fraudulent error or omission on the Contractor's part in the provision of the Services. The Council's right to make any claim against the Contractor whether under this indemnity or otherwise, will not be affected by the Council being an insured party under the same insurance policy as the Contractor.

- 21.1.2 The Contractor's indemnity shall cover, to the extent permitted by law, all fines or other liability imposed on Council resulting from the Contractor's breach of any law.

21.2 Council Indemnity

- 21.2.1 The Council shall be liable for and shall indemnify the Contractor in respect of any damages, costs, loss or expenses incurred by the Contractor as a result of any breach by the Council of any of its obligations under this Contract. The Contractor's right to make any claim against the Councils whether under this indemnity or otherwise, will not be affected by the Contractor being an insured party under the same insurance policy as the Councils (or any Council).

21.3 Liability limitation

- 21.3.1 Neither party will under any circumstances be liable under the law of tort, contract or otherwise or under any indemnity for any loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with this Contract.
- 21.3.2 The maximum amount of damages or indemnity payable by one party to the other under this Contract whether for direct or indirect losses or whether under the law of contract, tort or otherwise is limited in total to the amount stated in Schedule 1 – Reference Schedule.
- 21.3.3 The liability limitation set out in clause 21.3.2 shall not apply to a party's liability under this Contract for:
- (a) damage to the property of the other party or any third party;
 - (b) fraud;
 - (c) an obligation under this Contract to pay any amount due and owing under this Contract; or
 - (d) personal injury or death.
- 21.3.4 Notwithstanding clause 21.3.2, where the level of any insurance policy that the Contractor is required to effect and maintain under the Contract is greater than the maximum aggregate liability of the Contractor pursuant to clause 21.3.2 and such policy responds to a loss (or would have responded but for any failure to claim and/or breach of the relevant insurance policy by the Contractor, or due to the failure by the Contractor to maintain an insurance policy) the Contractor's liability in respect of such loss shall be increased to the level of cover under the applicable insurance policy.

21.4 Indemnities and liability limitations continue

- 21.4.1 The indemnities and liability limitations contained in this clause 21 continue in full force and effect after the termination or expiry of this Contract for any reason.

22. REPRESENTATIONS AND WARRANTIES

22.1 Entry into Contract

- 22.1.1 The Contractor warrants and agrees as follows:

- (a) It has entered into this Contract on the basis of its own judgment and its own evaluation and not on the basis of any representation or warranty which may have been made by or on behalf of Council other than such representations and warranties as are explicitly included in this Contract.
- (b) It may not bring or maintain any claim or action alleging misrepresentation or breach of warranty unless the representation or warranty upon which such claim or action is founded is included in this Contract.
- (c) It has taken such advice from advisors independent of the Council as it considers necessary and where no advice has been taken it acknowledges that it considers advice not to be necessary.

22.2 Contractor's general warranties

- 22.2.1 The Contractor warrants and agrees as follows:

- 22.2.2 The Contractor is a duly incorporated company under the laws of New Zealand, has the power to enter into and perform this Contract and has taken all necessary action to:

- authorise the entry into and performance of its obligations under this Contract;

- 22.2.3 ensure that its obligations under this Contract are legal, valid and binding; and

- make this Contract admissible in evidence in New Zealand.

- (b) All representations whether oral or in writing made on its behalf preparatory to this Contract being entered into (including as part of the Contractor's tender submission) are true and correct.

- 22.2.4 There is no action, suit, litigation, arbitration, administrative proceeding or claim current, pending or to the knowledge of the Contractor threatened which could materially adversely affect its financial condition, its business operations or its ability to fulfil its obligations under this Contract.

- 22.2.5 All Services will be provided in a competent manner and in accordance with best industry practice.

- 22.2.6 The personnel supplied to undertake the Services will have all the requisite skills and expertise, will carry out their duties with due care and skill and that all obligations will be completed to a high quality and standard in accordance with best industry practice.

22.2.7 All its obligations under this Contract will be carried out in accordance with all laws, regulations, standards and codes of practice in force in New Zealand.

22.2.8 All information contained in the Contractor's Proposal is true, accurate and complete in all material respects and is not misleading.

23. INSURANCE

23.1 Public liability insurance

23.1.1 The Contractor shall effect public liability insurance, for at least the sum (and having an excess or deductible not exceeding the sum) set out in Schedule 1 – Reference Schedule for any one claim or series of claims arising out of the same occurrence with no limit on the total number of occurrences payable.

23.1.2 All public liability insurance effected by the Contractor must cover liability for loss or damage to any property, injury or death or illness to any person occurring anywhere in New Zealand arising out of the performance of this Contract.

23.2 Motor vehicle public liability

23.2.1 The Contractor shall effect insurance against public liability arising out of the use of any motor vehicle belonging to or under the custody or control of the Contractor and its personnel or any other person in connection with the provision of the Services. Under this clause the term 'motor vehicle' means any vehicle or equipment which is licensed or required by law to be licensed as a motor vehicle. The motor vehicle liability insurance shall be for at least the sum (and having an excess or deductible not exceeding the sum) set out in Schedule 1 – Reference Schedule for any one claim or series of claims arising out of the same occurrence with no limit on the total payable on the number of occurrences.

23.3 General provisions re public liability insurance

23.3.1 All public liability insurance effected by the Contractor must:

- (a) be in place from the commencement of this Contract and be maintained until the Expiry Date;
- (b) include the Council as an interested party;
- (c) include an extension covering the Council for its vicarious liability arising out of the acts and omissions of the Contractor under this Contract;
- (d) be effected with reputable insurers approved by the Council and on terms approved by the Council. The Council's approval shall not be unreasonably withheld.
- (e) provide that:
 - if a claim is made and accepted, the amount of cover shall automatically be reinstated to the full cover required by this Contract;
 - the insurance shall not be cancelled for non-payment of premiums without five Working Days prior notification by the insurer in writing to the Council and to the Contractor; and

- default by an insured does not prejudice the rights of the other insureds.

23.4 Professional indemnity insurance

- 23.4.1 The Contractor shall effect in its own name professional indemnity insurance for negligence for at least the sums (and having an excess or deductible not exceeding the sum) set out in Schedule 1 – Reference Schedule for any one claim. The Contractor shall arrange and keep the professional indemnity insurance cover in force for six years after the expiry of this Contract.

23.5 Statutory liabilities insurance

- 23.5.1 The Contractor shall effect in its own name statutory liabilities insurance for at least the sum (and having an excess or deductible not exceeding the sum) set out in Schedule 1 – Reference Schedule for any one claim. The Contractor shall arrange and keep the statutory liabilities insurance cover in force from the Commencement date until six years after the expiry of this contract.

23.6 Fidelity insurance

- 23.6.1 The Contractor shall effect in its own name fidelity insurance covering both theft of money (by staff or otherwise) and the loss of money for at least the sum (and having an excess or deductible not exceeding the sum) set out in Schedule 1 – Reference Schedule.

23.7 Plant and equipment insurance

- 23.7.1 The Contractor shall insure the Contractor's plant and equipment including motor vehicles utilised in the provision of the Services. The amount of the cover shall be at least the current market value of the Contractor's plant and equipment.
- 23.7.2 The Contractor's plant cover shall cover loss or damage from any cause but may exclude wear and tear or gradual deterioration. This exclusion shall be limited to the defective item in the plant and shall not extend to other items consequently lost or damaged.

23.8 Insurances generally

- 23.8.1 All insurances required by this Contract:
- (a) shall be in effect prior to the Contractor commencing the performance of its obligations under this Contract; and
- 23.8.2 shall continue in force until the expiry of this Contract (or longer as specifically required above).
- 23.8.3 The Contractor shall, if requested by the Council, produce:
- (a) a certificate of insurance currency from the relevant insurer;
 - (b) (other than professional indemnity insurance) a copy of the policies; and
 - (c) receipts for payment of the current premiums.

23.8.4 If the Contractor fails to arrange or keep in force any Insurance required by this contract, the Council may after notifying the Contractor in writing, arrange or keep in force the insurance.

23.8.5 The Council may pay any premium due and unpaid by the Contractor (and including premiums for insurances arranged by the Council pursuant to clause 23.8.4) and deduct that amount from any moneys due to the Contractor.

24. FORCE MAJEURE

24.1 Force majeure event

24.1.1 Neither party will be liable for any act, omission or failure to fulfil its obligations under this Contract if and to the extent such act, omission or failure arises from any cause reasonably beyond its control that the party could not reasonably avoid or mitigate (a **Force Majeure Event**), which includes (without limitation):

24.1.2 floods, earthquakes, tsunamis and other acts of God;

(a) any industrial actions except any internal Contractor industrial actions;

24.1.3 any power, gas and other service failures;

(a) any riots or public demonstrations;

(b) any acts of terrorism; and

(c) epidemic but only to the extent it is a Pandemic.

24.1.4 Notwithstanding the above, a Force Majeure Event excludes any cause where the risk for the happening of that cause has been specifically allocated to the affected party pursuant to the Contract Documents.

24.1.5 The party who cannot carry out its obligations under this Contract due to a Force Majeure Event (**Claiming Party**) must give the other party to this Contract notice as soon as practicable of the cause and insofar as it is known the probable nature and extent to which the Claiming Party will be unable to perform or will be delayed in performing its obligation under this Contract.

24.2 Relief from liability

24.2.1 On the issue of notice of a Force Majeure Event the Claiming Party will not be liable to the other party insofar as the claiming Party is prevented during the continuation or intervention of such cause to carry out its obligations under this Contract.

24.2.2 The Claiming Party must take all reasonable steps to mitigate the effects of and eliminate the intervening event and must resume performance of the affected obligations as promptly as is practicable possible. The Claiming Party shall keep the other party advised as to the extent to which it is unable to carry out its obligations and its reasonable estimate of when and/or in which circumstance the Claiming Party will be able to resume performance of the affected obligations.

24.3 Contract Price abatement during force majeure

- 24.3.1 If during the Term of this Agreement, a Force Majeure Event occurs and the Contractor is unable to perform all or any part of the Services, for a period reasonably expected to last more than 10 Working Days, the Contract Price payable by the Council under this Contract shall abate as shall be fair and reasonable in accordance with the principles that the Contractor's fixed costs should be recognised, that governmental subsidies and costs savings accrued by the Contractor (if any) should be taken into account and that the Contractor should not derive an overall financial betterment. The quantum of the Contract Price abatement shall be agreed by the parties and failing agreement shall be determined by the Council's Representative, providing that any such determination shall be subject to the dispute resolution procedures set out in clause 24 of these Contract Conditions.

24.4 Termination following prolonged force majeure

- 24.4.1 Should the Force Majeure Event continue for a period exceeding 40 Working Days from the date the party that is unable to comply with the obligations has given notice to the other party, then the party being the recipient of that notice may terminate this Contract by giving written notice to the other party.
- 24.4.2 Where the Contract is terminated under clause 24.4.1, the Contractor shall be entitled to payment for the Services carried out to the date of termination.

25. DISPUTE RESOLUTION

25.1 Dispute

- 25.1.1 A dispute (**Dispute**) under this Contract is any dispute, disagreement or difference of opinion arising under the Contract, as to:
- (a) the meaning or application of any part of the Contract; or
 - (b) any other matter arising under the Contract.

25.2 Notice of dispute

- 25.2.1 A party claiming that a Dispute has arisen must give written notice to the other party, specifying the nature of the dispute and the relief or remedies sought.

25.3 Amicable resolution

- 25.3.1 Within ten (10) Working Days of the giving and receiving of notice of Dispute the parties shall meet for the purpose of endeavouring to amicably settle such Dispute. The process of inter-party settlement endeavours shall continue until either party gives the other written notice that discussions are to be terminated.

25.4 Referral to senior management

- 25.4.1 If the parties are unable to settle a Dispute amicably either party may issue a notice referring the Dispute to the senior management of the parties to resolve. In such case a senior management representative of each party shall, within 10 Working Days of service of such a notice, meet and attempt to resolve the Dispute. Any resolution shall be unanimous, recorded in writing, and shall be binding when signed by both parties.

25.5 Referral to mediation

25.5.1 A Dispute may be referred to mediation where:

25.5.2 the senior management representatives fail to meet within 10 Working Days of referral; or

(a) the senior management representatives fail to resolve a Dispute within 10 Working Days of referral; or

(b) neither party to this Contract requires referral to senior management representatives.

In such case either party may by notice in writing to the other require the Dispute to be submitted to mediation.

25.6 Mediation

25.6.1 If any Dispute is submitted to mediation under clause 25.5.1, the following shall apply:

(a) the mediation shall be conducted by a single mediator;

(b) the Contractor and the Council shall endeavour to agree on a mediator;

(c) if the Contractor and the Council cannot agree on a single mediator within 10 Working Days of service of notice of intention to commence mediation, either party may request Resolution Institute New Zealand to appoint a sole mediator;

(d) the mediation shall take place in Nelson;

25.6.2 the mediator shall discuss the matter with the Contractor and the Council (separately or jointly as the mediator may determine) and endeavour to facilitate the resolution of the Dispute by agreement;

(a) all discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings;

(b) the Contractor and the Council shall bear their own costs of the mediation and shall pay the cost of the mediator in equal shares.

25.7 Arbitration

25.7.1 If the parties cannot resolve the Dispute by mediation under clause 25.6.1, then either party may by written notice to the other refer the Dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

(a) a single arbitrator shall be appointed;

(b) the parties shall endeavour to agree on an arbitrator;

25.7.2 if the parties fail to agree on an arbitrator, then Resolution Institute New Zealand shall appoint the arbitrator;

(a) the place of arbitration shall be Nelson;

25.7.3 no person who has participated in an informal dispute resolution of the dispute shall act as arbitrator;

25.7.4 the arbitrator will proceed promptly to deliver an award. The parties shall co-operate fully in this respect;

(a) the parties agree that the arbitrator's decision shall, subject to clauses 4 and 5 of the Second Schedule to the Arbitration Act 1996, be final and binding;

(b) the Contractor and the Council shall bear their own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.

25.8 Performance of obligations

25.8.1 Pending the settlement of any Dispute, the parties shall continue to perform all their obligations under the Contract except neither party shall be obliged to pay any money which is the subject of the Dispute.

25.9 Compliance with dispute resolution regime

25.9.1 A party to the Contract may not commence any court or arbitration proceedings relating to a dispute unless it has complied with the clauses above relating to dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).

26. STEP IN RIGHTS

26.1 Failure to provide Services

26.1.1 Where the Contractor fails to provide all or a material part of the Services for any reason, the Council may, without prejudice to any other right or remedy available to the Council under this Contract or at law, arrange for the provision of those Services.

26.1.2 The Contractor shall provide the Council or its contractor(s) with its full co-operation as is necessary to facilitate the provision of those Services.

26.1.3 Other than where the Contractor's failure is due to Force Majeure Event under clause 24, the reasonable costs incurred by the Council under this clause shall be a debt due to the Council by the Contractor and (without limiting the Council's rights and remedies in any way) may be deducted from payments due to the Contractor by the Council.

27. TERMINATION

27.1 Termination rights

27.1.1 Either the Council or the Contractor may terminate this Contract immediately by notice in writing if the other party commits or allows to be committed any material breach of this Contract and fails to remedy the breach or fails to provide a solution to the breach acceptable to the non-defaulting party within 15 Working Days of receiving written notice of such breach. (Such notice must specify it is given under this clause and that termination may follow if the breach is not remedied).

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- 27.1.2 The Council may immediately terminate this Contract, by giving written notice of termination to the Contractor, if any of the following events occur:
- (a) The Contractor having a petition presented or an order made or an effective resolution passed or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding up (except for the purposes of solvent reconstruction or amalgamation approved by the Council, such approval not to be unreasonably withheld).
- 27.1.3 The Contractor having an encumbrancer, receiver, liquidator, trustee or similar officer take possession of or be appointed with respect to all or any part of its business, assets, or undertakings.
- 27.1.4 A meeting of creditors of the Contractor is called with a view to entering into a scheme of arrangement or composition with creditors or placing the Contractor under official management.
- (a) The Contractor enters a scheme of arrangement or composition with creditors.
- 27.1.5 A creditor of the Contractor obtaining judgment and such judgment remaining unsatisfied for a period of 14 days after having been entered.
- 27.1.6 The Contractor ceasing to trade or carry on business or materially changing its business operations in a way that is likely to influence its capacity to perform its obligations under this Contract.
- (a) Any warranty or representation made by the Contractor in this Contract is found to be materially incorrect or misleading.
- 27.1.7 The Contractor abandons or repudiates this Contract. Without limiting what circumstances might constitute abandoning or repudiation, failure to provide the Services over a period of 10 Working Days shall be considered abandonment of the Contract.
- (a) The Contractor failing to rectify defective Services (that are capable of rectification) for more than five Working Days after receiving notice from the Council Representative to do so.
 - (b) The Contractor consistently failing to meet the Performance Standards. In terms of this clause consistent failure is determined to be failure to achieve Performance Standards 1, 2, 4, 5 and 6 in Schedule 6 on three occasions within any rolling six month period.
- 27.1.8 The Contractor consistently breaching material requirements of this Contract. For the purposes of this clause consistent breach shall be the issue by Council of formal notice of breach pursuant to clause 27.1.1 (whether remedied within the time specified in clause 27.1.1 or not) on three occasions within any rolling six month period.
- 27.1.9 The Contractor failing to comply with its health and safety obligations under this Contract in a material way.
- (a) The Contractor assigns its interest in this Agreement in breach of clause 28.11.1.

- 27.1.10 Termination of the Contract shall not prejudice or affect the accrued rights and liabilities of either party under this Contract.

28. GENERAL

28.1 Council as a regulatory body

- 28.1.1 The Contractor acknowledges that in terms of its regulatory function as a local authority the Council is obliged to and shall act as an independent local authority and not as a party to this Contract. The Contractor expressly acknowledges that it shall have no right or claim against the Council in its capacity as party to this Contract as a result of any lawful action, decision or determination made by the Council in the performance of its regulatory function as a local authority except in the case of bad faith by the Council in its capacity as a party to this Contract.

- 28.1.2 Any consent or approval of the Council acting in its regulatory capacity shall not be construed as a consent or approval of the Council as a party to this Contract.

28.2 Publicity and publication

- 28.2.1 The Contractor shall not and shall ensure that the Contractor's personnel and subcontractors and their personnel do not release public or media statements or publish material (including without limitation on any Social Media Platform) related to the Services or this Contract without the prior written approval of the Council.

For the purposes of this clause 'Social Media Platform' means any website or application that enables users to create and share content or to participate in social networking, microblogging or the like.

- 28.2.2 The Contractor shall not respond to media requests for information or comment in relation to the Services or in any way relating to this Contract. All such requests shall be referred to the Council Representative for reply.
- 28.2.3 The parties agree that the Council shall be entitled to make the initial announcement as to the existence of this Contract. The Contractor shall not make any announcement or otherwise make public the existence of this Contract prior to the Council's announcement. The Council shall issue the initial statement in conjunction and with the agreement of the Contractor provided that the Council shall have the final discretion as to the wording of any such announcement.
- 28.2.4 Neither party shall make any announcement or otherwise make public or release any publicity or make any statement in connection with this Contract without first notifying the other. The parties agree they shall endeavour to make announcements relating to this Contract in conjunction and with the agreement of the other provided that this clause shall not restrict the right of the Council to discuss any aspect of this Contract in open Council meetings and have such deliberations reported in the media or to make statements in relation to the Contract as in the Council's opinion are necessary or desirable in the performance of the Council's role as a local authority or in the interests of full public debate of all issues relevant to a local authority, its community and its ratepayers.

28.3 Advertising

- 28.3.1 The Contractor shall not display any sign directly or indirectly indicating its involvement in the Services without the prior written approval of Council.
- 28.3.2 The Contractor shall not at any time, make any statement or claim that might be construed as an endorsement by the Council of its Services.

28.4 Confidentiality

- 28.4.1 The Contractor agrees that the Confidential Information shall be treated as confidential.
- 28.4.2 Subject to clause 28.4.3, the Contractor shall not disclose Confidential Information to any third party (other than as is required to perform the Services or to obtain any consent or approval, or any other party the Contractor may need to consult with in order to provide the Services) during or after the Term.
- 28.4.3 Subject to clause 28.5.3, the Contractor may release Council Confidential Information where (and only to the extent) required to be disclosed by any law or competent authority or in relation to any proceedings or action before any court, tribunal or other competent body.
- 28.4.4 For the avoidance of doubt, the Contractor acknowledges and agrees that the disclosure of any Personal Information which comprises Confidential Information under clauses 28.4.2 and 28.4.3 shall be subject to clause 5.3.
- 28.4.5 The Contractor shall not use or attempt to use any Confidential Information for any purpose other than to provide the Services.
- 28.4.6 The Contractor shall ensure that all Confidential Information is kept secure and shall return or destroy such information on the completion of the Services. The Contractor may keep one copy as required for business records retention purposes.
- 28.4.7 The Contractor will not, and shall ensure its personnel and subcontractors do not, view or access any Council electronic or hard copy files or information other than is required for the provision of the Services AND where access has been authorised by the Council.
- 28.4.8 The Contractor shall ensure that when its personnel or subcontractors access any Council IT system, such persons do not, other than is authorised by the Council:
- (a) copy, move or re-organise any computer files or information; and
 - (b) make changes to any Council computer files or software.

28.5 Official Information legislation

- 28.5.1 The parties acknowledge that Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Council may be required to release information about the Services and this Contract.

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- 28.5.2 In addition, the Contractor agrees to comply with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Council held by the Contractor or its subcontractors.
- 28.5.3 The Contractor will only release information to a third party under the Local Government Official Information and Meetings Act 1987 through the Council unless compelled by a competent authority, in which case it will immediately advise the Council as to the information released.
- 28.6 No partnership**
- 28.6.1 Nothing in this Contract constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Contract or authorised in writing.
- 28.7 No employment contract**
- 28.7.1 The parties expressly acknowledge that this is not a contract of employment.
- 28.8 Amendment**
- 28.8.1 This Contract cannot be amended, modified or varied or supplemented except in writing signed by duly authorised representatives of the parties.
- 28.9 Severance**
- 28.9.1 The illegality, invalidity or unenforceability of any provision in this Contract will not affect the legality, validity or enforceability of any other provisions.
- 28.10 Waiver**
- 28.10.1 No right under this Contract shall be deemed to be waived except by notice in writing signed by the party providing the waiver.
- 28.10.2 A waiver by a party will not prejudice its rights in respect of any subsequent breach of this Contract by the other party.
- 28.10.3 The failure by a party to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by a party will not be construed as a waiver of that party's rights under this Contract.
- 28.11 No assignment**
- 28.11.1 The Contractor shall not assign, sublet, subcontract or transfer the whole or any substantial right or obligation under the Contract without the written consent of the Council (to be not unreasonably withheld or delayed).
- 28.11.2 The assignment or transfer of shares in or the restructuring of the Contractor so that the effective control of the Contractor passes to persons other than those holding it at the date of this Contract will be an assignment of this Contract for the purpose of this clause.
- 28.11.3 Unless specifically stated to the contrary in any written consent to an assignment or subcontract, no assignment or subcontract shall release or discharge either party from any liability or obligation under this Contract. Any assignee shall be fully liable for payment of all moneys and/or damages payable

under the Contract notwithstanding Section 54 of the Contract and Commercial Law Act 2017.

28.12 Governing law and jurisdiction

- 28.12.1 This Contract will be governed by and construed according to the law of New Zealand. The parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

28.13 Costs

- 28.13.1 Each party shall bear its own costs incurred in the preparation and execution of this Contract.

28.14 Notices

- 28.14.1 All notices, documents, requests, demands or other communication to be given for the purposes of this Contract must be in writing and may be served personally, sent by email or other electronic method or sent by registered mail to the address for notice of each party as set out in Schedule 1 – Reference Schedule, or such other address that each party may notify in writing from time to time.
- 28.14.2 Such notice given:
- 28.14.3 in person is deemed served upon delivery;
- 28.14.4 by registered mail is deemed to be served three Working Days after posting;
- 28.14.5 by email or other electronic method is deemed to be served at the time the communication enters the recipient's system.
- 28.14.6 Any such notice which has been served on a non-Working Day or after 5:00pm on a Working Day is deemed served on the first Working Day after that day.

28.15 Entire agreement

- 28.15.1 This Contract represents the entire agreement between the parties. No party shall be bound by any prior warranty or representation unless included in this Contract.

28.16 Counterparts

- 28.16.1 This Contract may be executed in any number of counterparts. All counterparts will constitute one instrument.

28.17 Electronic execution

- 28.17.1 Any party may execute this Contract by way of electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

28.18 Contra proferentem

- 28.18.1 This Contract shall not be construed against a party on the basis the party was responsible for the preparation of the Contract.

28.19 Survival of obligations

- 28.19.1 The obligations of the parties under this Contract as to Confidential Information, Official Information, Intellectual Property, Contract Information, Transition on Contract coming to an end, Indemnities and liability, Publicity and publication and Advertising shall survive the termination or expiry of this Contract.

29. DEFINITIONS AND INTERPRETATION

29.1 Definitions

- 29.1.1 In this Contract unless the context otherwise requires the following definitions apply:

Collection Account means the bank account referred to in Schedule 1 – Reference Schedule and clause 5.12.2 of this Contract.

Commencement Date means the Commencement Date set out in Schedule 1 – Reference Schedule.

Compliance Notice has the meaning set out in the Privacy Act 2020.

Confidential Information means any information relating to the Services, the Council or any client or customer of the Council or member of the public that comes into the possession of the Contractor through the provision of the Services other than:

- (a) has been published or otherwise has become part of the public domain other than through acts or omissions of the Contractor; or
- (b) has been furnished by persons other than the Council (which term includes persons employed by or acting for the Council) as a matter of legal right and without restriction on disclosure; or
- (c) was already in the possession of the Contractor without restriction or disclosure.

Contract means this Contract and includes the Schedules and any additional documents specified in the Contract.

Contract Conditions means these Contract conditions comprising clauses 1 to 29.

Contract Documents means the Contract Conditions and includes the Schedules and any additional documents specified in the Contract.

Contract Information means the source data and other data and factual information collected by the Contractor during the course of providing the Services and all other information relating to the Services held by the Contractor under this Contract.

Contract Price means the contract price determined in accordance with Schedule 8 – Payment Schedule.

Contract Year means each annual period from [1 July to 30 June] during the Term. The day on which the Contract expires or terminates will be deemed to be the last day of the final Contract Year.

Contractor Representative means the person as nominated by the Contractor as the Contractor Representative from time to time in accordance with clause 17.1.1.

Council Representative means the person nominated by the Council as the Council Representative from time to time in accordance with clause 17.2.1.

Expiry Date means the means the Expiry Date set out in Schedule 1 – Reference Schedule.

Force Majeure Event has the meaning set out in clause 24.1.1.

GST means goods and services tax chargeable under the GST Act.

GST Act means the Goods and Services Tax Act 1985.

Handover Report means a Handover Report as referred to in clause 19.1.

HSW Act means the Health and Safety at Work Act 2015.

Intellectual Property means any methodologies, procedures, software, technical handbooks and information data and factual information, drawings, plans, designs, specifications or copyright, patents, designs, trademarks (registered or unregistered) or other protectable intellectual property rights.

Key Personnel means the Key Personnel set out in Schedule 1 – Reference Schedule.

Mandatory Variation means a Mandatory Variation ordered under clause 16.1.9.

Named Subcontractors means the entities described as Named Subcontractors in Schedule 1 – Reference Schedule.

Pandemic means a serious disease that is widespread in New Zealand and is declared to be a Pandemic by the New Zealand Government or other governmental authority or is the subject of a declaration of a state of National Emergency in New Zealand.

Pandemic Directive means:

- (a) any New Zealand Government directive made pursuant to law (whether by statute, regulation, bylaw or other legislative instrument) in response to a Pandemic; or
- (b) any Pandemic related directive made by the HSW Act Regulator, Ministry of Health or any other government entity having authority in relation to the Pandemic;

as may be applicable from time to time during the Contract Term.

Pandemic Requirements means any public health and social measures to be complied with for the management of a Pandemic imposed by a Pandemic Directive.

Pandemic Standards and Protocols means the industry best practice health and safety standards and protocols for operating under Pandemic conditions applicable to the Services.

PCBU means a person conducting a business or undertaking. PCBU has the meaning set out in the HSW Act.

Performance Standards means the performance standards specified in Schedule 6 – Performance Standards.

Personal Information has the meaning set out in the Privacy Act 2020.

Policies and Procedures means the policies, procedures and guidelines as set out in Schedule 4 – Policies and Procedures together with any further or amended policies, procedures or guidelines provided by the Council. Policies and Procedures includes provided by the Council under clause 6.2.

Privacy Breach means in relation to Personal Information any:

- (a) unauthorised or accidental access to or use of, or disclosure, alteration, loss, or destruction of any Personal Information; and
- (b) any action that prevents the Council from accessing Personal Information collected, held or stored by either the Council or the Contractor (or the Contractor's subcontractors) under or in connection with this Contract on either a temporary or permanent basis;

whether or not:

- (c) caused by an employee, consultant, subcontractor or agent of the Contractor or any of the Contractor's subcontractors;
- (d) attributable in whole or in part to any action by or on behalf of the Contractor; or
- (e) ongoing.

Proposal means the Contractor's proposal for the Services submitted to the Council in Schedule 12 – Contractor's Proposal.

Quality Plan means the Quality Plan as referred to in clause 8.3.2 of this Contract.

Risk Management Plan means the Risk Management Plan approved by the Council under clause 8.2.1.

Safety Plan means the Safety Plan as referred to in clause 9.2.1 of this Contract.

Schedule of Prices means the Schedule of Prices (if any) included in Schedule 8 – Payment Schedule.

Services means the Services set out in Schedule 2 – Services Specifications and where the context allows means any part of the Services.

Services Commencement Date means the Services Commencement Date set out in Schedule 1 – Reference Schedule.

Site means the site or sites where the Services are to be provided as described in the Specifications.

Specifications means the Specifications set out in Schedule 2 – Services Specifications

Taxable Supply Information has the meaning given to that term in section 19E(2) of the GST Act.

Term has the meaning set out in clause 3.1.1.

Transition Plan means the Transition Plan approved by Council under clause 8.1.1.

Variation means a variation under clause 16 of this Contract.

Variation Order means a written Variation order confirming a Variation or a Mandatory Variation under clause 16.1.8 and/or 16.1.9.

Working Day means any day other than a Saturday, Sunday, or a public holiday applying in the region that the Council's principal office is located in.

29.2 Interpretation

29.2.1 In this Contract unless the context otherwise requires:

29.2.2 All monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise.

29.2.3 Where the context permits the singular includes the plural and vice versa.

29.2.4 References to any party means the parties to this Contract and includes their respective successors and permitted assignees (as the case may be).

29.2.5 References to clauses, schedules and attachments are to clauses, schedules and attachments (if any) to this Contract (unless otherwise stated).

29.2.6 Where the context permits references to the Contractor include the Contractor's employees, agents and officers.

(a) 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.

29.2.7 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.

(a) The headings in this Contract shall not be used in its interpretation.

(b) Obligations that bind more than one person shall bind those persons jointly and severally.

(c) Defined expressions are signified by capitalisation.

(d) If there is a conflict between the provisions of the Contract, the provisions shall take priority in the following order:

- the contract provisions;
- the schedules (excluding the Proposal);

29.2.8 additional documents as specified in the Contract, including the Proposal.

(a) Reference to a 'law' or 'laws' means a statute, regulation, bylaw or any other requirement of a governmental or semi-governmental organisation.

- 29.2.9 The language of this Contract is English. All notices and communications of any kind required under or arising in connection with this Contract shall be in English.

EXECUTION

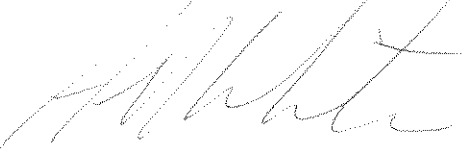
Executed as an agreement.

Dated

27 June

2024

Signed for and on behalf of
Nelson City Council:



[Name of Authorised Signatory]

Signed for and on behalf of

Community Leisure Management Limited

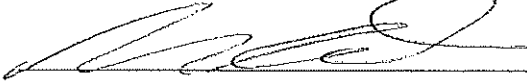
in the presence of:

) Kirsty Knowles.

) 

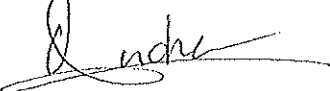
) Director

) 

) 

Director

Witness signature:



Witness name:

Louchea Rodriguez Alonso

Occupation:

Digital Marketing Specialist

Address:

1/1 Birman Close
Half Moon Bay 2012
Auckland

SCHEDULE 1 – REFERENCE SCHEDULE

Term	
Commencement Date (cl.3.1.1):	1 July 2024
Services Commencement Date (cl.3.2.1):	1 July 2024
Expiry Date (cl.3.1.1):	30 June 2027
Extension term (cl.3.3.1):	Three years
Maximum Term (cl.3.3.12):	Six Years from the Services Commencement Date
Lump Sum	
Annual Lump Sum (Schedule 8 – Payment Schedule):	Contract Year 1 (2024/25) s.7(2)(b)(i) - would be likely to
	Contract Year 2 (2025/26) s.7(2)(b)(i) - would be likely to
	Contract Year 3 (2026/27) s.7(2)(b)(i) - would be likely to
	(and should the contract be extended) Contract Year 4 (2027/28) s.7(2)(b)(i) - would be likely to
	Contract Year 5 (2028/29) s.7(2)(b)(i) - would be likely to
	Contract Year 6 (2029/30) s.7(2)(b)(i) - would be likely to
Representatives	
Contractor Representative (cl.17.1.1):	Kirsty Knowles, Director & GM of Operations
Council Representative (cl.17.2.1):	Contract Supervisor Facilities
Damages	
Maximum damages amount (cl.21.3.2):	\$100,000
Insurance	
Public Liability Insurance (cl.23.1.1):	Insurance amount \$20,000,000.00
Motor Vehicle Public Liability Insurance (cl.23.2.1):	Insurance amount \$5,000,000.00
Professional Indemnity Insurance amount (cl.23.4.1):	\$2,000,000.00
Miscellaneous	

Addresses for Notices (cl.28.14.1)	
Council:	Nelson City Council Civic House 110 Trafalgar Street PO Box 645 Nelson 7040 Email: customer.service@ncc.govt.nz
Contractor:	Community Leisure Management Ltd 135 Morrin Road, St Johns, Auckland 1072 PO Box 14-643, Panmure, Auckland 1741 Email: KIW@clmnz.co.nz
Collection account (cl.29.1.1):	Bank: Westpac Branch: Nelson Account name: Nelson City Council Account number: 03 0703 0325055 00
Key Personnel (cl.29.1.1):	Mark Mekalick, Manager Trafalgar Centre Kirsty Knowles, Director & GM of Operations

* The Annual Lump Sums have been agreed on the basis on that the Contractor pays its staff at a minimum the Living Wage (calculated by the Living Wage Movement Aotearoa New Zealand) and that there will be Consumers Price Index (CPI) review. The Annual Lump Sums for contract years 2 to 6 have been agreed on the expectation that the Living Wage will increase on average by [REDACTED] (which has been reflected in the wages budget line in the Contractor's Proposal) and that CPI (All Groups as published by Statistics NZ) will increase on average by [REDACTED] (which has been reflected in the other budget lines in the Contractor's Proposal). In the event that the Living Wage and/or CPI increases beyond these expectations (and failing any agreement between the parties as to variation any relevant Annual Lump Sum) the parties agree to in good faith negotiate any necessary reduction in the Services to reflect the shortfall. In the event that the Living Wage and/or CPI decreases or increases below these expectations (and failing any agreement between the parties as to variation any relevant Annual Lump Sum) the parties agree to in good faith negotiate any necessary increase in the Services to reflect the surplus.

SCHEDULE 2 – SERVICES SPECIFICATIONS

1. Venues and Services generally

1.1 This Contract relates to the provision of services for the following Council owned venues:

- Trafalgar Centre;
- Trafalgar Park and Trafalgar Park Pavilion;
- Saxton Oval and Pavilion
- Pūtangitangi Greenmeadows Centre;
- Trafalgar Street Hall; and
- Wakapuaka Memorial Hall.

Notwithstanding the Services Commencement Date, the Contractor shall not be required to commence the provision of any services with respect to Saxton Oval and Pavilion until 29 July 2024 or (such later date as directed by Council).

1.2 Any of these venues may be removed from the Contract pursuant to a Variation in accordance with clause 16.

1.3 Additional venues may be added pursuant to a Variation in accordance with clause 16.

1.4 The Contractor is required to have sufficient staff, materials, vehicles and small plant available to fulfil the Services specified. It is the Contractor's responsibility to ensure that staff are inducted/trained, and all plant is fit for purpose for the work required and that staff training/qualification matches that type of work.

1.5 The Contractor will be responsible for recruiting and training all customer services, technical, administration, and other staff explicitly required by the Contract, or otherwise required to meet the requirements of this Schedule 2 - Services Specifications.

1.6 The Contract Price includes payment for all time and expenses including but not limited to labour, vehicles, parts, materials and consumables incurred to programme all works and to provide records and reports, and attend meetings to the standards required in this Schedule 2 - Services Specifications.

1.7 Where it is known that a specific skilled subcontractor will be required the Contractor should specify a Named Subcontractor or a panel of Named Subcontractors for those activities and seek approval from Council in accordance with clause 10.1. When it is necessary to employ services of a subcontractor which is not a Named Subcontractor, the Contractor shall be required to provide three competitive quotes for the work in seeking approval from Council in accordance with clause 10.1. This is to ensure equity and fairness in procurement and value for money for Council.

2. Venue overview

2.1 A full list of Council venues and comprehensive information can be found on the website <https://venues.nelson.govt.nz/our-venues/> for reference purposes. Council will provide the relevant resource consent under the Resource Management Act 1991, and any variation to these, to the Contractor (**Resource Consent**).

2.2 The Trafalgar Centre

The Trafalgar Centre is Nelson Tasman's largest multi-purpose spectator sports and events arena.

It contains two key spaces:

- The Main Arena which is ideal for sports events, trade shows, concerts and conference and award dinners
- The new Northern Extension opening onto surrounding gardens and waterways. Ideal for mid-scale events, private, corporate and community gatherings

The Trafalgar Centre	
Venue Type	Premium, Sporting
Event Type	Sport, Concert, Conference, Dinner, Exhibition, Festival, Function, Meeting, Wedding
Capacity	4500
Facilities	Bar, Chairs, Commercial Kitchen, Projector and Screen, Stage, Tables, Toilets, WIFI
Main Arena	
Venue Type	Premium, Sporting
Event Type	Concert, Conference, Dinner, Exhibition, Festival, Sport
Capacity	4500
Facilities	Bar, Chairs, Commercial Kitchen, PA, Projector and Screen, Stage, Tables, WIFI
Northern Extension	
Venue Type	Premium
Event Type	Conference, Dinner, Exhibition, Meeting, Wedding
Capacity	450
Facilities	Bar, Chairs, Commercial Kitchen, Projector and Screen, Tables, WIFI

2.3 Trafalgar Park and Trafalgar Pavilion

Trafalgar Park is Nelson's premier open-air stadium for competitive sport and large-scale events. It is home to the Tasman Mako rugby team and hosts a broad range of events. It also contains the Trafalgar Park Pavilion.

Trafalgar Park	
Venue Type	Premium, Sporting
Event Type	Community Sport, Concert, Festival, Park, Sport
Capacity	25,000
Facilities	Bar, Commercial Kitchen, Toilets, WIFI
Trafalgar Park Pavilion	
Venue Type	Community
Event Type	Conference, Dinner, Function, Meeting, Wedding
Capacity	200
Facilities	Bar, Chairs, Commercial Kitchen, Lectern, Projector and Screen, Tables, WIFI

2.4 Saxton Oval and Pavilion

Saxton Cricket Oval is a boutique international cricket ground with ICC (International Cricket Council) accreditation. Saxton Oval Pavilion houses a function space with associated facilities. TOTS Athletics hold a lease directly with Council for one upstairs room within the pavilion which overlooks the athletics track.

Saxton Oval	
Venue Type	Premium, Sporting
Event Type	Sport, International cricket
Capacity	4500
Saxton Oval Pavilion	
Venue Type	Commercial and community
Event Type	Conference, Dinner, Function, Meeting, Wedding
Capacity	169
Facilities	Commercial Kitchen, Bar, Lounge, Toilets, Projector, Screen, tables and Chairs, PA

2.5 Pūtangitangi Greenmeadows Centre

Pūtangitangi Greenmeadows Centre borders Greenmeadows Park. It is the home of Stoke Tennis, Stoke Rugby and Stoke Seniors, and is designed to evolve with the needs of the Stoke community. Stoke Tennis, Stoke Rugby, and Stoke Seniors all hold leases directly with Council; it is the expectation that the Contractor will work directly with each party to utilise spaces where possible outside of leased hours.

Pūtangitangi Greenmeadows Centre	
Venue Type	Community

Event Type	Community Sport, Conference, Dinner, Function, Meeting, Wedding
Capacity	260
Facilities	Commercial Kitchen, On-site Catering, PA, Projector, Tables, WIFI

2.6 Trafalgar Street Hall

The Trafalgar Street Hall is a classic Kiwi community hall, used by various groups such as yoga, pilates, tango and salsa, indoor bowls and tai chi. It also houses the Ancestors Attic, the local archive for NZ Society of Genealogists who hold a separate lease with Council for their room inside the Hall.

Trafalgar Street Hall	
Venue Type	Community
Event Type	Community Sport, Function, Meeting, Music
Capacity	90
Facilities	Chairs, Kitchen Lectern, Projector and Screen, Tables, Stage

2.7 Wakapuaka Hall

Wakapuaka Memorial Hall is a classic Kiwi community hall built in simple art deco style in the 1950s in remembrance of WWII. It is ideal for local fundraisers, family celebrations, relaxed wedding receptions, amateur dramatic plays, and meetings.

Wakapuaka Memorial Hall	
Venue Type	Community
Event Type	Community Sport, Dinner, Exhibition, Function Meeting
Capacity	120
Facilities	Chairs, Kitchen, Tables

3. Maintenance and Cleaning

- 3.1 The Contractor is required to prepare, for Council's approval, a **Cleaning and Maintenance Plan** for each venue, including cleaning and maintenance schedules that ensure venues and assets are clean, tidy and safe for use prior to the start of every hire.
- 3.2 The Council shall provide to the Contractor an **Asset Register** for each venue prior to the Commencement Date. Each Asset Register shall include plant and equipment situated in each venue, including without limitation, any heating equipment, lifting equipment, sound systems, furniture and show equipment, sports equipment and cleaning equipment. The Contractor shall keep all Asset Registers up to date.

Maintenance generally

- 3.3 The Contractor is to carry out regular inspections of venues and oversee the maintenance tasks as agreed in the Cleaning and Maintenance Plans.
- 3.4 The Contractor shall arrange for the carrying out of all maintenance tasks required at the direction, or with the approval, of the Council Representative. Any approved costs incurred directly by the Contractor in the carrying out of the maintenance tasks (as opposed to costs billed directly to Council by its other contractors) shall be repaid by Council to the Contractor as a Cost Reimbursement.
- 3.5 For the avoidance of doubt, the maintenance tasks under any Cleaning and Maintenance Plan shall extend to:
- Interior building surfaces and fittings;
 - Internal and external door and windows;
 - Plumbing and electrical fittings;
 - Plant and equipment included in the Asset Register; and
 - Building security;

and, with respect to Trafalgar Park and Trafalgar Pavilion:

- Pavilion interior;
 - Downstairs and upstairs areas (including changing rooms);
 - VIP seating;
 - West and East stands;
 - Both toilet blocks; and
 - Both ticket office blocks.
- 3.6 With respect to Trafalgar Park and Trafalgar Pavilion:
- the Council Representative may advise that specific maintenance works identified by the Contractor will be permanently or temporarily deferred for operational or asset management reasons (where this is the case, the deferral of those works shall be noted on the Venue Maintenance Register);
 - maintenance tasks will exclude turf management (the Contractor will liaise directly with Council's turf management contractor on any required maintenance, and this will be reported to the Council Representative in the Contractor's Monthly Report); and
 - the Contractor will oversee inspections and, subject to Council Representative approval, reactive repairs and payment of invoices to Council's scaffolding contractor on Council's behalf (any direct payment of such invoices by the Contractor shall be repayable as a Cost Reimbursement).
- 3.7 Major repairs are beyond the scope of this Contract but may be completed by the Contractor if the parties agree pursuant a Variation in accordance with clause 16.
- 3.8 The Contractor shall maintain for each venue a rolling **Venue Maintenance Register** of work completed, issues identified, recommended upgrades or renewals and any quotes for work that have been obtained. The Venue Maintenance Registers should include detail of all asset condition and performance following monthly inspections of plant, machinery, buildings, and other items; and maintenance work and renewals carried out, time spent carrying out such work, and a projection of future maintenance required.
- 3.9 The Venue Maintenance Registers will be discussed at contract meetings and will be tabled as an attachment to the Contractor's Monthly Report. The Venue Maintenance

Registers must identify all issues and items observed during the previous month as well as any outstanding issues not resolved.

- 3.10 To facilitate resolution of issues identified on the Venue Maintenance Register, the Contractor shall provide to the Council Representative any further information reasonably required to facilitate resolution of the issue.

Cleaning

- 3.11 The Contractor is to carry out or arrange for the cleaning of venues as agreed in the Cleaning and Maintenance Plans as required to such extent that they are always in a clean condition that satisfies the inspection of the Council Representative.
- 3.12 Cleaning operations should be arranged at times compatible with public activities in the building. Cleaning operations include day to day cleaning and post-event cleans.
- 3.13 For the avoidance of doubt, cleaning under this Contract shall extend to the removal of all stains, dirt, mildew, dust, and any foreign matter to the satisfaction of the Council Representative. The removal of offensive material, odours, or graffiti shall be given priority.
- 3.14 For the avoidance of doubt, cleaning tasks under any Cleaning and Maintenance Plan shall extend to:
- Toilets, showers, vanity areas and food preparation areas;
 - Hard floor surfaces, including annual vinyl strip and polish;
 - Carpet as necessary before every hire or regular fixture, and after an event (with costs passed onto hirer as appropriate pursuant to venue hire agreement);
 - Carpet cleaned by a professional cleaning service at least once per year;
 - Windows both inside and outside at ground level;
 - All other surfaces;
 - Sports flooring to be clean prior to any match; and
 - Management of damage or loss.
- 3.15 The Contractor shall maintain hard copy logbooks for each venue. Each logbook shall collect relevant data pertinent to specific cleaning requirements of each venue and shall contain as a minimum the following data relating to maintenance and cleaning activities:
- Date and time
 - Contractors staff and/or subcontractor's name
 - Purpose of visit
 - Other observations made that may risk quality and security of the service
- 3.16 The Contractor may choose to use logbooks for confirmation that staff and subcontractors have been inducted with respect to the Safety Plan and any relevant Venue Health and Safety Management Plan as required by the Health and Safety Section of this Schedule.

Building Warrant of Fitness Requirements

- 3.17 Compliance management for Building Warrant of Fitness (BWOFF) for each venue is managed by the Council through contracts with specialised service providers (Independent Qualified Persons (IQPs)). The Contractor shall:
- provide support to ensure the day-to-day operations of specified systems are managed to the extent required to satisfy BWOFF compliance;
 - be the first point of contact with IQPs, and assist and consult with IQPs at the venues;
 - undertake cleaning, adjustments and minor maintenance identified during inspections; and

- arrange reactive repairs identified during inspections as requested by the Council Representative.

- 3.18A For the avoidance of doubt, any request by the Contractor to change or alter a fire system (for example, isolating a fire system) must be approved by the Council Representative; with any such instructions to the IQP to be issued directly by the Council (not the Contractor).
- 3.18 Comprehensive Building Warrant of Fitness documentation shall be made available and displayed by the Contractor at all times in accordance with legislation.
- 3.19 Only maintenance work under this clause shall be a Cost Reimbursement. For the avoidance of doubt, all other work envisaged by this clause shall be carried out by the Contractor under the Annual Lump Sum.

Safety and Security Equipment

- 3.20 The Contractor, in consultation with the Council Representative, is responsible for maintaining health and safety equipment, hand operated fire equipment, and other equipment in the venues as required under provisions of the Building Act 2004 and as per the NZ Standards 4503:2005.
- 3.21 For the avoidance of doubt:
- First aid equipment and supplies shall be inspected directly by the Contractor, with any replacement costs to be repaid by the Council to the Contractor as a Cost Reimbursement.
 - Fire alarm monitoring services are maintained under a separate Council contract. The following venues are monitored, with Fire and Emergency New Zealand (FENZ) being the first responders:
 - Saxton Oval
 - Pūtangitangi Greenmeadows Centre
 - Trafalgar Park Pavilion
 - Trafalgar CentreAll other venues (except Trafalgar Street Hall) have a manual warning system for fire, and require FENZ to be contacted directly.
- 3.22A In the event of a fire or fire alarm activation (false or actual), the Contractor shall:
- provide support to FENZ as required on a 24/7 basis;
 - initiate the Emergency Response and Evacuation Plan and Procedure as required;
 - report any actual fire and/or damage to the Council Representative (or the Council's Call Care after-hours service);
 - report any false activation to the Council Representative; and
 - arrange the resetting of any fire system with the relevant IQP and manage the payment of the response on behalf of Council (any direct payment of such invoices by the Contractor shall be repayable as a Cost Reimbursement).
- 3.22 The Contractor shall provide evidence as required, that each venue has functioning and fully effective emergency management equipment available for use by the emergency services and/or its customers.
- 3.23A For the avoidance of doubt, security alarm monitoring and response for the venues is maintained under a separate Council contract, with Council's security control services provider generally being the nominated first responder.

- 3.23B The Contractor may be required to nominate two contacts as second and third responders for afterhours security alarm activations and, in the absence of security control services provider as first responder, must:
- report unauthorised access or occupation to police;
 - record and report any facility breaches to the Council Representative;
 - in the event of damage to a venue, secure the venue as necessary or escalate to Council's maintenance contractor, and remain onsite until secure;
 - report any damage causing a health and safety hazard immediately to Council's Call Care after-hours service; and
 - record and report all damage to the Council Representative.

Grounds Maintenance

- 3.23 The Contractor is to conduct regular inspections of grounds surrounding each venue to ensure they are suitably maintained and remain free of litter.
- 3.24 The Contractor shall remove minor litter from the grounds noticed in the course of any such inspection. The Contractor is to liaise with Council's relevant grounds maintenance contractor to arrange, subject to Council approval, any major litter removal or any required maintenance. Council will be invoiced directly by the relevant grounds maintenance contractor for such work.
- 3.25 For the purposes of this Contract, the word 'grounds' includes carpark, courtyards, footpaths and roads, lawns and gardens, walls, fences and boundaries, outdoor furniture (including all picnic benches, benches, barrier rails, cycle racks, and litterbins) that constitute part of the venues, or are provided specifically for the use of venue hirers.

Keys

- 3.26 Any keys or security devices issued by Council shall remain the property of Council and the Contractor. No copies are to be made. Any keys or security devices lost or stolen need to be reported to the Council Representative immediately. Costs for mismanagement (lost/stolen) of keys/devices can be charged to the Contractor or hirer.
- 3.27 The Contractor shall keep a key register and form that records the use and possession of keys/security devices associated with the venues under its management. This shall include any keys issued by Council, or other keys or security devices used or managed by the Contractor. Annually, or as requested, the Contractor is to provide an up-to-date copy of their key register to the Council Representative.
- 3.28 The Contractor shall manage a process for the recovery and return of any keys issued when a staff member leaves.
- 3.29 The Contractor may be liable for costs incurred for damage or vandalism caused to venues, where there is a direct link between the cost incurred and failure of the Contractor to manage keys and access to the venues.

4. Event Management

Event Management Service

- 4.1 The Contractor is required to offer services that will assist venue users in preparing for events or functions and utilising the venues (**Event Management Services**). Such

- services are to be provided directly by the Contractor to the hirer and, as such, Council is making no warranty or guarantee as to these services.
- 4.2 At a minimum, the Contractor must make Event Management Services available for hires of the Trafalgar Centre, Trafalgar Park and Pavilion, Saxton Oval and Pavilion and Pūtangitangi Greenmeadows Centre.
- 4.3 The aim of providing Event Management Services will be to improve utilisation of the venues and level of service to users.
- 4.4 The nature and scope of Event Management Services shall be approved by Council, however as a minimum the Event Management Services provided shall include:
- Preparing floor plan layouts
 - Provision of a food and beverage service which caters to hirer needs
 - Coordination of event ticketing
 - Labour for setup for functions and events
 - Additional cleaning or waste management services (over and above normal daily cleaning)
 - Coordination for hire, delivery and setup of equipment and furniture (noting that Council equipment at the Trafalgar Centre must be set up and taken down and stored by the Contractor due to the value of assets and Health and Safety protocols)
 - Setting-up & packing-down services (including furniture and equipment)
 - Retail Sales
 - Special cleaning services
 - Ushers
 - Security
 - Provide, or provision of training for the preparation of an event for either a fire and emergency evacuation of the building
- 4.5 The contractor is required to provide a schedule of rates for the Event Management Services to be offered at the venues to be approved by the Council Representative. Any variation to this schedule of rates must also be approved by the Council Representative.
- 4.6 Subject to the below, hirers and/or Council shall not be obligated or required to utilise the Event Management Services offered by the Contractor, and no preferential treatment shall be provided to those users who choose to do so.
- At the Trafalgar Centre hirers and/or Council requiring a food and beverage service at an event or function must use the Contractor's food and beverage service. For the avoidance of any doubt, the Contractor may apply for an on-licence under the Sale and Supply of Alcohol Act 2012 with respect to the Trafalgar Centre.
- 4.7 Any fees and charges imposed by the Contractor upon hirers for Event Management Services shall be in accordance with the approved schedule of rates, other otherwise as approved by the Council Representative (**Event Management Fees**). Event Management Fees are to be invoiced to the relevant hirer as payable to Council (as a separate component to any applicable venue hire fee). Council shall reimburse all Event Management Fees paid to the Contractor on a monthly basis. The revenue from the food and beverage service component of the Event Management Services alone shall subsequently be shared between the Contractor and Council in accordance with Schedule 8 – Payment Schedule

- 4.8 Unless otherwise approved, provision of Event Management Services by the Contractor shall be at no cost to Council. Further, Council may seek compensation from the Contractor for any and all costs incurred by the Council as a result of the Event Management Services.

Event Management Manual

- 4.9 For the Trafalgar Centre and Trafalgar Park and Pavillion and the Saxton Oval and Pavillion, the Contractor will be required to compile an Event Management Manual that documents requirements for common uses at each venue. The manual shall document a standard Event Management Plan, a venue specific Health and Safety Management Plan, seating plan, equipment requirement, supervision requirements, contact numbers and standard procedures.
- 4.10 Use of the Event Management Manual shall be offered free to hirers.
- 4.11 The Contractor shall agree on the structure and content of the Event Management Manual for each venue with the Council Representative.
- 4.12 The Event Management Manual shall be completed and maintained on-site in anticipation of each event. Where it is determined by the Contractor or the Council Representative that the Event Management Manual is insufficient or requires modification due to the specific nature of an event, the Contractor will be responsible for requesting additional documentation from the hirer and making appropriate event-specific amendments.

Bookings and Enquiries Management

- 4.13 All venue enquiries and bookings will be managed by the Contractor on behalf of the Council.
- 4.14 Council shall independently set the applicable venue hire rates. Venue hire fees in accordance with such rates are to be invoiced by the Contractor to the relevant hirer as payable to Council (as a separate component to any applicable Event Management Fees).
- 4.15 The Contractor will provide pricing estimates to prospective hirers for bookings and Event Management Services, and advice on availability of equipment, suitability of venues and venue coordination to prospective hirers. The Contractor should be proactive in finding solutions and overcoming limitations of each venue.
- 4.16 The Contractor, unless otherwise authorised by the Council Representative, shall only use the Council's nominated **Venue Hire Agreements** for hiring the venues, which specify the relevant terms and conditions of venue use by a hirer. Council may update these nominated agreements from time to time.
- 4.17 The Contractor shall apply the Venue Hire Agreement Guidance document (as set out in Schedule 4 – Policies and Procedures and as may be updated by Council from time to time) and any other direction from the Council Representative in selecting and completing the Venue Hire Agreements for each hire.
- 4.18 The Contractor (by way of nominated **Venue Managers** approved by the Council Representative) is authorised to enter into the Venue Hire Agreements on behalf of Council and shall manage all bookings pursuant to the executed Venue Hire Agreements, including any other documentation or requirements related to the booking as set out in this Contract, on behalf of Council. Notwithstanding the above, the Contractor must comply with any direction of the Council Representative with respect to any booking, conflicting bookings or dispute under the Venue Hire Agreements. Any failure of the Contractor to manage a booking or to comply with such a Council direction shall be referred to a senior management representative of each

party shall for prompt resolution, without limiting any other rights of the parties under this Contract.

- 4.19 The Contractor shall, subject to any direction to the contrary from the Council Representative, given priority to ongoing regular bookings and booking which bring higher utilisation of the venues.
- 4.20 The Contractor shall take all reasonable steps necessary to assist Council in recovering any and all amounts payable by hirers (including with respect to cleaning or damage) pursuant to the Venue Hire Agreements.
- 4.21 The Contractor shall provide advice and assist hirers with planning an event, which will include how to obtain licenses, permits and consents required for specific bookings .
- 4.22 The Contractor shall use and maintain the Council's booking system to manage and publicly display venue bookings for all venues included in this contract.
- 4.23 The Contractor will also manage event operations plans that are part of the Council's event planning guide for venues under this contract.
- 4.24 The Contractor shall be responsible for confirming bookings with the hirer.

Management of conflicts and priority of bookings

- 4.25 The Contractor shall manage conflicts in bookings to with the aim of maximising utilisation and maintaining positive relationships with customers. Wherever possible the Contractor shall attempt to negotiate an outcome which is satisfactory for all parties.
- 4.26 In general, events or bookings that will result in higher utilisation shall be given preference.
Any bumping policy will be in accordance with the latest version of the Venue Hire Agreement, or as directed by the Council Representative.
Otherwise, the following order of priority for different uses (highest priority first) may be considered in resolution of any conflicts:
- National sporting events
 - Commercial events and conferences of frequent user groups
 - Community functions which are open to the public
 - Private events
- 4.27 Where there is significant conflict or the priority is unclear, the Contractor shall seek advice from the Council Representative.
- 4.28 The Council Representative may instruct the Contractor to set specific priority on any given conflict.

Admissions

- 4.29 The Contractor will communicate with hirers and arrange for admission into the venues as required and will provide a consistent point of contact for customers, site induction, overseeing the installation, delivery and exit of events.
- 4.30 The Contractor is responsible for:
- Ensuring the venue is in a clean and tidy state and suitable for the intended hire.
 - Maintaining the general security of the facilities during operation (separate to any event specific security services provided by way of Event Management Services).
 - Liaising with Councils' relevant security contractor for the opening and closing of the venue before and after functions if required.

- Maintaining a customer service interface and point of contact prior to, during, and after any hire, to ensure the venue meets user needs and expectations, to minimise operational difficulties and resolve any issues.
- Inducting and ensure hirers and users of the venues are aware and comply with health and safety rules, regulations and requirements set out in the Venue Hire Agreement and abide by them.
- Ensuring that the venue is left in a clean and tidy state post-hire (with any extra cleaning or damage to be charged to the hirer pursuant to the Venue Hire Agreement).
- Ensuring furniture and equipment when utilised is returned in a good state of repair and left in an agreed location.
- Prior to leaving any venue, ensuring all doors and windows are secure and any relevant alarm is set.

Run Sheets

- 4.31 For bookings at the Trafalgar Pavilion, Saxton Pavilion, Pūtangitangi Greenmeadows Centre, Trafalgar Street Hall and Wakapuaka Hall, the Contractor will be required to provide hirers with a run sheet that sets out access times, contact details, key timings and health and safety requirements.

Supervision

- 4.32 The Contractor shall ensure that there is sufficient supervision of events in accordance with the requirements of this Contract and all/any relevant legislation, codes of practice, and best practice standards relevant to the event.
- 4.33 Supervision requirements will be set out in the Event Management Manual.

Records

- 4.34 The Contractor shall collect and maintain information about the use of each venue for the purpose of statistical and marketing analysis. This will include records relating to events and hire bookings, event attendance, demographics and any other information required by the Council Representative, in conjunction with Council's Records Management Policy specified in Schedule 4 – Policies and Procedures.
- 4.35 Information collected for each event / hire shall include:
- The number of attendees (where possible);
 - Number of hours and days booked;
 - Identification of business, club, community group or individual hirers;
 - Use category, for example sport, training, commercial, community, private, and what the event was (e.g. business event, sports hire, wedding);
 - A description of the market demographic for commercial events: e.g. local, national, international, key market segment ;
 - If the event/booking is open to members of the public and if the event is ticketed; and
 - Any further information relating to Performance Standards as may be directed by the Council Representative from time to time.

Customer Service, Complaints and Feedback

- 4.36 The Contractor shall provide venue hirers with excellent customer service.
- 4.37 The Contractor will follow the Organisational Customer Service Standards specified in Schedule 4 – Policies and Procedures
- 4.38 The Contractor shall respond to customer compliments, complaints and feedback in a timely manner.
- 4.39 The Contractor shall respond to any feedback with a focus on satisfactory resolution.

5. Marketing

- 5.1 Council and the Nelson Regional Development Agency intend to actively pursue events that will bring economic benefit to Whakatū Nelson. The Contractor shall collaborate and assist with development of bid documents for events as they arise, and generally work collaboratively with Council to reinforce marketing opportunities for the venues.
- 5.2 The Contractor shall also develop, and implement, an annual Venue Marketing Plan for each venue in collaboration with Council's Representative.
- 5.3 The Venue Marketing Plans will include promotion of the venues in both a local and national context through all social media (posts, stories), print advertising, electronic direct marketing and other direct marketing, and attending trade conferences. Marketing activity is to include at a minimum:
- Social media and print advertisements
 - At least one electronic direct mail per month
 - At least 1 social media post per platform/per week/per venue
 - Conferences – attending a minimum of 2 conferences per year:
 - Educational
 - Promotional
 - Direct marketing (e.g: telephone/email to promoters):
 - To attract a range of event types
 - Attract event types currently missing from the region
- 5.4 The effectiveness of the Contractor's marketing activities and expenses shall be measured for the purpose of Annual Review and preparing the Venue Marketing Plans for the subsequent year.
- 5.5 Specific objectives for Community Halls (Trafalgar Street Hall and Wakapuaka Hall) in Venue Marketing Plans are:
- Aiming to maximise usage of the Community Halls.
 - Ensuring that activities reflect the needs and interests of the local neighbourhoods.
 - Proactively engaging with other social infrastructure and residents across these communities to encourage usage of Community Halls.
 - Ensuring marketing contributes to the optimal utilisation of venues and return on its investment.
- 5.6 Specific objectives for Trafalgar Centre, Trafalgar Park and Saxton Oval and Pavilion:
- Building strong relationships with other event centres and national promoters.
 - Optimising marketing opportunities.
- 5.7 The Contractor shall:
- Proactively seek to identify and develop marketing opportunities for all the venues. This should include, but not be limited to:
 - Ensuring any advertising or marketing products relating to the venues adhere to branding guidelines for those venues.
 - Identifying potential infrastructure investments that will help make the venues more marketable and advise the Council Representative.
 - Identifying potential photography or filming opportunities for future marketing.
 - Identifying ways to attract return custom and positive public relations at our venues.
 - Support the marketing of public events at the venues by:

- Displaying event promotional material within the venue.
- Keeping promotional displays in all venues tidy and up to date.
- Providing solutions for the display of sponsorship and event signage.

5A. Corporate signage and partnerships

- 5A.1 The Contractor shall develop, and comply with, a corporate sponsorship plan for the venues.
- 5A.2 Approval (in Council's complete discretion) is required before any agreements regarding corporate partnerships for the venues, including signage naming rights, (**Partnership Agreements**) may be entered into. Following any such approval, Council shall do all things necessary to facilitate such agreements.
- 5A.3 The Contractor must maintain detailed records and accounts regarding any Partnership Agreements and income received under such agreements. This information must be provided to Council on demand.
- 5A.4 The division of income from Partnership Agreements as between the Contractor and Council shall occur in accordance with Schedule 8 – Payment Schedule

5B. Ticketing partnership

- 5B.1 The Contractor may, with Council approval (which may be withheld at Council's discretion), enter into an agreement with any ticketing provider regarding a ticketing partnership for the venues (**Ticketing Partnership**). Following any such approval, Council shall do all things necessary to facilitate such an agreement.

As at the date of this Contract, the Contractor is advised that Council will likely not grant approval to any ticketing partnership which grants exclusivity, or otherwise prohibits any hirer from utilising the ticketing provider of their choice. Council agrees to in good faith review this position after the first year of the contract, and may seek submissions from the Contractor to inform this review.

- 5B.2 The Contractor must maintain detailed records and accounts regarding any Ticketing Partnership and income received under such agreement. This information must be provided to Council on demand.
- 5B.3 The division of income from any Ticketing Partnership as between the Contractor and Council shall occur in accordance with Schedule 8 – Payment Schedule

6. Website

- 6.1 The Contractor shall collaborate with Council's Representative on the maintenance of each venue's web presence and create social media plans in accordance with the Nelson City Council Media Policy specified in Schedule 4 – Policies and Procedures.

7. Waste Management

- 7.1 The Contractor shall implement Council policies and initiatives for waste minimisation (either specified in Schedule 4 – Policies and Procedures to the Contractor from time to time) within the venues. This shall include, but not be limited to:
- Providing pro-active methods for minimising operational waste within the venue
 - Providing pro-active methods and tools for minimising waste from venue hirers

- Working alongside hirers, contractors, and sub-contractors to minimise and recycle waste

8. Operations Manual

8.1 The Contractor will develop and maintain an **Operations Manual** with respect to the Services.

8.2 The Operations Manual shall include but not be limited to:

- Event Management Manual;
- Cleaning and Maintenance Plans, Venue Maintenance Registers, Asset Registers, Event Management Plans, Venue Marketing Plans, Venue Health and Safety Management Plans and Emergency Response and Evacuation Plans for all venues;
- Quality Assurance Plan, Safety Plan, Risk Management Plan, Transition Plan.
- Procedures to monitor, and report on asset condition and performance, including monthly inspection and reporting;
- Methods for undertaking risk assessment on all assets, new or changed assets;
- Management of use and storage of equipment:
 - Accounting for the location of assets at all times;
 - Safe storage;
 - Policies for assets hired or borrowed for Council events;
- Cash handling procedure in accordance with Council's Cash Handling Policy specified in Schedule 4 – Policies and Procedures; and
- BWOF for venues.

8.3 The Council Representative shall approve the Operations Manual and may require updates and changes from time to time. Any change to the scope of the Services required to be completed by the Contractor as a result of those changes, or from addition of new assets or removal of assets, will be treated as a Variation in accordance with clause 16.

9. Managing and maintaining existing long term venue users

9.1 The Contractor will continue to support, develop and manage existing long term venue user relationships and expectations. These community and club groups are regular hirers of the venues, as well as using the venues as their home base e.g. Rugby at Trafalgar Park, Stoke Rugby, Stoke Seniors, Stoke Tennis, Petanque etc.

9.2 The Contractor will be required to negotiate and balance bookings and fully accommodate other hirer events that may be required.

10. Hours of work

10.1 The Contractor must be available "On Call" to respond to any emergency events at any time including weekends and public holidays.

10.2 The Contractor must be available to provide venue management every day of the year (subject to reasonable notice of the booking) based on the needs of event bookings. This includes public holidays in accordance with NZ legislation.

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- 10.3 For the **Trafalgar Centre** and **Pūtangitangi Greenmeadows Centre** staff must be on site Monday to Friday from 8.00am to 5.00pm to provide administration services and respond to customer enquiries, and at other times to staff events. Exceptions can be requested via the Council Representative.
11. Staffing level requirements for each venue for events
- 11.1 **Trafalgar Centre** – to be staffed by at least one appropriately qualified member of the Contractor's team and provide induction.
- 11.2 **Trafalgar Park** - to provide key access and induction to the hirer and a post-event security check (unless the booking is a major ticketed event, or Council staff specifically state that a booking should be staffed by an appropriately qualified member of the contractor's team).
- 11.3 **Trafalgar Park Pavilion** – to provide key access and induction to hirer (unless the hire forms part of a Trafalgar Park booking).
- 11.4 **Saxton Oval** – to be staffed by at least one appropriately qualified member of the Contractor's team and provide induction.
- 11.5 **Saxton Oval Pavilion** - to provide key access and induction to the hirer and a post-event security check (unless the booking is a major ticketed event, or Council staff specifically state that a booking should be staffed by an appropriately qualified member of the contractor's team).
- 11.6 **Pūtangitangi Greenmeadows Centre** – to be staffed by at least one appropriately qualified member of the Contractor's team and provide key access and induction to users.
- 11.7 **Trafalgar Street Hall** – to provide key access and induction to users.
- 11.8 **Wakapuaka Memorial Hall** - to provide key access and induction to users.
12. Other contractors
- 12.1 The Contractor shall cooperate and interface with, as required by the Contract, all contractors engaged by the Council to provide services that relate to the Services including, without limitation, contractors engaged with respect to:
- Exterior maintenance
 - Security systems
 - Turf management
 - Stand scaffolding at Trafalgar Pavilion
 - Fire Compliance
 - Gas Compliance
 - BWOFF certification

13. Annual review

- 13.1 The Council Representative and the Contractor Representative shall undertake a joint review of this Schedule 2 – Services Specifications annually at a time mutually agreed by the parties.
- 13.2 Each party shall review specifications with the aim of identifying variations that could provide efficiencies or improved levels of service. Any such identified variation is to be treated as a Variation in accordance with clause 16.

14. Health and Safety Requirements

Venue Health and Safety Management Plans

- 14.1 In addition to the general requirement for a Safety Plan at clause 9.2.1, the Contractor shall prepare, maintain and comply with a **Venue Health and Safety Management Plan** for each venue.
- 14.2 Each Venue Health and Safety Management Plan shall include but not be limited to:
- Identification of responsibilities, including an on-site **Health and Safety Management Controller** who shall be nominated for each period of operation
 - Completion of daily, weekly and monthly safety checks (self-audits) by the Contractor for management of activities
 - Maintenance and ongoing review of a **Hazard Register**
 - To keep records and monitor validity of staff training and inductions
 - Requirements for hygiene in working in kitchens and other areas of food or beverage preparation and for use of venues by hirers.
 - To undertake periodic review and assessment of hazards at each venue:
 - Checking for any feature or problem that could reasonably cause an accident resulting in injury to any staff member, sub-contractor, or member of the public.
 - Where inspections indicate a potential Health & Safety risk, identify and propose control mechanisms.
 - Document such activity and advise staff and others in appropriate manner of the risk and control of the hazard.
 - Implement processes and protocols to allow use of all equipment safely.
 - Requirements for Event Management Plans to control safety during individual events.
 - Reporting of safety issues to Council immediately if major, in the Monthly report if minor.

Hirers of the venues

- 14.3 All hirers (including third party contractors employed by hirers) will be inducted by the Contractor to the venue site and on the use of equipment, plant and machinery and general health and safety concerns within the building. The induction programme will include, but is not limited to:
- the Venue Health and Safety Management Plan
 - Exchange of information in relation to on-site hazards and hazards that may be brought on-site by hirers, their sub-contractors, agents and/or representatives.
 - Emergency procedures.
 - Emergency contact numbers.

- Training for those items of plant/equipment/machinery to be used by the hirer through the course of their event.
- 14.4 A record of each induction must be maintained with comprehensive checklists signed by hirers. Checklists will include general items of induction as well as any specific training for use of plant, equipment, and machinery.

Incident Reporting and Investigation

- 14.5A If any incident (injury, illness or near miss) occurs as a result of work for Council, the contractor shall use their own procedures to record, report and investigate this. This includes incidents relating to sub-contractors.
- 14.5B The contractor is responsible for notifying WorkSafe of all notifiable incidents, illnesses or injuries, within the required timeframes.
- 14.5C Contractors must advise Council as soon as possible of all incidents causing, or which might have caused serious injury or illness, Lost Time Injury, or fatality to either workers or members of the public. This includes any events, injuries or illnesses notifiable to WorkSafe NZ.
- 14.5D Contractors must report all other incidents causing, or which may have caused injury or illness, at least monthly. This information should be submitted to the Contract Representative by the end of the first week of each month.
- 14.5E Full Incident Investigation documentation must be made available upon request by Council. This should be completed within the 14 days following an incident, and should be provided to Council within 48 hours of a request being issued.
- 14.5F Contractors must immediately advise Council of any actual or potential prosecution or notice to be issued by WorkSafe NZ for works being undertaken for Council.

Subcontractors

- 14.5 All subcontractors of the Contractor are to be inducted by the Contractor with respect to the Safety Plan and any relevant Venue Health and Safety Management Plan and made aware of any relevant Hazards Register.

Medical response

- 14.6 **Trafalgar Venues (Centre, Park and Pavilion) and Saxton Oval and Pavilion (if Oval and Pavilion hired together)**

The Contractor shall maintain relevant equipment and have trained staff available in order to provide assistance in the case of a medical emergency, specifically:

- Undertake regular maintenance and inspection of first aid equipment and supplies to ensure they are well stocked and accessible for staff or users of the venues
 - Arrange maintenance, inspection and testing to ensure defibrillators held at the venue are fit for use at all times and are easily accessible
- 14.7 **At Trafalgar Venues and Pūtangitangi Greenmeadows**

During business hours (8.00am – 5.00pm Monday to Friday) ensure that there are a sufficient number of personnel qualified in first aid present at each venue to deal with medical emergencies (which may be employees of the Contractor or third parties) that may arise as a result of customer use.

Emergency Response and Evacuation

- 14.8 The Council shall provide to the Contractor the **Emergency Response and Evacuation Plan and Procedure** for each venue as at the Commencement Date.
- 14.8 The Contractor will be required to ensure that the current Emergency Response and Evacuation Plan and Procedure for each venue is made available to its staff and its customers, and is required to ensure that all its staff and customers are familiar with the associated procedures.
- 14.9 The Emergency Response and Evacuation Plan and Procedure will be made available to the Contractor's staff in a prominent place at each venue and will include the following information:
- Crowd control
 - Process for getting assistance
 - System for follow-up reports
 - Dealing with the media
 - People to notify
- 14.10 Emergency Response and Evacuation Plan and Procedure which includes staff directions will be included in staff training material. Procedures for emergency evacuation will also be displayed throughout the venue in public areas.
- 14.11 The Contractor will ensure Emergency Evacuation procedures are practiced regularly by staff to meet with legislative requirements. As a minimum the Contractor shall organise quarterly practise drills for fire and earthquake evacuation at all venues with venue staff, and sub-contractors (if relevant).
- 14.12 For all venues, the Contractor will be required to display emergency numbers both within the manager's office and within public areas that include contact numbers (and names where appropriate), and basic instructions for contacting the following:
- Police, Ambulance, Fire
 - Safety Management Controller
 - National Poisons Centre
 - The Contractor Representative
 - The Council Representative
 - Council's Customer Service Centre
- 14.13 In the event of an earthquake, tsunami or evacuation the Contractor shall administer emergency response to assist the users of the venues.
- 14.14 The Contractor will review the Emergency Response and Evacuation Plans and Procedures following any emergency or emergency drill, and at least annually. Council may elect to participate in any such review. Any update to the Emergency Response and Evacuation Plans and Procedures shall require Council's approval. 14.15 For all venues where 100 or more people can gather, or where 10 or more people work, the contractor shall:
- Prepare and maintain an Evacuation Scheme, to be assessed and approved by Fire Emergency (FENZ),

- For any specific event that alters or changes the standard Evacuation Scheme initiate discussions with the local fire brigade to assist with a one off Evacuation Scheme to be agreed and approved by FENZ
- Undertake the required 6th monthly fire drills, and submit the outcomes of the evacuation report to the Fire Information Unit

14.15 For all venues used for public use, the contractor shall:

- Prepare and maintain an Evacuation Procedure

Emergency Management and Civil Defence

- 14.15 Venues managed under this Contract may become important as Civil Defence centres during or after the occurrence of an emergency event. The Contractor must make the Venues available for civil emergencies for as long as required by Civil Defence.
- 14.16 The Contractor shall provide the level of service necessary to address incidents (major events and emergencies), ensuring that both staffing, equipment and material contingencies are planned for and available at each venue. This includes maintaining appropriate staff levels to respond to urgent or unforeseen venue tasks, and emergency events.
- 14.17 In the case that a venue is used for Civil Defence, the Contractor will be responsible for administering the security and integrity of the building, and for providing additional cleaning or maintenance services as required by the Council Representative. During such an event the Contractor shall be available to report to the Council Representative or directly to the Civil Defence on any issues relating to the venues.
- 14.18 In the case of an earthquake the Contractor will work with the Council Representative and/or other specialised contractors appointed by Council to conduct preliminary earthquake damage checks to all venues within 24 hours and submit reports to the Council Representative where required.
- 14.19 Any costs incurred directly by the Contractor in compliance with this Emergency Management and Civil Defence component of the specification (as opposed to costs billed directly to Council by its other contractors) shall be repaid by Council to the Contractor as a Cost Reimbursement.
- 14.19 If a venue is damaged as a result of an emergency, the Contractor may be required to close venues that require repairs and manage all resulting booking changes including cancellations.

Health and Safety Audit

- 14.20 For the avoidance of doubt, audits under clause 9.3.13 may extend to the Contractor's compliance with the Venue Health and Safety Management Plans.

Hazards/Risks

- 14.21 Pursuant to clause 9.2.1, the hazards associated with the Services known to Council are as follows:

Access

- Access by public and third-party contractors:
- Access to the venues by members of the public and contractors employed by third parties (hirers and event organisers) must be managed to ensure all parties are suitably aware of health and safety risks at each site and to manage the identification of new hazards by those parties.

Hygiene and communicable diseases

- Hygiene issues connected to working in kitchens and other areas of food or beverage preparation and for use of venues by hirers.
- Communicable diseases.

Keys

- Unauthorised access to plant and equipment presents a key health and safety risk to individuals and our customers.

SCHEDULE 3 – COUNCIL INFORMATION TECHNOLOGY REQUIREMENTS

(Refer clauses 5.5.2, 5.5.3)

1. Overview

1.1 To facilitate the day to day operation of the Council's activities, external Contractors with new or existing contracts with the Council may be given appropriate access to the Council Information Technology System. Access will be restricted to corporate software application(s) directly required for the effective management of the Contract.

1.2 Provision of equipment

- The Council IT team will provide three personal computers, one laptop, and three monitors.
- Council will provide anti-virus for each work station
- Council will provide three phones for the site
- Contractor will provide applications and email
- Contractor will provide any required printing devices for the delivery of the contract

2. Provision of Access to the Council's Systems

2.1 The Council IT team require a minimum of 5 working days advance notice of the need for a Non-staff user account. In extenuating circumstances this requirement may be waived by the Manager Customer Service & IT.

2.2 In all cases an IT account will not be created or access be granted until this agreement and the Individual Non-staff User Agreement have been signed.

2.3 The IT Team will maintain a register of authorised Contractors, Users and responsible Business Units.

2.4 It is the responsibility of the Contractor to contact the Service Desk to ensure access to other systems and programs are updated if a user's role or need to access information changes.

3. Remote Access Requirements

3.1 The Contractor must take reasonable steps to secure their PCs from viruses and attempted intrusions or hacking when connecting to the Council network remotely. A firewall must be installed. Only web-based access via HTTP will be granted to Contractors for general use. VPN access is not preferred and will only be approved by the Manager IT in certain circumstances.

3.2 The services required will be published on Citrix servers and Contractors will access these published services via the Citrix Secure Gateway and Citrix Web Interface service. This will require the installation on the Contractor's PC of a client and a browser certificate which will be supplied by the Council.

3.3 Types of Services that can be published remotely:

3.3.1 Magiq (service request system), InTouch (access to the plant management system running at the Council to manage water, storm and waste water systems), Infor

(Asset Management system), Server Console (via PC Anywhere or Microsoft RDP), Internet Explorer, or Other specific tools required to perform application specific remote management if approved by Council.

4. Support for Remote Users

- 4.1 The Contractor will ensure that its staff use appropriate channels to request IT support. Initial calls for help with systems should be made to the Contractor's own IT support provider. Only once the provider has confirmed that the user's problem is not caused by an issue at the Contractor's site should a call be made to the Council IT Service Desk.
- 4.2 Any requests for support from Council must be made via the Council's IT service desk. (03 5460300 or askit@ncc.govt.nz)
- 4.3 IT support by Council to contractors is limited to testing that applications are able to be accessed by the contractor's Council IT account and resolving any issues arising from that.
- 4.4 All other support is the responsibility of the Contractor including:
- Installation of the Citrix client and the security certificate.
 - Any subsequent operational problems.
 - Any hardware or software maintenance on the Contractor's desktop and peripherals.
 - Any issues arising from the use or processing of data by the Council corporate Software.

5. Support for On-site Users

- 5.1 Where the Contractor has staff accessing systems and information on Council premises then support should be accessed via the IT Service Desk.
- 5.2 If the Contractor needs to connect their own equipment to the Council network, approval is required by the IT Service Desk. They will ensure the machine is checked for viruses and is allocated a correct IP address.

6. Outages

- 6.1 From time to time the Council will make systems unavailable for maintenance. Although the Council will try to provide advance notice of an outage, there is no obligation on the Council to do so.

7. Training

- 7.1 Training for accessing the Council System and the use of required software applications will be provided by a designated Council staff member(s). Contractors should request this via the Nelson City Council staff member managing the contract relationship with Council.

8. Network Use and Security

- 8.1 Systems and/or Information Access may only be granted to an individual or to an organisation by the IT Service Desk. On no occasion should passwords or user names

be shared to allow access. In the event that Nelson City Council becomes aware of password sharing, the account will be disabled.

- 8.2 Generic log-ons are not generally permitted across Council, however, use of generic accounts under exceptional 'controlled' circumstances may be permitted if approved by the Manager Customer & Information Services.
- 8.3 The appropriate level of access to systems and information will be determined upon the prospective users required business need, job function and role. Generally, access will be set at the minimum level that enables the user to perform their job effectively. Access to critical systems (such as Magiq) will be reviewed by Business Unit Managers each six months.
- 8.4 Passwords are set to expire every 90 days. Passwords must meet the following criteria:
- Be at least 8 characters long
 - Include at least 1 letter and 1 non-letter (number or special character)
 - Not include the log-in name in the password
 - Be different to any of the 24 previous passwords.

9. Breach of Policy

- 9.1 Breaches of these Information Technology Requirements and/or security incidents can be defined as events which could have, or have resulted in, loss or damage to Council assets, or an event which is in breach of the Council's security procedures and policies.
- 9.2 All Council employees, elected members, contractors, vendors and any other organisations accessing Council systems have a responsibility to report security incidents and breaches of this policy as quickly as possible to the Manager Customer and Information Services. This obligation also extends to any external organisation contracted to support or access the Information Systems of the Council.
- 9.3 The system is monitored. Ongoing access to the Council System is subject to compliance with Council procedures & policies. Breach of Council policies & procedures will be considered as a breach of the terms of this Contract and connection may be terminated immediately.

SCHEDULE 4 – POLICIES AND PROCEDURES

General policies and procedures

(Refer cl.5.6)

1. Children's Act Policies

General policy requirement

Any issues of suspected child abuse must be taken seriously and handled in an appropriate manner that ensures the child's safety.

The Contractor's staff must not act alone, and will refer all suspected child abuse to Police and/or Ministry for Children, Oranga Tamariki. The safety of the child will be the primary consideration and staff will not collude to protect an adult or an organisation.

The Contractor's staff will seek advice as required from the Ministry for Children, Oranga Tamariki and/or the Police before providing or sharing identifying information about any allegation.

Council Child Protection Policy

Child Protection Policy - A1524143

2. Health & Safety Policy

Nelson City Council Health and Safety Policy - A115020

3. Nelson City Council Media Policy

Nelson City Council Media Policy - A309851

4. Records Management Policy

Records Management Policy - A1528153

5. Cash Handling Policy

Cash Handling Policy – A340171

6. Organisational Customer Service Standards

Organisational Customer Service Standards - A710052

7. Complaints and Feedback Policy

Complaints and Feedback Policy - A1468916

8. Credit Card Use Policy

Credit Card Use Policy - A18269

9. Fraud Prevention Policy

Fraud Prevention Policy - A1756958

10. Risk Management Policy

Risk management policy - A1553263

11. Computer and Communications Policy

Nelson City Council Computer and Communication Systems Policy - A17975

12. Media Policy

Nelson City Council Media Policy - A309851

13. Venue Hire Agreement Guidelines

Venue Hire Agreements Guidelines July 2023

14. Nelson Tasman Waste Management and Minimisation Plan

Nelson Tasman Waste Management and Minimisation Plan April 2012

Note: All the above policies as at 26/06/2024 are sent separately

SCHEDULE 5 – MONEY COLLECTION REQUIREMENTS

(Refer clause 5.12)

1. **Specific requirements**
- 1.1 The Contractor must at all times adhere to the requirements of the Cash Handling Policy specified in Schedule 4 – Policies and Procedures.
- 1.2 All revenue relating to the hire of venues is to be processed through the Collection Account.
- 1.3 Within 5 days of the end of each month a revenue and expenditure against budget report is to be prepared and provided to the Council Representative.
- 1.4 Payments for bookings in cash direct to the Contractor are not permitted with the exception of door sales for specific events which will be agreed in writing prior. Specific cash handling procedures will be developed for each specific event where this applies.
- 1.5 Payments for bookings are to be made by eftpos, electronically or at Council's Customer Service Centre.
- 1.6 Only authorised personnel with no conflicting duties will have access to financial records, data files and programmes, and related records.
- 1.7 All Contractor personnel dealing with financial aspects of this Contract are required to obtain a Ministry of Justice criminal check and provide this information to Council prior to their commencement.
- 1.8 Procedures on the financial management / reporting shall be documented by the Contractor and provided to all personnel responsible for any financial aspect of this Contract.
- 1.9 The Contractor will provide a detailed report identifying the cause of any discrepancy between receipts and payments received by Council. Where the Contractor fails to adequately identify variations between cash collected and payments to Council they will be required to reimburse Council the full value of the discrepancy.
- 1.10 The Contractor shall not, whether itself or by any partner engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Services other than any charges properly approved by the Council in accordance with the provisions of this Contract.

Venues Management, Maintenance and Marketing Contract

SCHEDULE 6 – PERFORMANCE STANDARDS

(Refer clause 26.1.2)

The following Key Performance Indicators (KPIs) are the Performance Standards for the purposes of this Contract:

KPI 1 – Satisfactory Contractor's Monthly Report

The Contractor, each month, shall provide a monthly report in compliance with the requirements of Schedule 7 – Reporting.

Adjustment of Contract Price for failure to meet KPI:

Reduction of the Monthly Lump Sum by 1%.

KPI 2 – Venues available for hire

The Contractor will ensure that all venues are available for hire every day of the year and for the operating times permitted by the Resource Consent for each venue, and report on any closures.

Adjustment of Contract Price for failure to meet KPI:

Reduction of the Monthly Lump Sum by 2% per day that a venue is closed (or not available for hire for the full period permitted by the Resource Consent) due to lack of resourcing, poor scheduling or any other circumstances within the Contractor's control in the relevant month.

KPI 3 – Number of bookings

The Contractor will meet or exceed the number of days/hours set by Council's Long Term Plan levels of service (specified below) that the venues are booked for during each year of the Term.

Bookings are recorded and tracked through Council's booking system.	Past Annual Statistics	Number specified
Total number of days Trafalgar Centre is booked.	2021/22 = 90 (39 Covid vaccination clinic) 2022/23 = 125	120 days
Total number of hours community halls are booked.	Wakapuaka Memorial Hall 2021/22 = 165 2022/23 = 240	180 hours
Wakapuaka Memorial Hall	Trafalgar Street Hall	1000 hours
Trafalgar Street Hall	2021/22 = 1122 2022/23 = 670	
Trafalgar Park Pavillion	Trafalgar Park Pavillion 2021/22 = 483	450 hours

	2022/23 = 465	
Total numbers of hours booked at Pūtangitangi Greenmeadows (includes rooms)	2021/22 = 5145 2022/23 = 6119	6000 hours

Adjustment of Contract Price for failure to meet KPI:

Reduction of the portion of the Annual Lump Sum relating to the venue where the performance target has not been met by 2%. The reduction is to be applied to the first Monthly Lump Sum following the generation of statistics for any completed year of the Term.

KPI 4 – Work Audit

Following any periodic audit undertaken by the Council in accordance with clause 12.2, the Contractor being compliant with all contractual requirements, or having rectified any non-compliance within 7 days of notification (or a reasonable longer timeframe agreed between the parties).

Adjustment of Contract Price for failure to meet KPI:

Reduction of the Monthly Lump Sum by 2%.

KPI 5 – Health and Safety Audit

Following any health and safety audit undertaken by the Council in accordance with clause 9.3.13, the Contractor being compliant with the health and safety procedures and obligations under the HSW Act and this Contract (including, for the avoidance of doubt, each Venue Health and Safety Management Plan).

Adjustment of Contract Price for failure to meet KPI:

Reduction of the Monthly Lump Sum by 5%.

KPI 7 – Marketing generally

The Contractor meeting or exceeding the minimum requirements of marketing for venues specified in clause 5.3 of Schedule 2 – Services Specifications during each year of the Term.

Adjustment of Contract Price for failure to meet KPI:

N/A

KPI 8 – Marketing Community Halls

The Contractor meeting or exceeding the specific objectives for Venue Marketing Plans for Community Halls set out in clause 5.5 of the Services Schedule 2 during each year of the Term.

Adjustment of Contract Price for failure to meet KPI:

N/A

KPI 9 – Customer enquiries

The Contractor recording the time required to satisfy each enquiry for information or booking request (including email and telephone) and reporting this information in the Contractor's Monthly Report.

The Contractor ensuring that all enquiries for information or booking request shall be acknowledged within 24 hours and responded to within 48 hours.

Adjustment of Contract Price for failure to meet KPI:

Reduction of the Monthly Lump Sum by 2% for any month where less than 80% of enquiries for information and booking request are acknowledged within 24 hours and responded to within 48 hours.

KPIs Generally

For the avoidance of doubt, adjustments to the Contract Price as provided for by this Schedule are cumulative. For example, if Contractor incurs both a 5% reduction and a 2% reduction of the same Monthly Lump Sum, this will amount to a 7% reduction of the relevant Monthly Lump Sum.

SCHEDULE 7 – REPORTING

(Refer clause 11)

The Contractor is required to maintain open and transparent communication with Council throughout the Term and meet the minimum reporting requirements set out below.

1. Contractors Monthly Report

The Contractor shall provide a monthly report to the Council Representative by the 15th day of each month during the Term that identifies service activities and performance. The report shall include, but not be limited to:

- a brief narrative of significant issues or events associated with this Contract, including the identification of any issues or potential problems arising and what the Contractor has done or proposes to do about them;
- a self-assessment of the Contractor's compliance with Performance Standards (including with respect to venues marketing progress), including:
 - Identification and comment of any Performance Standards that are not being complied with; and
 - explanation and statement of future intent on any Performance Standard that is not being complied with;
- a monthly summary of each venue booking records, including:
 - a list of statistical information, including detailed information on the bookings, organisation, type of booking, attendee numbers;
 - a summary of the number of return customers/hirers/events; and
 - a summary about the availability of each venue and if there were any reasons for closures.
- venue revenue including food and beverages etc;
- a copy of the month's 'Compliments, Complaints and Feedback Register' including any feedback from venue hirers on user experience;
- any issues regarding staffing and resourcing;
- Venue Maintenance Register;
- any specific reporting required for operational purposes and long-term asset management as requested by Council Representative;
- reporting on waste minimisation initiatives and compliance; and
- any other matters required to be included in the Contractor's Monthly Report pursuant to Schedule 2 – Services Specifications.

SCHEDULE 8 – PAYMENT SCHEDULE

A Basis of payment

1. The Contract Price shall be determined in accordance with this Schedule, comprising the Annual Lump Sum specified in Schedule 1 – Reference Schedule, payable in 12 equal monthly instalments during each year of the Term (Monthly Lump Sum) (less any adjustments in accordance with Schedule 6 – Performance Standards), plus any reimbursements for expenses payable in accordance with the Contract.
2. All work described or otherwise implied by Schedule 2 – Services Specifications that is not described as being a 'Cost Reimbursement' shall be completed by the Contractor and paid for by way of the Annual Lump Sum.
3. Payment for reimbursement expenses shall be made monthly on an actual cost incurred basis without addition of a service fee or margin. Reimbursement expenses are those expenses described as being 'Cost Reimbursements' in Schedule 2 – Services Specifications, with Council Representative approval being required prior to incurring the expense (with the exception of urgent health and safety work). For the avoidance of doubt, Council Representative approval for Cost Reimbursement may be given on an individual basis and/or on a standing basis. Any reimbursement expenses which are not described as being Cost Reimbursements shall be only as approved by Council, with such approval to be obtained in writing prior to incurring the expense.

B Invoice content

All Contractor invoices must:

- (a) be dated the month the work or services were carried out;
- (b) include all required Tax Supply Information;
- (c) be received by Council within 5 Working Days of the end of that month;
- (d) state the Council's contract number and/or Purchase Order Number for the work, services or goods; and
- (e) be sent directly to creditors@ncc.govt.nz.

C Monthly claims

The procedure for monthly claims shall be as follows:

1. The Contractor shall submit claims on a calendar month basis. Claims shall be forwarded to creditors@ncc.govt.nz].
2. Claims shall be submitted within five Working Days of the end of the applicable month.
3. The monthly claim shall detail all amounts to which the Contractor is entitled determined in accordance with this Schedule 8 – Payment Schedule and shall separately detail claims for Variations. On completion of any task where there is a claim for a Cost Reimbursement the Contractor shall provide justification for costs and copies of any receipts/invoices from third parties.
4. The claims shall be in the format required by the Council Representative and shall include the contract number and Council's purchase order number.

5. The Contractor shall also submit such further information as is reasonably required to verify all amounts claimed and that the Services for which payment has been claimed have been performed to the standards required under this Contract.
6. Claims (or parts of claims) may be rejected by the Council where insufficient verifying information is provided.
7. Verified claims (less deductions permitted under this Contract or at law) shall be paid, subject to provision of a valid tax invoice, [by the 20th of the month following the date of the claim], or where further verifying information, within 10 Working Days of the date the required verifying information is provided to the Council.
8. If the Contractor omits any amount from a monthly claim, it shall give written notice to Council immediately it becomes aware of the omission provided this happens in the following month. The omitted amount may be included in the monthly claim for the following month but not otherwise.

D Variations

1. The value of each Variation shall as far as possible shall be determined by agreement between the Contractor and the Council.
2. Where the valuation of the Variation requires that the Services be monitored or measured, the Contractor will keep a record of all additional Services provided. This information shall be submitted to Council with each applicable monthly claim.
3. If the Contractor and Council cannot agree on the valuation of a Variation then the value of the Variation shall be such fair value as properly reflects the cost of the Service and a reasonable margin for the Contractor as shall be determined under the dispute provisions of this Contract.
4. Where the scope of the Services is decreased the Contract Price adjustment shall exclude the Contractor's margin (to the intent that the Contractor still receives its full margin for negative variations).

E Shared Income

1. Gross revenue from the Contractor's food and beverage service (as billed by the Contractor to hirers) shall be divided as follows: Council [REDACTED] Contractor [REDACTED]. The Contractor shall, on a monthly basis, notify Council of the total gross revenue and facilitate payment of the relevant proportion to Council in the manner directed by Council.
2. Income from Partnership Agreement shall be divided as follows: Council [REDACTED] Contractor [REDACTED]. It is anticipated that such income shall be received annually from the relevant corporate partner. The Contractor shall, as soon as reasonably practicable following the receipt of such income, notify Council of the amount received and facilitate payment of the relevant proportion to Council in the manner directed by Council.
3. Income from Ticketing Partnerships shall be divided as follows: Council [REDACTED] Contractor [REDACTED]. It is anticipated that such income shall be received annually from the relevant ticketing partner. The Contractor shall, as soon as reasonably practicable following the receipt of such income, notify Council of the amount received and facilitate payment of the relevant proportion to Council in the manner directed by Council.

Venues Management, Maintenance and Marketing Contract

SCHEDULE 9 – COUNCIL INFORMATION AND FACILITIES

(Refer clause 14)

N/A

SCHEDULE 10 – HANDOVER REPORT REQUIREMENTS

(Refer clause 19.1)

All information relating to bookings and enquiries for booking dated beyond the date of handover.

All maintenance and compliance records required to be maintained under this Contract.

Any other information reasonably required by Council as directed by the Council Representative.

SCHEDULE 11 – PARTNERING

(Refer clause 18)

Partnering philosophy

Council and the Contractor will conduct the Contract within the philosophy of partnering.

Partnering plan

Partnering under this Contract shall involve (but will not necessarily be limited to) the following:

1. Gaining senior management commitment from each party.
2. Arranging team building/bonding between Council and the Contractor as a planned process to acknowledge each other's agendas, focussing on common goals, clarifying expectations and establishing ground rules for the implementation of the Contract.
3. Expanding the commitment to all other significant participants who will be working together on the Contract by forming a cohesive team with a single set of objectives and developing a joint commitment for the timely identification, discussion and resolution of issues affecting the Services.
4. Producing a charter for the Contract with each team building workshop participant signing the charter to reinforce its commitment. The charter may typically contain the following commitments to:
 - (a) maintain quality control;
 - (b) carry out and administer the Contract so that all parties are treated fairly;
 - (c) achieve the Performance Standards expectations;
 - (d) resolve disputes as quickly as possible; and
 - (e) encourage the achievement of added value for the benefit of all parties by indicating improvements which become apparent throughout the project.
5. Conducting regular joint evaluations of partnering performance by all participants.
6. Conducting regular formal follow up evaluations of team performance and identifying areas for improvement at regular intervals as are necessary to enforce the attitudes and processes developed in the initial workshops.
7. Developing commitment and support from all levels of management including consistent endorsement of the principles of partnering.

SCHEDULE 12 – CONTRACTOR’S PROPOSAL

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