

SOUTH WAIRARAPA DISTRICT COUNCIL

25 JUNE 2014

AGENDA ITEM B3

SALE AND SUPPLY OF ALCOHOL 2012: THE DISTRICT LICENSING COMMITTEE

Purpose of Report

To enable Council to reappoint the current List Members to the District Licensing Committee.

Recommendations

Officers recommend that the Council:

1. *Receive the information.*
2. *By resolution reappoint the following persons as members of the South Wairarapa Licensing Committee; Damien Pivac, Gregory Ariell, Jessie Hunt, Catherine Rossiter-Stead, Bruce Farley, Andrew Beck and Donald Adams until 31 December 2016.*
3. *That these appointments are subject to the terms and conditions set out in the document titled "Agreement for the Provision of Services - List Members as attached".*

1. Discussion

Council is required to have a District Licensing Committee. The Committee is responsible for considering applications made under the Sale and Supply of Alcohol Act 2012 (the Act) and has been in place by since December 2013.

Councillors appointed Damien Pivac, Gregory Ariell, Jessie Hunt, Catherine Rossiter-Stead, Bruce Farley, Andrew Beck and Donald Adams to the District Licensing Committee on the 27 November 2013 (Resolution DC2013/197). The term of engagement was for a six month period concluding 30th June 2014.

For continuity Council will now need to re appoint members to the committee. In this instance it is recommended by the Wairarapa Alcohol Working Group that this be for a term of two and a half years concluding 31st December 2016.

It is considered appropriate that the term for committee members be three years so as to coincide with local authority triennial elections, but for a

further two months (ending 31st December) to ensure adequate cover over the election period, Inaugural Council meeting, and setting up of various council committees. The existing members seek reappointment.

1.1 Legal Implications

Section 186 of the Act requires each territorial authority appoint a licensing committee to deal with licensing matters in its district. This report enables Council to meet that obligation.

Contact Officer: Bronwyn Johnson Environmental Health Leader
Reviewed By: Murray Buchanan, Group Manager Planning and Environment

Agreement for the Provision of Services

For List Members - District Licensing Committee

South Wairarapa District Council

19 Kitchener Street

Martinborough 5741

[Name of DLC List Member]

[Address]

[Address]

The Agreement

Agreement

The South Wairarapa District Council has appointedto deliver the services described in this agreement.

The documents forming this Agreement are

This page

Description of Services

Schedule 1

Implementation of Services agreement

Schedule 2

Any other attachments described in Schedule 1 and 2.

Acceptance

For and on behalf of the **List Member:**

For and on behalf of the **Council:**

(signature)

(signature)

Name:

Name:

Paul Crimp

Position:

Position:

CEO and Secretary, SWDC DLC

Date:

Date:

Schedule 1

Administrative Arrangements and Description of Services

| | |
|------------|------------------|
| Start Date | 18 December 2013 |
| End Date | 30 June 2014 |

Contact

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| Name: | Bronwyn Johnson |
| Title / position: | Team Leader, Environmental Health, P and E Group/ Chief Licencing Inspector |
| Address: | 19 Kitchener Street, Martinborough 5711 |
| Phone: | 06 306 9373 ext 853 |
| Fax: | 06 306 9373 |
| Email: | bronwyn.johnson@swdc.govt.nz |

Description of Services

Context

District Licensing Committees (DLCs) are required to be appointed by Council under the Sale and Supply of Alcohol Act 2012 (Act). The objects of the Act are that:

- the sale, supply, and consumption of alcohol be undertaken safely and responsibly; and
- harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

DLC functions are specified by the Act (ref. Act section 187) as:

- a) To consider and determine applications for licenses and manager's certificates; and
- b) To consider and determine applications for renewal of licences and manager's certificates; and
- c) To consider and determine applications for temporary authority to carry on the sale and supply of alcohol in accordance with section 136; and
- d) To consider and determine applications for the variation, suspension, or cancellation of special licences; and
- e) To consider and determine applications for the variation of licences (other than special licences) unless the application is brought under section 280 (Note: section 280 relates to applications by constables or inspectors to the licensing authority for the variation, suspension or cancellation of a licence, other than a special licence); and
- f) With the leave of the Chairperson for the licensing authority, to refer applications to the licensing authority; and
- g) To conduct inquiries and to make reports as may be required of it by the licensing authority under section 175; and
- h) Any other functions conferred on licensing committees by or under this Act or any other enactment.

The Act specifies the criteria a DLC **must** have regard to when deciding whether to issue a licence (ref. Act sections 105, 131 and 142). The Act also specifies the criteria a DLC **must** have regard to when deciding whether to issue a manager's certificate (ref. Act section 222).

A DLC is a committee of Council and is subject to the provisions of the Local Government Official Information and Meetings Act 1987, other than Part 7 which refers to considerations concerning Local Authority meetings including the admission and exclusion of the public and the public availability of agendas, report and minutes.

Within the scope of its jurisdiction DLCs must be treated as being a Commission of Inquiry under the Commissions of Inquiry Act 1908 (ref. Act section 210).

Description of Services

The DLC consists of 3 members appointed by Council. The quorum for considering an unopposed application for a new, or renewal of, an existing licence or manager's certificate is 1 member who must be the Chairperson. For all other DLC meetings the quorum is 3 members.

The DLC list members services will entail participation in full meetings of the DLC (i.e. 3 members) to consider opposed licence and manager's certificate applications.

In addition to hearing time the services include pre-hearing preparation time and post-hearing administrative time.

Preparation time will include: reading the application file, relevant previous case law, what the Local Alcohol Policy (LAP) may or may not say about a particular area, the licence conditions that could be imposed and, if necessary, site visits. Administrative time will include post hearing discussion and finalisation of DLC decisions.

Council expectations

DLCs, and hence its members, are responsible for making and documenting decisions that are consistent with the requirements of the Act, particularly the object of the Act and the criteria to be considered when deciding an application as well as the Council's LAP.

Decisions are to be documented to a high standard. Decisions should accurately and comprehensively capture the reports, evidence and submissions made on applications. Decisions should also reflect relevant case law and guidance from the licensing authority.

Decisions should be issued promptly after due consideration of the application and related reports, evidence, submissions, case law and licensing authority guidance.

- The target is for opposed application decisions to be issued by the Chairperson by 10 working days after the hearing. However complex and potentially contentious decisions may take longer. but are still expected to be issued by 15 working days after the hearing.
- To meet this target list members are expected to turnaround draft decisions, provided by the Chairperson for comment and consideration, within 2 working days or, for complex and potentially contentious decisions, within 4 working days.

DLC hearings are to be conducted consistent with the procedures required of public hearings of quasi-judicial bodies and any guidance issued by relevant bodies (e.g. the licensing authority or the Ministry of Justice).

The DLC must operate within any Council approved Terms of Reference as attached.

DLC members are expected to uphold the highest standard of professional and ethical conduct at all times.

With respect to timeliness the targeted performance standard is that 95% of decisions should be issued within the targeted number of working days.

List members are expected to confirm their approval of final decisions (draft decisions that have considered and incorporated list member feedback) within 2 working days. The only expected exception is final decisions that the list member believes still requires further DLC discussion.

Decisions of the DLC that are appealed will be determined by the licensing authority and, potentially, the High Court and Court of Appeal. Appeal authority decisions will potentially provide comment on DLC decision quality and consistency.

The DLC Chairperson will from time to time comment in confidence on the contribution and performance of DLC list members to the Council.

Specific health and safety

The Health and Safety in Employment Act 1992 (HSE Act) places a duty on Council to take all practicable steps to ensure persons are not harmed while undertaking any work for the Council. Specific health and safety

requirements may be notified under this agreement.

Code of conduct

While the DLC is a statutory body it is also a committee of Council. DLC members are expected to conduct themselves consistent with the Council's values and expectations of its elected and staff representatives.

In upholding the highest standard of professional and ethical conduct at all times DLC members, in discharging their responsibilities, are expected to pay particular attention to conflict of interest and confidentiality considerations.

DLC members must not bring the Council or DLC in to disrepute through their personal activities.

Section 193(4) of the Sale and Supply of Alcohol Act 2012 provides that:

The territorial authority may at any time remove a member of a licensing committee or a commissioner appointed to a licensing committee for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, proved to the territorial authority's satisfaction.

Without limiting that provision, the member must:

- a. immediately advise the Team Leader, Environmental Health if there is any change in the member's circumstance or interests, including by virtue of his or her relationship with another person, that could lead the Council to believe that he or she could not perform his or her duties without actual bias or the appearance of bias. This includes but is not limited to any involvement or appearance of involvement with the alcohol industry or any organisation which opposes the consumption of alcohol.
- b. immediately advise the DLC Secretary of any issues or matters that may raise issues of conflict or bias with respect to an individual application
- c. err significantly on the side of caution and declare any matters that could potentially raise conflict or bias concerns.
- d. not have any contact, outside of formal hearings, with applicants, stakeholder representatives or any other interested party, on any matters related to alcohol licensing.

Failure to comply with these provisions would be grounds for the immediate termination of the members services.

Transfer of Records

All notes or other records made by a DLC member related to an application, form part of the record of the DLC's consideration of the application and are required to be retained and given to the DLC Secretary.

FEES: The following section sets out the fees. Fees are the total maximum amount payable for the Services provided by the Member. *This* includes daily fee rate and where agreed, *Expenses* and *Daily Allowances*. These are set out below.

Fees

DLC list member fees have been determined under the Cabinet approved Fees Framework approved by the Minister of Justice.

The approved fees cover hearing time but also pre-hearing preparation and post-hearing administrative time.

DLC List Members are required to maintain an accurate and up to date record of time spent on DLC matters.

Daily Fee Rate

For each day worked a Daily Fee Rate of \$408.00 will be paid. One day's work is defined as eight hours or more. The Fees Framework does not permit extra payment for work in excess of 8 hours in a day. If the DLC member works less than a full day (8 hours) the Fee shall be pro-rated based on the time worked i.e. $\$408 \div 8 \times \text{hours worked}$.

The time required of each DLC list member will be mainly determined by: the number and type of applications received, how many applications are opposed, the experience and expertise required to consider each opposed application and the skill set of each DLC list member. As these variables are beyond the control of the Council there can be no

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| | guarantee or expectation of the time required of a DLC list member. |
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| Expenses | <p>Actual and reasonable — general expenses</p> <p>The Council will pay the DLC list member's actual and reasonable travelling and other Expenses incurred in carrying out their office provided that:</p> <ul style="list-style-type: none">• The Council has given prior written consent to the DLC list member incurring the Expense;• The Expense is charged at actual and reasonable cost;• The claim for Expenses is supported by GST receipts. |
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| Daily Allowance | Daily Allowances are payable only by prior arrangement |
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| Request for Payment | The List Member must send the Council an expenses claim at end of the month, for Services delivered during that month. The claim must be supported by a complete and accurate record of time spent providing DLC services. |
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| Address for Payment Claims | Council's address | |
|-----------------------------------|------------------------------|-------------------------------------|
| | For the attention of: | Team Leader, Environmental Health |
| | Physical address: | 18 Kitchener St, Martinborough 5711 |
| | Postal address: | PO Box 6, Martinborough 5741 |
| | Email: | bronwyn.johnson@swdc.govt.nz |

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| Public Statements | The List Member is not authorised to make any comments to any media representative or any third party about any DLC decision or material produced as part of an application heard by the DLC. All such statements can only be made by the Council. However, for the purposes of clarification, this obligation does not prevent or restrict any elected member participating in debate or decisions on behalf of the Council relating to changes to the Local Alcohol Policy. |
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| Attachments | The Council approved District Licensing Committee Terms of Reference and Council Code of Conduct are attached and form part of this agreement. |
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Schedule 2

Implementation of Services Agreement

1. Term of Agreement

1.1 This agreement for services starts on the 19 December 2013. Any training and engagement prior to that date is not covered by this agreement.

1.2 This agreement ends on the End Date of 30 June 2014 unless terminated earlier.

2. Relationships Controlling Services

2.1 Both Parties agree to:

- a. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other,
- b. discuss matters affecting this Agreement or the delivery of the Services, whenever necessary,
- c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Services,
 - ii. receive media attention, and
- d. comply with all applicable laws and regulations.

2.2 The Council agrees to:

- a. provide the List Member with any information it has reasonably requested to enable the delivery of the Services,
- b. make decisions and give approvals reasonably required by the List Member to enable delivery of the agreed services. All decisions and approvals must be given within reasonable timeframes, and
- c. pay the List Member the applicable fees for their Services as long as the List Member has delivered the Services, all in accordance with this Agreement.

2.3 The List Member agrees to:

- a. on time and to the required performance standards or quality set out in Schedule 1 or reasonably notified by the Council to the List Member from time to time, the services specified in this agreement
- b. within the amounts agreed as fees, and
- c. with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would normally be expected.

2.4 The List Member agrees to:

- a. comply with any relevant codes of conduct and other requirements referred to in Schedule 1 or notified by the Council from time to time,
- b. comply with any requirements for Health and Safety.

2.5 If the List Member is at the Council's premises, the List Member must observe the Council's policies and procedures, including those relating to health and safety, and security requirements. The Council will tell the Member what the relevant policies and procedures are, and either give the List Member a copy of them or provide an internet link.

2.6 If the nature of the Services requires it, the List Member will deliver Services:

- a. in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and
- b. that respects the personal privacy and dignity of all participants and stakeholders.

3. Fees and payment

- 3.1 The Fees are the total maximum amount payable by the Council to the List Member for delivery of Services. It includes Fees and, where agreed, Expenses and Daily Allowances.
- 3.2 The List Member must provide a valid expenses claim for all fees and expenses and allowances on the approved form shown as attachment 3. The Council has no obligation to pay the fees set out on an expenses claim, which is not on a valid expenses claim form. A valid claim must:
- a) contain the Commissioner's name and address.
 - b) state all the required information as indicated on the approved form,
 - c) state the Fees due, calculated correctly, and
 - d) be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Council.
- 3.3 If the Council receives a valid expenses claim on or before the 3rd Working Day of the month, the Council will pay the expenses claim by the 20th calendar day of that month. Any valid expenses claim received after the 3rd Working Day of the month will be paid by the Council on the 20th calendar day of the month following the month it is received. The Council's obligation to pay is subject to clauses 3.2 and 3.4.
- 3.4 If the Council disputes an expenses claim that complies with clause 3.2, the Council will notify the Commissioner within 10 Working Days of the date of receipt of the expenses claim. The Council will pay the portion of the expenses claim that is not in dispute. The Council may withhold payment of the disputed portion until it is satisfied that the expenses claim is valid.
- 3.5 If the Council receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 3.2 and 3.6.
- 3.6 If the Buyer disputes a tax invoice or any part of a tax invoice that complies with clause 3.2, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

4. Management

- 4.1 The persons named in Schedule 1 as the Contact are responsible for managing the Agreement, including:
- a. managing the relationship between the Parties,
 - b. overseeing the effective implementation of this Agreement, and
 - c. acting as a first point of contact for any issues that arise.
- 4.2 If the Council changes its Contact it will advise the List Member, in writing, of the name and contact details of the replacement within 5 Working Days of the change.

5. The relationship

- 5.1 Nothing in this Agreement constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Member is responsible for the liability of its own salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.
- 5.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

6. Conflicts of interest

- 6.1 In relation to Avoiding Conflicts of Interest, the List Member warrants that as at the Start Date, there is no Conflict of Interest in providing the Services or entering into this Agreement.
- 6.2 The List Member must do its best to avoid situations that may lead to a Conflict of Interest arising.

- 6.3 The List Member must tell the Council immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Agreement. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

7. Resolving disputes

- 7.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Agreement.
- 7.2 If there is a dispute, each Party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.

8. Ending this Agreement

- 8.1 The List Member may terminate their engagement at any time by giving Council notice in writing, 20 Working Days' prior, except where personal circumstances may dictate otherwise.
- 8.2 The Council may terminate this agreement by notice in writing at any time but with 20 working days, notice.
- 8.3 The Council may terminate this Contract immediately, by giving Notice, if the List Member:
- a. becomes bankrupt or insolvent,
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed,
 - c. becomes subject to any form of external administration,
 - d. ceases for any reason to continue to deliver the Services,
 - e. is unable to deliver the Services for a period of 20 Business Days or more due to an Extraordinary Event,
 - f. requires the supply of Services within the period of an Extraordinary Event,
 - g. is in breach of any of the List Members obligations under this Agreement and the breach cannot be remedied,
 - h. repeatedly fails to perform or comply with its obligations under this Agreement whether those obligations are minor or significant,
 - i. does something or fails to do something that, in the Council's opinion, results in damage to the List Member's reputation,
 - j. has a Conflict of Interest that in the Council's opinion is so material as to impact adversely on the delivery of the Services, or
 - k. provides information to the Council that is misleading or inaccurate in any material respect.
- 8.4 On giving or receiving a Notice of termination, the List Member must:
- a) stop providing the Services, and
 - b) comply with any conditions contained in the Notice.
- 8.5 On termination or expiry of this Agreement, the List Member must, if requested by the Council, immediately return or securely destroy all Confidential Information and other material or property belonging to the Council.
- 8.6 The termination or expiry of this Agreement does not affect those rights of each Party which:
- 8.6.1 accrued prior to the time of termination or End Date, or
 - 8.6.2 relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.
- 8.7 If this Agreement is terminated the Council:
- 8.7.1 will only be liable to pay Fees that were due for Services delivered before the effective date of termination, and

8.7.2 may recover from the List Member or set off against sums due, any Fees paid in advance that have not been incurred.

8.8 The List Member will, within 10 Working Days of the End Date, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Council or any person appointed by the Council.

8.9 If the Parties agree, the List Member will provide additional assistance to support any replacement Member to deliver the Services. This support may be for a period of up to 3 months from the date of termination and at a reasonable fee to be agreed between the Parties, based on the Fees and Expenses stated in this Agreement.

9 Intellectual Property Rights

9.1 Pre-existing Intellectual Property Rights remain the property of their current owner.

9.2 New Intellectual Property Rights in the Deliverables become the property of the Council when they are created.

9.3 The List Member grants to the Council a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the List Member. This licence includes the right to use, copy, modify and distribute the Deliverables.

9.4 The List Member warrants that they are legally entitled to do the things stated in clause 9.3 with the Intellectual Property Rights in the Deliverables.

9.5 The List Member warrants that Pre-existing and New Intellectual Property Rights provided by the List Member and incorporated in the Services and Deliverables do not infringe the Intellectual Property Rights of any third party.

9.6 The List Member indemnifies the Council in respect of any expenses, damage or liability incurred by the Council in connection with any third party claim that the delivery of the Services or Deliverables to the List Member or the List Member's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap on liability that may be stated elsewhere in this Agreement.

10 Confidential Information

10.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:

10.1.1 to the extent that use or disclosure is necessary for the purposes of providing the Deliverables or Services or in the case of the List Member using the Deliverables or Services,

10.1.2 if the other Party gives prior written approval to the use or disclosure,

10.1.3 if the use or disclosure is required by law (including under the Local Government Official Information Act 1987), Ministers or parliamentary convention, or

10.1.4 in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

10.2 Each party will ensure that they or their Personnel:

10.2.1 are aware of the confidentiality obligations in this Contract, and

10.2.2 do not use or disclose any of the other Party's Confidential Information except as allowed by this Agreement.

11 Notices

11.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.

11.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

12 Extraordinary Events

- 12.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement where the failure is due to an Extraordinary Event.
- 12.2 A List Member who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the Council as soon as reasonably possible.
- 12.3 If a List Member is unable to perform any obligations under this Agreement for 20 Working Days or more due to an Extraordinary Event, the Council may terminate this Agreement immediately by giving Notice.

13 General

- 13.1 This Agreement, including any Variation, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Agreement was made, whether they were verbal or in writing.
- 13.2 The List Member may disclose the terms of this Agreement but must obtain the Council's prior written approval before making reference to the Council or this Agreement through any publications, public statements, media comment, promotional material or promotional activities.
- 13.3 Each Party undertakes not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the Services, this Agreement, each other or any of its Personnel and to ensure that where applicable its Personnel do not do so.
- 13.4 The date of execution is date this Agreement is made.
- 13.5 The clauses that by their nature should remain in force on expiry or termination of this Agreement do so.
- 13.6 If there is any conflict or difference between the documents forming this Agreement (as stated on Page 1) then the order of precedence is:
 - 13.6.1 a Variation agreed between the Parties under clause 16.1,
 - 13.6.2 Schedule 1,
 - 13.6.3 any Attachment to Schedule 1,
 - 13.6.4 Schedule 2,
 - 13.6.5 any Attachments to Schedule 2.
- 13.7 The parties acknowledge that the Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act it may be required to release information about the Services and the List Member. The List Member 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 List Member. The List Member will only release information directly 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.

14 Definitions

- 14.1 When used in this Agreement the following terms have the meaning beside them:

Approved Personnel

A person who is engaged to deliver the Services and is named in Schedule 1.

Attachment

Any supplementary document named in Schedule 1 as an Attachment.

Working Day

A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Working Day starts at 8.00am and ends at 5pm.

Fees

The total amount payable by the Council to the List Member as stated in Schedule 1 and includes any Expenses and Daily Allowances stated in Schedule 1. Fees are payable on successful delivery of the Services provided a valid expenses claim has been submitted.

Confidential Information

Information that:

- a. is by its nature confidential,
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence',
- c. is provided by either Party or a third party 'in confidence',
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest

A Conflict of Interest arises if a List Members personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Agreement or the Sale and Supply of Alcohol Act 2012. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- a. actual: where the conflict currently exists,
- b. potential: where the conflict is about to happen or could happen, or
- c. perceived: where other people may reasonably think that a person is compromised.

Agreement

The legal agreement between the List Member and the Council that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2 and any other Schedule, and any Variation and Attachment.

Contact Manager

The person(s) named in Schedule 1 as the Contact Manager. Their responsibilities are listed in clause 4.1

Daily Allowance

An allowance to cover accommodation, meals and incidentals if required in order to deliver the Services or to travel overnight away from their normal place of business. The amount of any Daily Allowance must be agreed to in Schedule 1. A Daily Allowance is similar to a per diem.

Daily Fee Rate

If the List Member's fee rate is expressed as a Daily Fee Rate this is the fee payable for each day spent in the delivery of Services. A day is a minimum of 8 working hours.

Deliverables

A tangible output resulting from the delivery of the Services as stated in Schedule 1. A deliverable may be a document, a piece of equipment, goods, information or data stored by any means including all copies and extracts of the same.

End Date

The earlier of the date this Agreement is due to end as stated in Schedule 1, the date of termination as set out in a Notice of termination or any other date agreed between the Parties as the date the Agreement is to end.

Expenses

Any actual and reasonable out-of-pocket costs incurred by the List Member in the delivery of the Services and agreed to in Schedule 1.

Extraordinary Event

An event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster,
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo,
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

GST

The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Hourly Fee Rate

If the List Member's fee rate is expressed as an Hourly Fee Rate this is the Fee payable for each hour spent delivering the Services.

Intellectual Property Rights

All Intellectual Property Rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

New Intellectual Property Rights

Intellectual Property Rights developed after the date of this Contract and incorporated into the Deliverables.

Notice

A formal or legal communication from one Party to the other that meets the requirements of clause 11.

Party

The List Member and the Council are each a Party to this Agreement, and together are the Parties.

Personnel

All individuals engaged by either Party in relation to this Agreement or the delivery of Services.

Pre-existing Intellectual Property Rights

Intellectual Property Rights developed before the date of this Agreement. It does not cover later modifications, adaptations or additions.

Records

All information and data necessary for the management of this Agreement and the delivery of Services. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

Services

All work, tasks and Deliverables, including those stated in Schedule 1, that the List Member must perform and deliver under this Agreement.

Schedule

An attachment to this Agreement with the title 'Schedule'.

Start Date

The date when this Agreement starts as stated in Schedule 1.

Variation

A change to any part of this Agreement that complies with clause 13.1.