

FUNDING AGREEMENT XXXX BID targeted rate grant



Dated:

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

Auckland Council (“Funder”)	
Street address	135 Albert Street, Auckland CBD
Postal address	Private Bag 92300, Wellesley Street, Auckland 1142
Company No.	[For company CCO use]

[Recipient Name] (“Recipient”)	
Street address	[Street, Suburb, City, Postcode]
Postal address	[Street/Box/Bag, Suburb, City, Postcode]
Society No.	As per Incorporated Societies

Funder agrees to provide the Funding to Recipient, and Recipient accepts the Funding, on the terms of this Agreement, which includes this Signing Page, the Specific Terms, General Terms and any Schedules.

Important: By signing this Agreement, Recipient acknowledges that:

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

Signed under delegated authority for and on behalf of Auckland Council by:	
<hr/> Authorised signatory	
Name:	[Full Legal Name]
Position:	[Job Title]
Date:	_____

Signed for and on behalf of [Recipient Name] by:	
<hr/> Authorised signatory	
Name:	[Full Legal Name]
Position:	[Job Title]
Date:	_____

SPECIFIC TERMS

Clause references are to the General Terms.

Funder Representative	
Name	[Enter name here]
Phone	[Phone number]
Mobile	[Mobile]
Fax	[Fax]
Email	[Email address]

Recipient Representative	
Name	[Enter name here]
Phone	[Phone number]
Mobile	[Mobile]
Fax	[Fax]
Email	[Email address]

BACKGROUND	
A.	On Click here to enter a date , the [insert relevant Funder decision maker i.e. Local Board, Committee, Governing Body] resolved: [Insert resolutions]
B.	This Agreement sets out the conditions of the Funding.

DOCUMENTS (cl 1.2)	The documents forming part of this Agreement are: <ul style="list-style-type: none"> • The Signing Page • The Specific Terms • The General Terms • BID Policy 2021 and support documents. Visit https://bid.aucklandcouncil.govt.nz/ • BID-operating business association indicative/draft detailed income and expenditure budget XXXX/XXXX • BID-operating business association business plan XXXX/XXXX Attach as schedule 2
FUNDING (cl 2.1)	The total amount of funding is \$[Insert \$\$] (not subject to GST). The funding will be paid as follows: Four equal payments on or about: 20 July XXXX, 20 October XXXX, 20 December XXXX and 20 March XXXX.
FUNDING PERIOD (cl 3.1)	1 July 2022 - 30 June 2023
PURPOSE (cl 3.1)	This BID targeted rate grant is to be used by the BID-operating business association (Recipient) to deliver the BID programme/business plan and BID budget for the benefit of all BID affiliates/members for the 2022/2023 financial year as presented and agreed at its XXXX AGM.
OBJECTIVES & MEASURES (cl 3.4)	The Recipient must: <ol style="list-style-type: none"> 1. Meet all the requirements of the BID Policy (2021) including the support documents. 2. Notify the Funder of any issues relating to the governance or operation of the business association and or BID programme.

<p>REPORTING (cl 5.1)</p>	<p>The Recipient to provide the following reporting as required under the BID Policy (2021), section 3.2, requirement 21.</p> <ol style="list-style-type: none"> 1. BID programme Accountability Report XXXX/XXXX including the following documents: <ul style="list-style-type: none"> • Financial statements for year ending 30 June XXXX including: <ul style="list-style-type: none"> ○ Chair’s written report covering governance and organisation accountability to June XXXX. ○ Treasurer’s written report on financial accountability and processes against the business plan to June XXXX. Note this report should explain any redirection, variation of surplus/deficit of funds from the agreed business plan. • Auditor’s report and management letter for year ending 30 June XXXX. • Manager’s written report highlighting the achievement/status of key deliverables in the business plan to June XXXX. • Draft minutes of the XXXX AGM meeting. <p>To provide a copy of the following documents covering the financial year (XXXX/XXXX) that will be presented to BID members as part of the XXXX AGM including:</p> <ul style="list-style-type: none"> • Strategic plan which covers at a minimum the XXXX/XXXX financial year. • Business plan for period 1 July XXXX through to June XXXX • Indicative/draft detailed income and detailed expenditure budget XXXX/XXXX - must clearly identify the BID targeted rate grant amount and any proposed increase or decrease to the grant. <ol style="list-style-type: none"> 2. Confirmation of a register of members who qualify and confirm as being full members of the BID-operating business association – as defined by the constitution. 3. Confirmation of a register of BID affiliates – those who are members of the BID programme and pay the BID targeted rate directly (ratepayer/property owner) or indirectly (tenant), and who choose not to be full members of the association. 4. To complete and sign the XXXX/XXXX BID Accountability Report summary and declaration documents. 5. To forward the above documents to the Auckland Council BID team no later than 10 March XXXX.
<p>RECOGNITION (cl 2.5)</p>	<p>Recipient shall give fair and proper public acknowledgement of Funder’s support, including as follows:</p> <ol style="list-style-type: none"> (a) <u>Promotional materials</u>: Placement of Funder's name and logo on advertising and promotional material (e.g. print advertising, posters, newsletters, signage). (b) <u>Website</u>: Acknowledgement of Funder on Recipient's website, including a link to Funder's website using Funder’s logo. (c) <u>Communications</u>: Acknowledgement of Funder as a supporter, wherever possible, in press conferences, news releases, speeches, launches, articles sent to any publications, magazines, editorial and annual reports. (d) <u>Opportunities</u>: Recipient shall advise Funder of any marketing and promotional opportunities for Funder to promote its role as a supporter of Recipient. <p>The acknowledgements above shall be commensurate with the amount of the Funding (including placement and prominence relative to acknowledgements by Recipient of its other supporters). Use by Recipient of Funder’s name and logo must be in accordance with Funder’s brand guidelines, as notified by Funder from time to time, and Recipient shall copy all such promotional material to Funder’s Representative.</p>
<p>TERMINATION (cl 9.1)</p>	<p>[If an ongoing funding agreement, include right to terminate at will in absolute discretion on giving 30 days written notice]</p>

**OTHER TERMS
(cl 1.3)**

Business Improvement District (BID) Policy 2021 – including the support documents.

The policy establishes and sets out the roles and responsibilities for the Auckland Business Improvement District (BID) programme. The policy:

1. Defines the relationship between the Funder (Auckland Council) and Recipient (BID-operating business association). The relationship is based on:
 - Respect
 - Trust
 - Good faith
 - Co-operation
 - Focused on the collaborative good rather than individual.
 - and a no surprises approach.
2. Defines and sets out the requirements for the Recipient in relation to the governance, management, operation, and reporting aspects of the BID programme.
3. Requires the BID-operating business association must comply with the BID Policy
4. Requires the Recipient to provide BID affiliates/members have, at all times, unrestricted free access (BID Policy 2021, Requirement 7 and 16) to the following information that is fit for purpose:
 - How the BID programme works – including the BID boundary map and targeted rate calculation
 - Who’s involved
 - How and what decision-making takes place - generic information and contact details on the BID-operating business association, the executive committee and manager.
 - Governance information including business association member registration process, member benefits and executive committee nomination and appointment processes.
 - Appropriate documents – BID strategic plan, income and expenditure budget, AGM documents including the annual review documents and performance reports.
5. Requires the Recipient to have a BID manager/contractor or other agency appointed who is responsible for managing and implementing the BID programme and BID Policy compliance.
6. Insurance
 - The BID-operating business association is required to have appropriate and adequate insurance in place.
 - The Certificate of Insurance stating the limits, is made available to the Funder on request.
7. The Recipient acknowledges that in addition to and without limiting the Funder’s rights set out in clause 9.1, if, as a result of an issue (defined in section 3.5, of the BID Policy 2021), becoming known to the Funder, at any time during the term of this agreement, the BID Policy issues resolution process (defined in section 3.5 of the BID Policy 2021) will commence. One of the options of this process allows the Funder to delay payment of the BID targeted rate grant until the issue has been resolved.

GENERAL TERMS (Version 3.2)

1 DEFINITIONS AND INTERPRETATION

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

“BID Policy” means the Funder’s BID Policy 2021 and support documents as amended, restated or replaced from time to time.

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

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

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

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

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

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

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

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

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

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

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

“Vulnerable Children Act and Regulations” means the Vulnerable Children Act 2014 and associated subordinate legislation.

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

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

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

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

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

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

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

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

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

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

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

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

2 FUNDING AND PAYMENT

2.1 Funding: Subject to Recipient complying with this Agreement, Funder will provide the Funding to Recipient for the Purpose as set out in the Specific Terms.

2.2 Payments: The Funding will be paid in accordance with Funder’s grant payment process. Payment of the Funding is not subject to GST.

2.3 Conditions: The Funding (and any instalments thereof) will be paid to Recipient subject to the following conditions:

- (a) Funder is satisfied Recipient has complied with all material obligations under this Agreement (including the reporting requirements) and the BID Policy and is not in default of any obligations;
- (b) Funder continues to have confidence in the Recipient's structure, governance, management, operational practices, and financial stability/solvency; and
- (c) Funder is satisfied that Recipient intends to only use the Funding for the Purpose during the Funding Period.

2.4 Recognition: Recipient will give fair and reasonable acknowledgement of Funder's funding contributions, including as set out in the Specific Terms.

3 RECIPIENT'S RESPONSIBILITIES

3.1 Use of Funding: Recipient will use the Funding during the Funding Period solely for the Purpose and in a manner that is diligent and prudent.

3.2 Legal compliance: Recipient shall:

- (a) obtain all necessary licences, authorisations, permits and registrations to enable it to achieve the Purpose; and
- (b) comply with all applicable laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements.

3.3 Vulnerable Children:

- (a) Where the Recipient is a specified organisation under the Vulnerable Children Act and Regulations, the Recipient will ensure that it complies with all applicable requirements including, as required, ensuring that the Recipient undertakes safety checks for new and existing children's workers employed or engaged by the Recipient (both in relation to any activities funded and generally). The Recipient will, upon request, at all times, immediately provide the Funder with information about any matters relating to the Vulnerable Children Act and Regulations.
- (b) The Funder (or its representatives) may carry out audits of the Recipient to ensure compliance with all obligations set out under clause 3.3(a). The Recipient must:
 - (i) actively cooperate and participate in any audits carried out by the Funder;
 - (ii) provide all necessary access and information required by the Funder in relation to an audit; and
 - (iii) take all reasonable steps to immediately rectify any issues raised by the Funder.

3.4 Health and Safety: Without limiting any additional obligations set out in the Specific Terms, the Recipient must

- (a) at all times comply with all health and safety legislation, regulations, applicable codes of practice and standards;
- (b) ensure that it takes all practicable steps to ensure the health and safety of all personnel of the Recipient and any other parties associated with the use of the Funding Services, including the public, and visitors to any area under the control of the Recipient;
- (c) will have and keep current, all relevant Health and Safety qualifications required to perform its obligations in respect of the use of the Funding; and

- (d) allow the Funder (or its representatives) to audit its Health and Safety compliance at any time and provide the Funder with any information as the Funder requires in relation to those matters.

3.5 Objectives and Measures: Recipient will use its best endeavours to try to achieve the Objectives and Measures during the Funding Period.

3.6 No additional funding:

- (a) Recipient is responsible for organising all additional funding over and above the Funding which may be required for the Purpose or other activities and operations of the Recipient.
- (b) If required by the Funder, Recipient will actively seek funding contributions during the Period to assist it with the costs associated with the Purpose from other sources, i.e. sponsorship, donations, grants and through other fund raising initiatives.
- (c) The Funding is only for the Period and Purpose and Funder is under no obligation to provide any funding to Recipient other than the Funding. Any decision about providing further funding to Recipient will be at Funder's sole discretion and subject to a separate funding agreement.

4 PARTIES' RELATIONSHIP

4.1 Representatives: The Party Representatives are the first and primary contact persons in relation to this Agreement, except to the extent otherwise provided in this Agreement or agreed by the parties.

4.2 No surprises: Recipient shall communicate regularly with Funder about its use of the Funding, including promptly raising and escalating any issues (including media issues) likely to be of concern to Funder.

4.3 Publicity and reputation: Funder acknowledges that the nature of BID-operating business associations involves advocating on behalf of their members. Recipient acknowledges that its activities may affect Funder's reputation.

- (a) Public communication: Recipient should be aware of the impact of any inaccurate or misleading representations or public statements on the Funder or this Agreement.

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

4.5 Conflicts of interest:

- (a) Recipient undertakes that it has disclosed, and that it will disclose, to Funder in writing any actual, potential or perceived conflict with the interests of Funder under this Agreement or in any other material way.
- (b) Recipient shall manage any conflicts in consultation with Funder. The Funder acknowledging that the nature of a BID-operating business association involves advocating on behalf of their members, if the Recipient is not acting reasonably to manage the conflict of interest, then the clause allows Funder to engage with the association for a more acceptable outcome.

4.6 Recipient's responsibility:

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

5 REPORTING AND PERFORMANCE

5.1 Reporting:

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

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

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

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

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

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

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

6 CONFIDENTIAL INFORMATION AND IP

6.1 Confidentiality: The parties acknowledge that some information provided by them in connection with this Agreement may be commercially sensitive or not for general publication. Where so, the party providing the information should specify which information they provide is confidential, and the party receiving the information agrees not to disclose it without the prior consent of the other party, except as required by law or where the information is already publicly available (other than through a breach of this Agreement).

6.2 Intellectual property: Recipient acknowledges that the Funder owns all intellectual property in respect of the Funder name and logo ("Funder trade marks"). All use of the Funder trade marks (if permitted by this Agreement) shall comply with Funder's logo and brand guidelines or otherwise as reasonably required by Funder from time to time in writing. All goodwill associated with Funder trade marks shall inure exclusively to the benefit of Funder.

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

- (a) a description of the Funding being supplied;
- (b) the name of the Recipient;
- (c) the Term of the Agreement;
- (d) the value of the Agreement;
- (e) the total funding received by the recipient regarding all agreements or contracts with Auckland Council.

7 WARRANTIES

7.1 General warranties: Recipient represents and warrants and undertakes on a continuing basis that:

- (a) Entity status: Recipient is:
 - a. a duly constituted corporation, society or trust under the laws of New Zealand,

and that status and registration will be maintained during the Funding Period.

- (b) Enforceable: this Agreement is valid, binding and enforceable and it has taken all necessary action to authorise the execution and performance of this Agreement, and entry into this Agreement will not cause Recipient to be in breach of any other agreement or obligation;
- (c) No impediment: except as disclosed by Recipient to Funder in writing, Recipient is not aware of any matter or event which does or may materially and adversely affect the ability of Recipient to perform its obligations under this Agreement;
- (d) Solvency: no Insolvency Event has occurred in respect of it;
- (e) No inducements: no form of inducement or reward has been or will be directly or indirectly provided or offered by Recipient to any of Funder's employees, agents, officers or representatives in connection with this Agreement;
- (f) Tax resident: Unless notified otherwise to Funder prior to the date of this Agreement, Recipient is a New Zealand tax resident;
- (g) Correct information: all information and representations made by Recipient (prior to or after the date of this Agreement, including in any contestable funding application process leading to this Agreement)

are true, complete and correct and not misleading through non-disclosure; and

- (h) **No double funding:** Recipient has not sought or received any funding from any other person that “doubles up” on the Funding in excess of Recipient’s actual requirements for the funded activities in question.

7.2 Reliance: Recipient acknowledges that Funder has, in entering into this Agreement, relied on Recipient’s representations in clause 7.1.

8 REFUND OF FUNDING

8.1 If the:

- (a) Funding (or any part of it) is not used for the Purpose; or
- (b) Funder terminates this Agreement pursuant to clause 9.1,

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

9 TERMINATION

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

- (a) Recipient commits a material breach of this Agreement and/or the BID Policy that is not, in the reasonable opinion of Funder, able to be remedied;
- (b) Recipient commits a material breach of this Agreement, and/or the BID Policy and, where such breach is capable of remedy, Recipient fails to remedy such breach within ten (10) Business Days following receipt of written notice from Funder specifying the breach and requiring it to be remedied;
- (c) Recipient suffers an Insolvency Event or a Probity Event occurs; or breaches any of its obligations under clause 3.4.
- (d) any warranty contained in this Agreement is untrue in any material respect; or
- (e) Recipient breaches clause 12.2 (no assignment or legal changes without consent).

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

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

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

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

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

- (a) **Inducement:** where any improper inducement, reward or benefit has been provided on behalf of Recipient to any of Funder’s staff or other persons to influence their actions in relation to Recipient or this Agreement; or
- (b) **Offence or breach:** where Recipient commits any offence relating to fraud or dishonest acts, or breaches the Commerce Act 1986 in relation to this Agreement, or Recipient defrauds, or attempts or conspires to defraud, Funder;
- (c) **Ethical wrongdoing:** where Recipient engages in governance, ethical or business practices which are fundamentally incompatible with Funder’s values or the local government accountability and legislative framework; or
- (d) **Related party transactions:** where Recipient enters into or performs any financial transaction (including payments, koha or gifts) with related parties (such as trustees, staff or other associated persons), irrespective of whether the transaction is demonstrably at under-value, except for the following permitted transactions:

- a. koha or gifts that comply with policies and financial limits expressly disclosed to Funder prior to entering into this Agreement;
- b. arms-length services payments or remuneration; or
- c. distributions that fall directly within Recipient’s charitable purposes or objects in its constituting documents,

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

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

10 DISPUTE RESOLUTION

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

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

11 INDEMNITY, LIABILITY AND INSURANCE

11.1 Indemnity: Recipient indemnifies Funder, its employees, agents and officers against all claims, demands, actions,

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

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

11.3 Trustee limitation: Despite anything stated or implied in this Agreement, if Recipient is a trust, Funder agrees that the trustees of Recipient enter into this Agreement as trustees for Recipient and not in any personal capacity. The liability of each of the trustees of Recipient under this Agreement (except in matters of fraud, criminal act, or wilful wrongdoing by that trustee) is limited to the assets for the time being of Recipient.

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

12 GENERAL

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

- (a) In the case of facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error free transmission to the correct facsimile number; and
- (b) In the case of post or courier delivery, when the notice is delivered to the correct Contact Address.

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

12.2 Assignments and transfers: Recipient must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Funder. Any change in effective control or beneficial ownership of Recipient shall be deemed an assignment for purposes of this clause 12.2. If Funder consents, Recipient will pay Funder's reasonable legal and other costs relating to consent and assignment.

12.3 Further acts: Each party must sign all documents and do all things reasonably requested by the other party necessary or convenient to give effect to this Agreement according to its true intent and spirit.

12.4 Rights, benefits and obligations:

- (a) **Benefits:** Except as expressly provided, this Agreement is not intended to confer benefits or enforceable rights on subcontractors or any persons other than the parties.

- (b) **Joint liability:** If Recipient is more than one person or entity (whether or not trustees) then this Agreement binds them jointly and severally.

- (c) **Cumulative rights:** Provisions in this Agreement for the benefit of Funder are cumulative.

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

12.6 Severability: If any provision of this Agreement is or becomes unlawful or unenforceable it shall be treated as severable from the other provisions of this Agreement which shall remain in full force and effect.

12.7 Variation and waiver: The provisions of this Agreement may only be varied or waived by written agreement signed by the parties. Any delay or failure to exercise any remedy is not a waiver.

12.8 Entire agreement: This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.

12.9 Governing law and jurisdiction: This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.

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

SCHEDULE 1

[Insert schedule here or delete if not applicable]

SCHEDULE 2

[Insert schedule here or delete if not applicable]

SCHEDULE 3

[Insert schedule here or delete if not applicable]