



**FUNDING AGREEMENT  
FOR**

**Manawatū-Whanganui – Whanganui Port Revitalisation Programme Stage 1c -  
Geotechnical Feasibility**

DATED the 19<sup>th</sup> day of April 2018

**BETWEEN** The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment ("**Ministry**")

**AND** **WHANGANUI DISTRICT COUNCIL**, a territorial authority under Schedule 2, Part 2 of the Local Government Act 2002, 101 Guyton Street, Whanganui 4500 ("**Recipient**")

**BACKGROUND**

The Ministry wishes to contribute to the Project by providing funding from the appropriation set out in the Details on the terms set out in this Agreement.

**AGREEMENT**

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details) and Schedule 2 (Funding Agreement Standard Terms and Conditions).

Signed by Stephanie Weller, Regional Economic Development Implementation Manager, the authorised delegate of the Chief Executive of the Ministry of Business, Innovation & Employment

Signature

Date: 18/April/2018

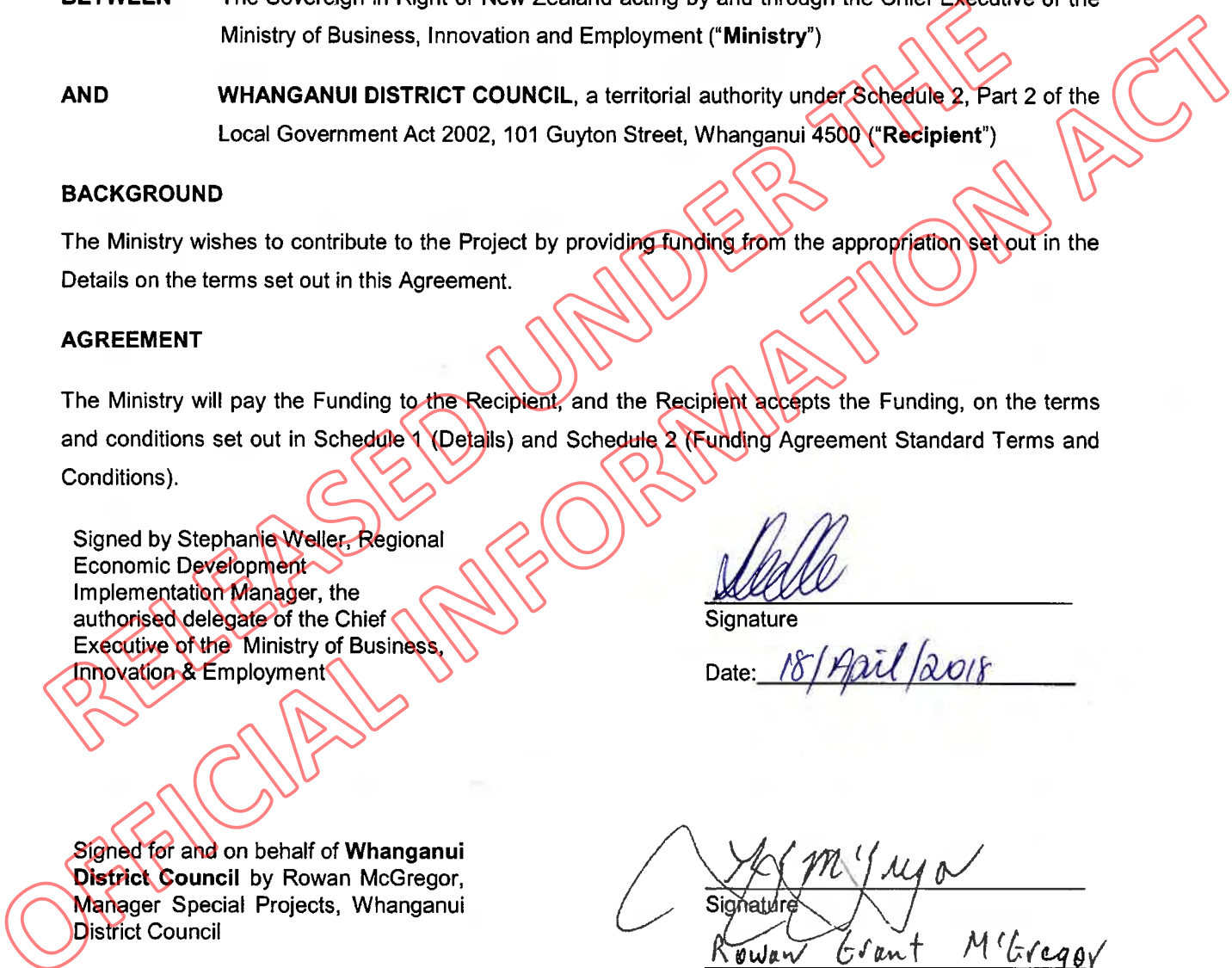
Signed for and on behalf of Whanganui District Council by Rowan McGregor, Manager Special Projects, Whanganui District Council

Signature

Rowan Grant McGregor  
Print Full Name

Manager - Special Projects  
Print Title

Date: 13-4-18



## SCHEDULE 1 - DETAILS

### 1. Context

- 1.1 New Zealand's economy is made up of diverse regions, each specialising in different activities depending on its natural resources, infrastructure and people. While they differ, each region has the potential to attract further investment, raise incomes, and increase employment opportunities. The Government's Regional Economic Development (RED) work helps to leverage that potential by working with regions to identify opportunities and develop an economic action plan for implementation. The work is led by the Government's Provincial Development Unit with each region having a Senior Regional Official (SRO) appointed, the Manawatū-Whanganui's SRO being Di Grennell from Te Puni Kōkiri.
- 1.2 Manawatū-Whanganui was one of four regions included in the RED Programme in 2014.
- 1.3 The Accelerate25 Manawatū-Whanganui Action Plan (Accelerate25) was launched in August 2016 as part of the RED Programme. It identifies nine opportunities and four enablers to growing the region's economy.
- 1.4 Whanganui Port Revitalisation was identified as a key priority within the Distribution and Transport Enabler, and will contribute to the economic, environmental and social wellbeing of the city.
- 1.5 A new project Governance Group has been formed with the first meeting held in November 2017.
- 1.6 The Ministry wishes to contribute funding for the completion of investigations for the Port Revitalisation Programme Stage 1c – Business Case and completion of the final Business Case for the next stage of development, Stage 2a.

### 2. Appropriation and approval process

- 2.1 The funding for the Project, as outlined in Clause 4 below, is approved from Vote Business, Science and Innovation from Non-departmental Regional Growth Initiatives Multi-Year Appropriation endorsed by SROs and by delegated Ministers. Ministers approved the funding in February 2018.

### 3. Funding (clause 2.1, Schedule 2)

- 3.1 The funding for the Project is provided up to a maximum of \$90,000 (excl GST).
- 3.2 The total Project costs are <sup>9(2)(b)(ii)</sup> [REDACTED]. In addition to the funding provided under the terms and conditions of this agreement, the Recipient is contributing <sup>9(2)(b)(ii)</sup> [REDACTED].
- 3.3 As a condition of the funding a representative of the Ministry will sit within the governance meetings as an observer only.

**4. Project (clause 2, Schedule 2)**

4.1 The Recipient, originally working through its commercial subsidiary Whanganui District Council Holdings Ltd, but more recently the Whanganui Port Revitalisation Programme Governance Group (Governance Group) is providing oversight of the Programme and reporting through to the Recipient and the Accelerate25 Lead Team. The Whanganui Port Revitalisation Programme Project Control Group (PCG) reports to the Governance Group and is proceeding with the development of a master plan for the port area, completed a study of the technical feasibility, commercial viability and economic benefit of each proposal and will finalise a business case for district, regional and central government to consider for investing.

4.2 This Project is to enable the Recipient to undertake further investigations which will support the completion of the Business Case for the next stage of the development (Whanganui Port Revitalisation Programme Stage 2a).

4.3 The investigations include:

- Completing further technical work (including geotechnical) and an engineering assessment of the existing wharf structures
- Undertaking additional design work
- Reviewing various options for vessel launch infrastructure
- Undertaking a value engineering exercise.

**5. Project Purpose**

5.1 To complete further investigations and design work in order to prepare and finalise a Business Case for the next stage of development.

5.2 Revitalisation of the port will contribute to the local and regional economies. The benefits are ongoing with a commitment to training and development, infrastructure improvement, environmental remediation and improvement, and a focus on community wellbeing.

5.3 It will offer diversity of industry, with a focus on sustainable jobs for the future and be a focal point for Whanganui and the community.

5.4 Investment will secure the use of the area as a coastal shipping location, will provide a more extensive area for value added specialist manufacturing, commercial boat construction, refit services, recreational boat storage, and expand freight and logistics servicing capability.

**6. Project Tasks**

6.1 The Recipient will invite the Ministry's representative to all Project related meetings and provide them with all agendas and papers for each meeting.

6.2 The Recipient will contract following Whanganui District Council's procurement processes with the preferred suppliers to undertake the investigations above (clause 4.3).

6.3 The Recipient will contract with a preferred supplier to complete the Business Case, building on the

results of the investigations, for the next stage of the development.

6.4 The Recipient will provide the final drafts of the Business Case to the Ministry to provide feedback, and then incorporate the relevant feedback as appropriate in the final Business Case.

6.5 The Recipient will submit a final report including the final Business Case.

**7. Payment terms** (clause 2.1, Schedule 2)

7.1 The Ministry will pay the Recipient in instalments as set out in the table below, subject to completion of the relevant milestone to the Ministry's satisfaction and the Recipient submitting an invoice to the Ministry.

Payment number	Milestone	Amount (excluding GST)
One (1)	On signing of the Agreement (April 2018)	\$70,000
Two (2)	On completion and submission of the Final Business Case (June 2018)	\$20,000

**8. Commencement Date** (clause 1.1, Schedule 2)

8.1 March 2018

**9. Completion Date** (clause 1.1, 2.3(b) Schedule 2)

9.1 July 2018

**10. Reporting Requirements** (clause 5.1, Schedule 2)

10.1 A final report is to be submitted to the Ministry within 30 Business Days of completion of the Project (Final Project Report).

**11. Content of Report** (clause 5.1, Schedule 2)

11.1 The Final Project Report must include details relating to:

- (a) Results of the investigations including a copy of the completed Business Case
- (b) a summary of expenditure including co-funding received, actual against budgeted; and
- (c) any other information requested by the Ministry.

12. **Address for Notices** (clause 12.5, Schedule 2)

<b>Ministry:</b>	<b>Recipient:</b>
Ministry of Business, Innovation & Employment 15 Stout Street PO Box 1473 WELLINGTON  <b>Attention: Stephanie Weller</b>	Whanganui District Council PO Box 637 WHANGANUI 4540  <b>Attention: Rowan McGregor</b>

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OFFICIAL INFORMATION ACT

## SCHEDULE 2 – FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS

### 1. Interpretation

1.1 In this Agreement, the following terms have the following meanings:

**"Agreement"** means this agreement, including Schedule 1 and this Schedule 2;

**"Business Day"** means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

**"Commencement Date"** means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement.

**"Completion Date"** has the meaning given in the Details;

**"Confidential Information"** includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

**"Details"** means Schedule 1;

**"Funding"** means the funding amount set out in the Details;

**"GST"** means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

**"Intellectual Property Rights"** includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

**"Parties"** means the Ministry and the Recipient and their respective successors and permitted assigns;

**"Project"** means the project described in the Details; and

**"Project Tasks"** means the project tasks (if any) set out in the Details which must be completed by the Recipient before a Funding payment is made by the Ministry.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 "Including" and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency.

1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail.

### 2. Funding

2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.

2.2 The Recipient must use the Funding only to carry out the Project (including the Project Purpose and Deliverable/Milestone in each Appendix) in accordance with this Agreement.

2.3 In consideration of the Funding, the Recipient must:

(a) complete each Deliverable/Milestone by the relevant payment date set out in the Details;

(b) complete the Project to the Ministry's satisfaction by the Completion Date;

(c) carry out the Project in accordance with:

(i) the methodology (if any) set out in the Details;

(ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and

(iii) all applicable laws, regulations, rules and professional codes of conduct or practice; and

(d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.

2.4 If at the Completion Date the ratio between the Funding and the Co-funding is not as anticipated in this Agreement, the Recipient will, if requested by the Ministry, promptly pay to the Ministry an amount to make the ratio the ratio anticipated in the Agreement.

2.5 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total cost of the Project, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.4, any amount that exceeds the total amount of Funding.

### 3. Project Progress

3.1 If:

(a) the Ministry is not satisfied with the progress of the Project;

(b) the Recipient does or omits to do something, or any matter concerning the

Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or

- (c) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

- (d) renegotiate this Agreement with the Recipient; or
- (e) terminate this Agreement immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

#### 4. Term and Termination

4.1 Subject to clauses 4.2 and 4.3, this Agreement will commence on the Commencement Date and expire when:

- (a) each final report is completed and provided to the Ministry; and
- (b) the Project is completed,

to the satisfaction of the Ministry.

4.2 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days notice to the Recipient.

4.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry;

- (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

- (ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or

- (c) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

4.6 The provisions of this Agreement relating to termination (clause 4), audit and record-keeping (clause 5.2(b), (c) and (d)), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

#### 5. Reporting Requirements and Audit

5.1 The Recipient must report on the progress of the Project to the Ministry:

- (a) as set out in the Details;
- (b) as otherwise reasonably required by the Ministry; and
- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding;

## 6. Warranties

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

## 7. Intellectual Property

7.1 All Intellectual Property Rights in the reports provided under clause 5.1 will be owned by the Ministry from the date the reports are created or developed.

7.2 All intellectual property produced by the Recipient or its employees or contractors in relation to the Project is, on creation, jointly owned by the Ministry and the Recipient. Each Party may use (which includes modifying, developing, assigning, or licensing) such intellectual property without obtaining the prior consent of the other Party. On request, the Recipient must provide to the Ministry such intellectual property in any format, and on any medium, reasonably requested by the Ministry.

7.3 The Recipient must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

## 8. Confidentiality

8.1 The Recipient must:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
- (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
- (d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 8.

8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:

- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
- (b) required by law; or
- (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.

8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.

## 9 Liability and Insurance

9.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

9.2 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

9.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety At Work Act 2015 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.

9.4 The Recipient indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by the Ministry, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.

9.5 Where the Recipient is a trustee, the Ministry acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in the Details in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement



only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.

9.6 The Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

## 10. Dispute Resolution

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

10.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

10.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of LEADR New Zealand Inc.) and on the terms of the LEADR New Zealand Inc. standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

10.5 Nothing in this clause 10 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

## 11. Force Majeure

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;

- (b) use its best endeavours to overcome the Force Majeure Event; and

- (c) continue to perform its obligations as far as practicable.

## 12. General

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.

- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address or postal address as set out in the Details. A notice is deemed to be received:

- (a) if personally delivered when delivered;
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 This Agreement may be signed in any number of counterparts (including email copies) and

provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.8 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

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