



36TH AMERICA'S CUP HOST CITY APPOINTMENT AGREEMENT

This HOST CITY APPOINTMENT AGREEMENT ("**Agreement**") is made this

26th day of March 2018

Parties:

Team New Zealand Limited, a New Zealand Limited Company registered at the Companies Office under No 582931, having its registered office at the offices of Harnos Horton Lusk Limited, Level 37, 48 Shortland Street, Auckland 1010, New Zealand and currently trading as Emirates Team New Zealand ("**ETNZ**") and the entity which has been granted all rights relating to the defence of the 36th America's Cup;

America's Cup Event Limited, a New Zealand Limited Company registered at the Companies Office under No 4753619, having its registered office at 168 Beaumont Street, Auckland Central, Auckland 1010, New Zealand ("**ACE**");

Auckland Council, with its offices at 1135 Albert Street, Auckland 1010, New Zealand ("**Council**"); and

The **Ministry of Business, Innovation and Employment**, with its offices at 15 Stout Street, Wellington 6011, New Zealand ("**MBIE**") on behalf of the Crown.

For the purposes of this Agreement:

- (a) Council and MBIE are collectively referred to as the "**Hosts**". Save to the extent expressly stated herein, the obligations of the Hosts shall be joint and several; and
- (b) the obligations of ETNZ and ACE shall be joint and several.

Background:

ETNZ won the 35th America's Cup Match in Bermuda in June 2017 as the representative team of the Royal New Zealand Yacht Squadron ("**RNZYS**") which as the current holder and trustee of the America's Cup has appointed ETNZ to conduct the defence of the 36th America's Cup on its behalf including all aspects of the sporting campaign and the required event management.

ETNZ has established ACE to undertake its event management responsibilities.

The Parties wish to record the essential terms and conditions in relation to the appointment of Auckland as the host city for the 36th America's Cup in this Host City Appointment Agreement ("**this Agreement**") which will be followed by the development of an Event Concept and the execution of a Host Venue Agreement further detailing the respective rights and obligations of the Parties in relation to the 36th America's Cup.

The Parties also wish to recognise the role of the Challenger of Record ("**COR**") representing all the Challengers and PRADA as the title sponsor (the "**Title Sponsor**") which has rights in relation to the Events as set out in Appendix 2 to the Protocol.

Operative Terms

The parties have agreed as follows:

1.	Operation	By signing this Agreement but subject to the satisfaction of the following conditions:
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		<p>(a) approval of this Agreement by the Governing Body of the Council by no later than 5pm on Thursday 29 March 2018;</p> <p>(b) agreement between Council and the Crown on the sharing of costs and expenses for the Events and the delivery of the related infrastructure and assets by no later than 5pm on Thursday 29 March 2018;</p> <p>(c) approval from the Minister of Finance and the Minister for Economic Development in relation to the Crown's entry into this Agreement; and</p> <p>(d) s7(2)(b)(ii) Commercial Prejudice 3rd Parties</p> <p>the parties hereby bring into legal force and effect this Agreement including these operative terms ("Operative Terms") and the enclosed Schedules, which are hereby incorporated by reference in full into this Agreement and which shall come into force and be binding on the parties from the date of final signature by all parties of this Agreement (the "Commencement Date").</p> <p>This is an initial agreement recording the essential terms for the appointment of Auckland as Host City and New Zealand as the Host Country for the 36th America's Cup and it is acknowledged that the details of Schedules 1, 2, 3 and 4 and 5 will be included in a final Host Venue Agreement ("Host Venue Agreement"). However, Schedule 2 shall not change when included in the Host Venue Agreement, subject to the milestones to be agreed.</p> <p>The Parties agree that they will negotiate in good faith to agree the Host Venue Agreement (the Host Venue Agreement to be on terms acceptable to all Parties) and enter into such agreement as soon as possible after the Event Concept is completed (which Event Concept will be prepared in accordance with clause 7).</p>
2.	Events	<p>ETNZ and ACE appoint Auckland as the Host City and New Zealand as the Host Country for the events listed in paragraphs (a) to (c) below ("Events"), the Hosts shall host the Events in accordance with the terms and conditions of this Agreement (and the Host Venue Agreement) and ACE shall be responsible for the management of the Events and their associated activities:</p> <p>(a) the America's Cup Christmas Race (or such other name as may be selected by ACE), currently scheduled to take place during December 2020;</p> <p>(b) the America's Cup Challenger Selection Series, known as the Prada Cup currently scheduled to take place during January/February 2021; and</p> <p>(c) the 36th America's Cup Match, currently scheduled to take place in March 2021.</p> <p>ETNZ and ACE warrant that as the representatives of the Royal New Zealand Yacht Squadron they have the right under the Deed of Gift and Article 4 of the Protocol to organise and conduct the Match, to select the venue for the Events and to appoint Auckland as the Host City and New Zealand as the Host Country. s7(2)(b)(ii) Commercial Prejudice 3rd Parties</p>

		<p>s7(2)(b)(ii) Commercial Prejudice 3rd Parties</p> <p>[Redacted]</p> <p>The Host Venue Agreement will also cover rights of the Hosts with respect to overseas ACWS venues.</p>
3.	Rights	<p>In consideration of the Event Investment specified in clause 4 and its commitment to the Public Sector Delivery Obligations, ETNZ and ACE grant the Hosts the rights and benefits as described in Schedule I in relation to the Events, which are to be fully developed in the Host Venue Agreement and which will recognise and reflect the Hosts' partner relationship with ACE and ETNZ and which are to be at least as favourable (including in terms of quantum and value of the rights and benefits) as what ETNZ and/or ACE provide to any other commensurate event sponsor ("Rights and Benefits").</p> <p>Whilst the Rights and Benefits are provided free of further charge in consideration for the Event Investment specified in Clause 4 and the Public Sector Delivery Obligations, the cost of the actual exercise of those Rights and Benefits by the Hosts and any associated activation or leverage shall be at the Hosts' cost. For example – the production of the International TV feed shall be at the cost of ACE, but if the Hosts want to reproduce any of its content across social media for their own tourism purposes then the required advertising and promotion shall be at their cost.</p>
4.	Financial Arrangements	<p>ETNZ and ACE have advised (and hereby warrant) that they require a total of [Redacted] of funding to deliver the sporting campaign for, and the management of, the Events (the "Total Funding Amount"). Prior to 1 July 2018, ETNZ will provide to the Hosts an initial report signed by a Director of ETNZ to confirm that it has secured [Redacted] of the Total Funding Amount and that it has put in place a plan to secure the remainder of the Total Funding Amount (the "External Funding Commitment").</p> <p>In order to satisfy the Hosts as to the External Funding Commitment and, on-going funding commitments, ETNZ shall also provide to the Hosts each quarter after 1 July 2018 further reports signed by a Director of ETNZ confirming:</p> <p>(a) in each case, the level of funding that:</p> <ul style="list-style-type: none"> (i) has been committed; (ii) is under negotiation; and (iii) is contemplated (i.e. where ETNZ and/or ACE are considering making approaches), <p>splitting each of the above to identify on a no-names basis the commitments from different sponsors; and</p> <p>(b) to the extent not covered in the above confirmation, an outline of the plan for raising the balance of the funding ("Funding Report").</p>

ETNZ's obligation under this clause to deliver the Funding Reports to the Hosts shall cease once it has provided a Further Report confirming it has secured ^{67(2)(b)(i) Commercial Figure} of the Total Funding Amount.

The obligations in this clause to deliver the Funding Reports will be included in the milestones to be developed in the Host Venue Agreement.

ETNZ confirms that as at the date of this Agreement it has already secured under signed contracts the key sailors required to launch a credible defence.

In return for the benefits of hosting the Events in Auckland and in order to enable ACE to deliver the Events, the Hosts shall pay to ACE the sum of NZ\$40,000,000 (Forty million New Zealand dollars) (the "**Event Investment**") in specified instalments towards the costs of managing and delivering the Events, subject to:

- (a) the reporting requirements in respect of the External Funding Commitment being satisfied; and
- (b) completion of the Event Concept after full consultation and co-operation with the Hosts;

(together, the "**Funding Conditions Precedent**").

ACE warrants that it will use the Event Investment solely for the purpose of meeting costs that arise with the management and delivery of the Events.

ACE and ETNZ acknowledge and agree that in the event that any one of the Events does not occur in New Zealand or a credible event with a credible number of teams competing (not less than four) is not likely to take place or any other material adverse circumstance occurs in relation to the management and delivery of the Event, then the Parties will engage in a resolution to such issues and the Hosts will be able to exercise rights to run the Events and rights to withhold further Event Investment contributions and/or have amounts of the Event Investment that have been paid and not spent, repaid. Further details on these events and on the Hosts' rights in respect of these events will be set out in the Host Venue Agreement.

This Event Investment is expressed to be exclusive of any GST (which shall be payable in addition where applicable) and payment shall be made in accordance with the terms of Schedule 2 (including in accordance with the percentages and timetable set out in Schedule 2).

Save to the extent expressly stated in this Agreement, ACE shall be responsible for all other costs and expenses in relation to its delivery of the Events and ETNZ shall be solely responsible for the cost of conducting the sporting campaign for the defence.

ETNZ and ACE acknowledge that the Event Investment, together with the Public Sector Delivery Obligations and any amounts that the Hosts determine to pay in connection with the ETNZ Team Base, is the maximum financial contribution available from the Hosts and the risk of any increased costs over the budgeted costs (either for the management of the event or the conduct of the sporting campaign) shall lie solely with ACE and ETNZ who both warrant not to seek (directly or indirectly, including through statements to the media and others) any further contribution from the Hosts.

		<p>ETNZ guarantees that the event will be delivered to the standard outlined in the Event Concept and should there be a cost overrun will meet any funding shortfall.</p>
5.	Venue	<p>To enable ACE to deliver the Events, the Hosts shall arrange for suitable areas within the Venue.</p> <p>The exact limits of the Venue will take into account resource consents and the Hosts engagement with third parties that currently occupy or operate from the proposed locations and the remainder of the area will be agreed amongst the Parties (acting reasonably). The details of the Venue will be defined in the Host Venue Agreement. Pending the execution of the Host Venue Agreement the Hosts will place a moratorium on booking any of the facilities included within the land based areas of the Venue for the Use Periods.</p> <p>The Hosts and ACE and ETNZ have agreed the Heads of Agreement regarding the superyachts which is set out in Schedule 6 to this Agreement.</p> <p>The Hosts undertake to procure the Team Base Areas (which shall also be the subject of a separate master agreement between Panuku Development Auckland and ACE for the supply of the Team Base Areas and individual leases with each team for their particular base) to enable the Events to take place at the Venue.</p> <p>The Team Base Areas shall meet the general specifications outlined in in Schedule 5.</p> <p>As at the date of this Agreement, the parties' intention is that the Team Base Areas (including the ETNZ Team Base Area but not including waterspace and public access areas) will be in the locations as shown in the images as set out in Schedule 7 (Team Base Areas).</p> <p>The Hosts shall be responsible for obtaining all necessary resource consents for the development works at the Venue and ACE shall support the applications related to those consents. The exact location of the Team Base Areas is subject to the resource consent applications and engagements with third parties that currently occupy or operate from these locations and the locations are accordingly, subject to change. However, the Hosts agree that there will be no further significant change to the location or layout of the Team Base Areas without the specific approval of ETNZ and ACE (such approval not to be unreasonably withheld).</p> <p>The Hosts acknowledge the importance of having the areas for the Team Base Areas available for occupation at a time in advance of the Events. As at the date of this Agreement but subject to any Force Majeure Events and to the provisions of the construction agreements for the Team Bases Areas, the Hosts will use best endeavours to have the Team Base Areas ready for handover by the following times (or such other time as agreed between the Hosts and ACE):</p> <ul style="list-style-type: none"> - four double base areas in August 2019; and - any further base areas by August 2020. <p>In the event that ETNZ is not successful in defending the 36th America's Cup, the Hosts can require ETNZ and ACE to ensure that the Team Bases (not including the ETNZ Team Base) will be removed within three months following the last day of the Events. If ETNZ is</p>

		<p>successful in defending the 36th America's Cup, the Hosts will consider whether the Team Bases (not including the ETNZ Team Base) can remain at the then current location and if they decide that they cannot, the Hosts will find another location that they determine is appropriate.</p> <p>Subject to the satisfaction or waiver of all conditions in this Agreement and the parties entering into the Host Venue Agreement, Council will procure that Regional Facilities Auckland Limited (Co No 3089627) ("RFA") will (as Lessor), enter into a deed of lease of the Viaduct Events Centre ("VEC") with ETNZ (as Lessee) ("VEC Lease"). The terms of the VEC Lease are subject to final agreement between ETNZ, Council and RFA however the Auckland District Law Society form of deed of lease (ADLS Lease) as amended to reflect the terms set out in Schedule 3 will be used as a base.</p> <p>The Hosts shall, to the extent that they are reasonably able to do so, procure use of the Venue as further defined in the Host Venue Agreement by ACE free of charge (as regards access to physical space) and in all appropriate areas of the Venue (as agreed in the Host Venue Agreement) Clean, for the purposes of staging the Events during the relevant Use Periods. Any exceptions to the Clean Venue requirement due to existing contractual arrangements, including sponsorship category exclusivity, shall be discussed by the Parties, including the proposed mitigating measures.</p> <p>It shall be the sole responsibility of ACE and ETNZ to manage the relationship with the following in relation to their rights in respect of both the Venue and the event generally :</p> <ul style="list-style-type: none"> - The COR in relation to their rights under the Protocol and in particular their role in COR/D, the joint management body established under the Protocol; - The Title Sponsor in relation to their contractual rights arising from the sponsorship agreement and specified in the Protocol (as detailed in Appendix 2 to the Protocol). <p>The Hosts shall act reasonably in considering any requests from ACE and ETNZ in relation to the above event partners or to support ETNZ and ACE with their requirements in relation to their rights established in the Protocol, provided that the Hosts are not obliged to spend any additional money in fulfilling this act.</p>
6.	Host's Delivery Obligations	<p>In return for the Rights and Benefits and subject to the Funding Conditions Precedent and the resource consents, in order to enable ACE to deliver the Events, the Hosts shall further deliver (or procure the delivery of) the public sector requirements provisionally described in Schedule 4 and as to be further defined in the Host Venue Agreement (the Public Sector Delivery Obligations) without charge to ACE.</p> <p>ACE shall be responsible for bringing the Events to the Venue and for all other aspects relating to the staging and management of the Events.</p>
7.	ACE's Delivery Obligations and Standard of Events	<p>Without prejudice to the terms and conditions of this Agreement, ACE shall be responsible for all aspects of the on-water and on-land delivery of the Events at the Venue, including all racing and Event-related entertainment. ACE shall ensure that it delivers the Events to</p>

		<p>a standard no less than the corresponding events for the 35th America's Cup. In particular but without limitation this shall include:</p> <ul style="list-style-type: none"> - Quality on the water race management under the control of an independent Regatta Director supported by suitably qualified race officials; - A minimum of four participating teams; - Efficient on the water course management and spectator control - A vibrant race village catering for the needs of all sponsors and stakeholders with suitable public areas featuring race viewing screens, a suitable stage for entertainment, pre-race shows, after race presentations, food and beverage outlets and other amenities to a standard customary for such a space. - Local promotion of the Events; - A high standard media centre providing for all the needs of international and local journalists; - A superyacht program of the standard that is comparable to the 35th America's Cup. <p>ACE shall develop a detailed event concept covering the three Events which will set out the vision, physical location, top level objectives and timeline for the Events ("Event Concept") to be completed within 120 days following the Commencement Date. A copy of the Event Concept shall be included as a schedule to the Host Venue Agreement. The Event Concept will be developed in full consultation with the Hosts (and ATEED, Panuku Development Auckland, Regional Facilities Auckland Limited and Auckland Transport). The parties shall work co-operatively in completing the Event Concept to ensure that the Event Concept works operationally within the City, delivers to the Hosts objectives and that the Hosts obligations thereunder fit within the total amount that is available from the Hosts for these Events and do not exceed the obligations set out in the Public Sector Delivery Obligations.</p> <p>ACE shall procure that general admission to the public areas in the Venue is free of charge.</p>
8.	Team Management	<p>ACE shall be responsible for liaising with the COR and all the Teams in relation to the Events and for delivering its obligations to the Teams under the Protocol of the 36th America's Cup.</p>
9.	Governance and Reporting	<p>ETNZ recognises Council and the Crown's contributions to the 36th America's Cup as significantly above a sponsor and more as an enabling partner. To this end, all information necessary to ensure a successful event for the defence of the Cup will be shared between the parties. Such information as provided will be protected as confidential.</p> <p>Governance is proposed through the structures outlined below, or other such structures or mechanisms mutually agreed between the parties.</p> <p><i>Relationship Governance Board</i></p> <p>There will be a Relationship Governance Board with two members from ETNZ and ACE (collectively) and one each from Council and the Crown. The role of this board will be to sort out issues that are</p>

unable to be resolved at a lower level. It will convene as required, and at the request of any party, but it is expected that the members will keep in touch to ensure the relationship runs smoothly. The Parties agree that they will establish the Relationship Governance Board as soon as possible after the Commencement Date.

Event Steering Group

An Event Steering Group chaired by ACE and with representatives from ATEED, Panuku Development Auckland and the Crown along with the COR and Title Sponsor (when requested by ACE), will be established as soon as possible after the Commencement Date. The Event Steering Group will meet regularly as agreed from time to time. The Event Steering Group will be responsible for ensuring that the delivered event is consistent with the concept and principles developed in the Event Concept and in accordance with the terms and conditions of this Agreement and the Host Venue Agreement. Mana whenua will have an observer role on the Event Steering Group with the right to have one person in attendance at meetings. The responsibility for delivering the event remains with ACE. Funding will not be unreasonably withheld and any issues that might result in a failure to achieve the milestones should be raised to the Relationship Governance Board for discussion before a decision is made.

Each member of the Event Steering Group shall provide such information as required to ensure that the group can operate effectively and efficiently in order to meet the group's objective. Documents provided in advance of the meeting will include cashflow statement (actual and forecast) for ACE and the Events, and an update of the progress in meeting delivery obligations and milestones established by the Host Venue Agreement.

The Hosts shall also prepare and circulate not less than one week before a regular meeting an update on the progress with the completion of the infrastructure for the Team Base Areas (until the time such infrastructure is completed) and the Public Sector Delivery Obligations.

Inter-agency Steering Group

Reporting to the Event Steering Group is the Inter-agency Steering Group. This consists of the Council and Crown agencies that are required to ensure the successful event. This group may have sub-groups as required (e.g. security). The Chair of this group will be the key point of contact for both the Event Steering Group and ACE and their delivery partners.

Prior to each Inter-agency Steering Group meeting senior directors of key contracted agencies and ACE shall meet to discuss the oversight of the infrastructure alliance, event, legacy and leverage outcomes, and overall risk management. As a minimum members of ACE, Council, MBIE and mana whenua will attend.

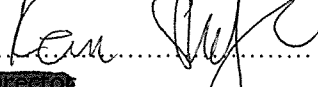

Final Event Report

		Within two months of the completion of the Events ACE shall produce a final event report containing a summary of the milestones achieved over the duration of the Events and a final financial report..
10.	Co-operation	The parties each undertake to co-operate with each other in good faith in relation to the Events and all matters related to the subject-matter of this Agreement.
11.	Competing Events	The Hosts represent and warrant that, to the best of their knowledge and belief having made due and careful enquiries, no international major sporting event or international sailing regatta that could have a material negative impact on the successful hosting of any of the Events is planned, (as at the date of this Agreement) to take place in the City on the agreed race days (as known at the date of this Agreement).
12.	Confidentiality	<p>The Parties agree to use Confidential Information of the other parties only in relation to the operation of this Agreement and the Events and not to disclose the same to any third party without the prior written consent of the disclosing party, provided that nothing in this clause shall prevent:</p> <p>(a) a party from disclosing Confidential Information as required by a court order or request or demand by a judicial or duly authorised governmental representative, provided that the disclosing party shall, to the extent reasonably practicable, advise the other in advance of such disclosure; or</p> <p>(b) a party from disclosing Confidential Information to its professional advisors, provided that such advisors are under a duty of confidentiality no less stringent than set out in this Agreement; or</p> <p>(c) ACE from disclosing the terms of this Agreement or any information obtained pursuant to and/or in the course of this Agreement to ACPI.</p> <p>Upon expiration or termination of this Agreement for whatever reason, each party shall immediately return all received Confidential Information to the relevant disclosing party or, at the request of the disclosing party, certify in writing that all copies of such Confidential Information have been destroyed.</p> <p>ACE and ETNZ acknowledge that the Crown is subject to the Official Information Act 1982, that Council and its council-controlled organisations are subject to the Local Government Official Information and Meetings Act 1987, and that the Crown and Council and its council-controlled organisations are obliged to disclose Confidential Information under the relevant Act if so requested and if there is no good reason under the terms of the relevant Act to withhold that information. The Crown shall use its reasonable endeavours to advise ACE and ETNZ of any request received by it under the Official Information Act 1982 that relates to Confidential Information of ACE and ETNZ.</p>
13.	Definitions and Interpretation	Schedule 8 sets out the definitions and rules of interpretation that shall apply to this Agreement.

14.	Counterparts	This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.
15.	Governing Law and Jurisdiction	This Agreement is governed by the laws of New Zealand.
16.	Dispute resolution	<p>The Parties will endeavour to settle any dispute in a fair, objective and friendly spirit by negotiation. If any dispute is not resolved within a period of 14 days after one party has given written notification to the other Parties formally requesting resolution of the dispute by negotiation the Parties will refer the dispute to mediation.</p> <p>Unless the Parties agree otherwise, the mediation will be conducted in terms of the standard mediation agreement promulgated by LEADR NZ at the time the dispute is referred to mediation. If no standard mediation agreement is promulgated by that organisation at the time of the dispute, the mediation will be conducted in a manner determined by the mediator except that:</p> <ul style="list-style-type: none"> (a) the mediation will be conducted on a without prejudice basis; (b) any party may terminate its involvement in the mediation at any time but only after consultation with the mediator; (c) any information disclosed during the mediation process will not be disclosed to any person not present at the mediation unless required to by law; and (d) the costs of the mediation will be borne equally by the parties. <p>No Party may commence legal proceedings in relation to a dispute until the process in this clause is exhausted, provided that nothing in this clause shall prevent a party from seeking injunctive relief in relation to any dispute or difference arising in connection with the Agreement.</p>
17.	Regulatory Capacity	Nothing in this Agreement affects or fetters any regulatory power of Council or any of its council-controlled organisations. ETNZ and ACE have no recourse under this Agreement with respect to the exercise (or not) of such powers, including on licensing or consenting matters.

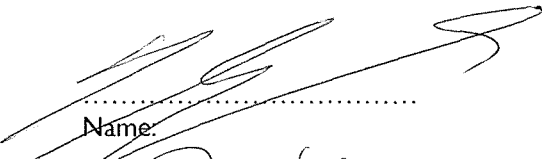
In witness whereof, the parties have executed this Agreement on the date set out at the top of this Agreement.

For and on behalf of
Team New Zealand Limited


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KEW SNOEBERGER
CHIEF OPERATIVE OFFICER
Date: 26th March 2018.


.....
DATE:

For and on behalf of
America's Cup Event Limited


.....
Name:
Title: Director
Date: 26th March 2018

For and on behalf of
Auckland Council

.....
Name:
Title:
Date:



In witness whereof, the parties have executed this Agreement on the date set out at the top of this Agreement.

For and on behalf of
Team New Zealand Limited

.....
Director

Director

Date:

Date:

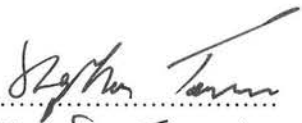
For and on behalf of
America's Cup Event Limited

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Name:

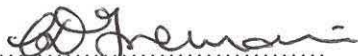
Title:

Date:

For and on behalf of
Auckland Council


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Name: *S TOOMEY*
Title: *CEO*
Date: *26/3/18*

For and on behalf of
**The Ministry of Business,
Innovation and
Employment**


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Name: CD TREMAINE
Title: CEO MBIE
Date: 26 Mar 2018

SCHEDULE I

Rights and Benefits

ACE shall provide the Hosts with rights and benefits to be fully detailed in the final Host City Venue Agreement, but which are to be at least as favourable (including in terms of quantum and value of the rights and benefits) as what ETNZ and/or ACE provide to any other commensurate event sponsor and which will include the following:

- (a) the right to host the Events;
- (b) branding rights for the City, the Crown and tourism activation at the Events;
- (c) tickets to premium events and activities staged at the Events;
- (d) hospitality opportunities at the Events;
- (e) use of America's Cup Marks for Host Promotional Purposes;
- (f) access to the media centre, media accreditation, media lists and media programming;
- (g) use of media content for Host Promotional Purposes;
- (h) broadcast free to air for New Zealand, and credits and features for the Hosts in the global coverage of the Events.
- (i) Event receptions, both delivered by ACE and the right to deliver Mayoral and / or Ministerial receptions
- (j) Race village activation by ACE to include local content and entertainment
- (k) The right to deliver city and national activations and ancillary events in association with the Event
- (l) Sponsorship rights commensurate with the level of investment and as connected with the wider sponsorship family
- (m) Access to offshore events to allow for event leverage
- (n) Access to hospitality areas in ETNZ bases
- (o) Access to talent (subject to availability of personnel)
- (p) Opportunities to leverage the Events for sport development

SCHEDULE 2
Payment Terms

The following payment terms shall apply:

1.	Instalments	s7(2)(b)(ii) Commercial Prejudice 3rd Parties
		<p>The Hosts shall pay the Event Investment to ACE (plus GST where applicable, in accordance with Clause 2 below), in cleared funds, net of any deduction, set-off, charge, levy, withholding or other tax imposed in relation to the payment of the Event Investment, in the instalments set out above, to such bank account as ACE shall advise. Payment shall be due for each instalment within 30 (thirty) days of a valid invoice in respect of the same, subject to agreement that all relevant milestones have been met.</p>

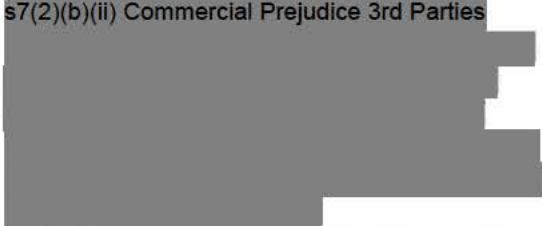
2.	Tax	The Event Investment is expressed as exclusive of GST (or equivalent sales tax) which, if applicable, ACE shall invoice and the Hosts shall pay in addition in the manner and amount prescribed by law at the relevant time.
3.	Currency	All payments of the Event Investment shall be made in New Zealand Dollars unless expressly approved in advance by ACE.
4.	On-Charging Restriction	Restrictions on on-charging to be covered in the Host Venue Agreement.

**SCHEDULE 3
Lease Terms**

Commencement	<p>For office portion of VEC Building: 1 August 2018</p> <p>For remainder of VEC Building: 1 October 2018</p>
Term	s7(2)(b)(ii) Commercial Prejudice 3rd Parties
Premises	The entire VEC building (subject to the staggered commencement date referred to above for the office / non-office portion of the VEC Building).
Requirements on commencement	Clean venue including the right to brand the premises as set out in the "Branding rights" section below.
Lease assignment, subletting, venue hireage (temporary or long term)	<p>Assignment will be prohibited. Subletting and venue hireage will require RFA approval on commercial terms agreed with RFA (including that RFA will have a right of first refusal to take back any such space).</p> <p>The parties agree that it will be reasonable for RFA to withhold consent to a sublease if the proposed sublease does not comply with the parameters agreed with RFA or are inconsistent with the Permitted Business Use.</p> <p>RFA will receive all revenues from sub-letting and hiring agreements.</p> <p>ETNZ will regularly advise RFA whenever it knows the building, or parts of the building,</p>

	will be available for RFA to use for other purposes.
Permitted Business Use	<p>As a base for Team New Zealand, America's cup sailing team including use for offices, America's Cup and other Team New Zealand events and storage related to Team New Zealand America's Cup activities and as Team New Zealand innovation hub/ centre</p> <p>Changes of the permitted use are to be prohibited.</p> <p>ETNZ will be solely responsible for obtaining at its cost all necessary consents to enable the lawful exercise of the Permitted Use and will ensure compliance with all specific resource consent requirements, applicable regulations and laws.</p>
Dispute Resolution (removal of obligation to proceed to arbitration)	<p>Clause 42 of the ADLS Lease will be amended by:</p> <p>(a) Deleting the heading 'Arbitration' and replacing it with 'Dispute Resolution'; and</p> <p>(b) Deleting clauses 42.2 and 42.3.</p>
Branding Rights	The lessor will use best endeavours to enable ETNZ to call the premises 'Emirates Team New Zealand' (and have full sponsor naming rights) from 2 October 2018.
Public Access to adjoining water space	ETNZ will ensure that there is unrestricted public access between the western side of the VEC building and adjoining waterspace (outside of event times), public access on the eastern side of the VEC from time to time will depend upon TNZL operational requirements. TNZL will use best endeavours to accommodate any public access needs outside of operational requirements.
Fit Out Costs, including structural works on VEC	The Crown/Council will reimburse TNZL for the cost of alterations to the VEC to make it fit for purpose up to a maximum of \$5 million. If the actual fit out costs are less than \$5million, the surplus funds will be shared equally between the Crown, Auckland Council and ETNZ.
Maintenance costs and make good provisions	Normal lessor repairs and maintenance obligations as set out in the ADLS Lease will be met by RFA, but any other renewal, decoration, or non-structural alterations

	<p>outside of the lessor's obligations will be met by ETNZ.</p> <p>Make good provisions (as provided in clause 20.1 of the ADLS Lease) will apply to any internal fit outs, additions or alterations and to any works carried out within the office areas within the Premises, but not to any structural work undertaken on the premises with the lessor's consent.</p> <p>It is acknowledged that ETNZ wish to undertake some structural works to the Premises to make them fit for purpose at its own cost (subject to reimbursement as above), including [opening the eastern side of the premises, installation of hanger doors and a re-configuration of the existing auditorium to enable yachts and water craft to enter the Premises]. ETNZ will not undertake any alterations or additions to the Premises without obtaining the lessor's prior written consent on every occasion (such consent not to be unreasonably withheld). For the purposes of enabling the lessor to consider an application for consent to any alterations or additions, ETNZ will provide the lessor with detailed plans identifying its proposed works and comply with any other reasonable requirements of the lessor.</p>
Lease payments	s7(2)(b)(ii) Commercial Prejudice 3rd Parties
Outgoings	s7(2)(b)(ii) Commercial Prejudice 3rd Parties
Early termination	The lessor will be entitled to terminate the lease in the event of:

	<ul style="list-style-type: none"> <input type="checkbox"/> ETNZ no longer credibly competing in the America's Cup <input type="checkbox"/> the liquidation (or other insolvency event) of TNZL; <input type="checkbox"/> material breach (standard ADLS terms). <p>s7(2)(b)(ii) Commercial Prejudice 3rd Parties</p> 
Operational Agreement	<p>ETNZ will enter into a separate operational management agreement with Panuku Development Auckland Limited (Panuku) on terms reasonably required by Panuku, which will include but not be limited to:</p> <ul style="list-style-type: none"> - Grant of access licence and rights to use the forecourt (identified on the attached plan) between the Premises and the adjoining waterspace to be allocated to ETNZ (Forecourt). The use of the Forecourt will be available to ETNZ to use from 1 October 2018; - Practical requirements for interruption to/blocking public access around the eastern side of the premises to allow for boats to enter and exit the building or for other reasonable requirements of ETNZ; - Clarification that ETNZ will not have priority over other users of the waterspace and normal navigational operation rules will apply; - A no complaints covenant on ETNZ in respect of Panuku's / its invitees / other users operations within the Wynyard quarter/viaduct area; - That ETNZ will comply with Panuku's reasonable vehicular access and carparking requirements and directions;

- That ETNZ will have use of a 75m x 28m area of waterspace adjacent to the Eastern side of the premises.

For the avoidance of doubt, there will not be any further rental or licence fee payable by ETNZ under the Operational Agreement.

Long term venue

Commitment to find a long term base location

s7(2)(b)(ii) Commercial Prejudice 3rd Parties



SCHEDULE 4
Public Sector Delivery Obligations

The following venue requirements are indicative only and subject to final agreement amongst the Parties. Once agreed, the obligations will be included in the Host Venue Agreement:

Venue Requirements

1.	Development	<p>The Hosts shall ensure that the development of the Venue takes place in accordance with the planned works and all publicly-communicated milestones, to be finalised no later than June 2020. The Venue shall be provided to ACE free of charge (as regards access to physical space) for the purpose of staging the Events (including the period of setting up and taking down all temporary infrastructure) during the Use Periods set out at Clause 5 below.</p> <p>Without prejudice to the foregoing, the Hosts shall ensure that identified and agreed areas of the Venue are suitable for load bearing to support the lifting of the Team's boats.</p>
2.	Race Village	<p>As part of the Venue, the Hosts shall provide the Race Village area for no ground rent suitable for hosting a world class international event of this status. Discussions around the areas that make up the race village will be part of the Host Venue Agreement and will comprise of a mix of publicly owned and accessible spaces on the waterfront and Auckland Central Business District. ("Race Village").</p>
3.	Media and Broadcast Centre	<p>Additionally, the Hosts shall assist with procuring and agreeing a venue for the media and broadcast centre and this shall be further specified in the Host Venue Agreement.</p> <p>The Hosts shall ensure reasonable vehicle access to and from the Media and Broadcast Centre wherever practical and possible throughout the Use Period. For the avoidance of doubt this does not include vehicle parking.</p>
4.	Ancillary Sites	s7(2)(b)(ii) Commercial Prejudice 3rd Parties
5.	Availability and Use	<p>The Venue shall be made available for the use of ACE in relation to the Events during the period commencing one month before the first Event until one month after the last Event, currently 1 November 2020 to 30 April 2021 (the "Use Periods").</p> <p>Site operations including build and demount will be covered by consents and permits. The Hosts will support ACE in ensuring that these offer as much flexibility in hours of working as is practically possible.</p> <p>Furthermore, the Hosts shall provide access to ACE upon reasonable written notice at times to be agreed between the parties (acting reasonably and in good faith) outside of the Use Periods, for</p>

		the purposes of planning the Events and monitoring the Hosts' compliance with its obligations under this Agreement.
6.	Access Control	ACE shall be entitled to control access into the areas of the Venue identified and agreed in the Host Venue Agreement through its management of an accreditation system. ACE and the Hosts will also manage access to the venue, recognising that in some identified areas it is not possible to restrict public access.
7.	Copyright	ACE shall be entitled to film, record and photograph the Events and any related event and activity within and around the Venue as is necessary provided the Hosts have access to such film, recordings and photographs. The Hosts also retain the right to film, record and photograph the Events and activities for their own purposes subject to Event confidentiality.
8.	Amenities	The Hosts shall provide the following public amenities: (a) public toilets – the existing public toilets available at the Venue; and (b) public lighting – the existing lighting available at the Venue.
9.	Utilities	The Hosts shall use best endeavours (subject to any Force Majeure Events and any actions of ACE and/or ACE's subcontractors) to make available all existing utilities at the Race Village for use in relation to the Events and over the Use Period, including: (a) power sources (63amp, 3 phase 380v 50Hz); (b) fresh water supply; (c) maintenance of grey water and black water sites; and (d) high speed wired broadband fibre availability. s7(2)(b)(ii) Commercial Prejudice 3rd Parties ACE warrants that they will not undertake any activity which endangers or prevents this supply.
10.	Permitted Branding Space	ACE shall be responsible for all Event-related branding and shall be entitled to erect the same on all existing infrastructure (including any fencing and flagpoles) within and along the perimeter of the Race Village, subject to and in accordance with all consents and permits and any existing contractual arrangements that apply to branding in these areas.
11.	Relocation of Fisheries and Berth Holder Car Parks	Fishing vessels and Berth holder carparking are subject to legal agreements. Agreement as to timing and relocation will be part of development of the Host Venue Agreement
12.	Storage	ACE and the Teams shall be responsible for the transportation of their respective equipment/cargo to and from the Venue at their own cost for each Event. As a result of the shipping schedules, it may be necessary for some equipment or cargo to arrive in New Zealand before the Use Period and to depart after the Use Period, in which case the Hosts shall assist ACE to procure suitable storage facilities, unloading/loading coordination and associated services (including security) in or about the Venue. The Hosts will not charge

		for existing storage that is within the Venue. Other storage costs and services will be payable by ACE or the individual team to the relevant party.
13.	Standard of Facilities and Services	The Hosts shall ensure that all facilities and services provided by the Hosts hereunder shall be provided and maintained throughout the Use Periods to a standard to be reasonably expected of a major international sporting event and, without prejudice to the foregoing, at no less standard than currently provided at the Venue at the date of this Agreement.

Event Requirements

14.	Insurance	<p>The Auckland Council Group will provide evidence that they are adequately insured or are prepared to self insure in relation to their roles and responsibilities for the event.</p> <p>The Auckland Council Group and ACE shall provide the other, no later than three (3) months prior to each Event, with a valid certificate of insurance and other evidence as may reasonably be requested to show that such insurance is in place and will remain in place throughout the Use Period, and of the payment of any related insurance premiums (if applicable). The parties shall notify each other forthwith of any claim against such insurance policy.</p> <p>Neither party shall do anything (or make any omission) which invalidates (or is likely to invalidate) any such insurance policies at any time during the life of the policy.</p>
15.	On-Water	The Hosts shall assist ACE's coordination with the harbourmaster in identifying an appropriate on-water race area for each Event (anticipated to be off North Head) and shall use reasonable endeavours to assist with on-water support for racing and practice sailing for each Event. For the avoidance of doubt, ACE shall be responsible for the management of all racing activities at the Events.
16.	Marina Services and Berthing	This will be the subject of a separate agreement with Panuku Development Auckland. The principles are described in Schedule 6
17.	Superyacht Programme	This will be the subject of a separate agreement with Panuku Development Auckland. The principles are described in Schedule 6

Public Services

18.	Emergency Services	The Hosts shall provide without charge to ACE full support for the Events from all emergency services, including police, ambulance and fire services to comply with all health and safety requirements.
19.	Traffic and Transport Plan	A transportation plan will be developed and implemented prior to the Events at the Venue. The preparation of the transportation plan will be confirmed in the Host Venue Agreement. The transportation plan shall reflect any specific resource consent requirements and applicable regulations and aim to reduce demand for private vehicle trips, encourage and support the use of public transport to the Events at the Venue and manage parking demands.

		<p>The transportation plan is to be endorsed by the Event Steering Group prior to being provided to Auckland Transport for approval.</p> <p>The Hosts will assist ACE in identifying any planned public works which could impact the Events at the Venue to ensure these are fully considered within the development of the transportation plan..</p> <p>The Hosts will assist ACE with identifying available supporting carparking infrastructure for the purpose of supporting ACE's parking requirements for the Events.</p>
20.	Crowd and Public Safety	<p>The Hosts shall provide required policing and security outside the immediate perimeter of the Venue, throughout the events, to ensure public safety. For the avoidance of doubt, ACE shall not be responsible for the costs of any additional policing or security required outside of the Venue.</p> <p>The Hosts shall use reasonable endeavours to prevent any breach of security throughout the Use Period for each Event.</p> <p>For the avoidance of doubt, ACE shall be responsible for crowd control and public safety within the perimeter of the Race Village.</p>
21.	Cleaning and Waste Management	<p>The Hosts shall ensure that throughout each Event all publicly accessible areas immediately adjacent to the Venue are thoroughly cleaned, maintained and kept free from litter, in accordance with the usual standards applicable to such areas. Any additional requirements over and above usual operating levels and the costs associated with this will be met by ACE. For avoidance of doubt ACE are responsible for all waste management within the agreed Venue.</p>
22.	Air Space	<p>The Hosts will assist ACE in obtaining all relevant permissions in respect of the control of and access by or on behalf of ACE of airspace above and around the Race Village and all relevant on-water areas (including the Race Area), including for the purposes of allowing helicopters and drones access throughout the Events.</p>
23.	Dredging	<p>Subject to resource constraint (and in particular any resource consents) the Hosts shall ensure that the Viaduct Marina and Team Base area (and a transit channel out of the Viaduct Marina into the open water and to the Race Area) has an uninterrupted a depth of at least 5.5m (five and a half metres) in all states of tide; and shall conduct all necessary dredging in advance of, and maintain as such throughout, each Event.</p>
24.	Marketing and Communications	<p>The Hosts shall work with ACE to prepare, deliver and implement a marketing and communications plan, aimed at ensuring that the Events are marketed and promoted in the most effective manner in order to maximise visitors to the Events and to ensure that the City, the Crown and the Events receive media exposure. This shall include use of all relevant available marketing channels of the Host.</p> <p>For the avoidance of doubt ACE is responsible for marketing and promoting the events.</p>

Delivery Services

25.	Vessels	<p>The Hosts shall use reasonable endeavours to provide existing marina and on-water support to ACE in respect of ACE's engagement with:</p> <ul style="list-style-type: none">(a) Panuku Development Auckland; (Subject to Super Yacht agreement)(b) harbourmaster;(c) maritime police; <p>ACE will be responsible for provision of any additional vessels required.</p>
26.	Management of Promotional Events and Communications	<p>The Hosts shall be responsible for the management of all Host activations.</p> <p>The Hosts shall also be responsible for setting up and operating information centres throughout the City providing information regarding the Events.</p> <p>All Hosts activations and activities relating to the Events must conform with the Branding Manual and in particular respecting the rights of the Event Commercial Partners.</p>
27.	Broadcast	<p>The Hosts shall provide all reasonable assistance to ACE in relation to its discussion with New Zealand broadcasters, as may be requested by ACE from time to time.</p>

Legal/Regulatory

28.	Border Services	<p>Once ACE has applied for Major Events Border facilitation and has been granted the border facilitation service, ACE enters into a full working partnership with the Major Events Border Steering Group to enable a coordinated and seamless border experience.</p>
29.	Building Compliance and Permits	<p>The Hosts shall respond to ACE in respect of any queries that ACE may have in relation to building compliance standards and shall provide practical assistance in meeting these as well as facilitating that all necessary permits and permissions are obtained in respect of the Use Periods.</p>
30.	Anti-Ambush Marketing	<p>If ACE chooses to apply for major event status for the Events under the Major Events Management Act 2007 and the respective event is subsequently declared a major event under the Act, the Hosts will work collaboratively with ACE to develop an enforcement plan that will meet the obligations of all parties under the Act, including those relating to ambush marketing.</p>
31.	Local Compliance	<p>The Hosts shall work with ACE to engage the support for the Events of all necessary public authorities, including the port authority, harbourmaster, civil aviation authority and Ministry for the Environment.</p>

32.	Frequencies and Satellite	<p>The Hosts shall use their best endeavours to assist ACE to apply for, secure and maintain from MBIE for each Use Period, all frequency and radio spectrum allocations reasonably required by ACE in relation to the Events for the purposes of Event-related communications and media production and broadcast, including:</p> <p>(a) RF; (b) 5G (to the extent allocations are available from MBIE); and (c) satellite uplinking support.</p> <p>For the avoidance of doubt, the charges for usages of these will be the responsibility of ACE including charges from existing licence holders</p>
33.	Licences and Permits	<p>The Hosts shall use their best endeavours to assist ACE (including by making introductions, setting up and attending relevant meetings) to obtain all required licences, consents, authorisations, permissions, certificates and approvals necessary or desirable in connection with the Events and all Event-related activities, including entertainment, alcohol, food, health and safety, live music, broadcast, advertising, construction and security licenses and licences from police and fire departments.</p>

A reference to a party using or an obligation on a party to use its best endeavours or reasonable endeavours (or similar) does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions

SCHEDULE 5
TEAM BASE AREAS BRIEF SPECIFICATIONS

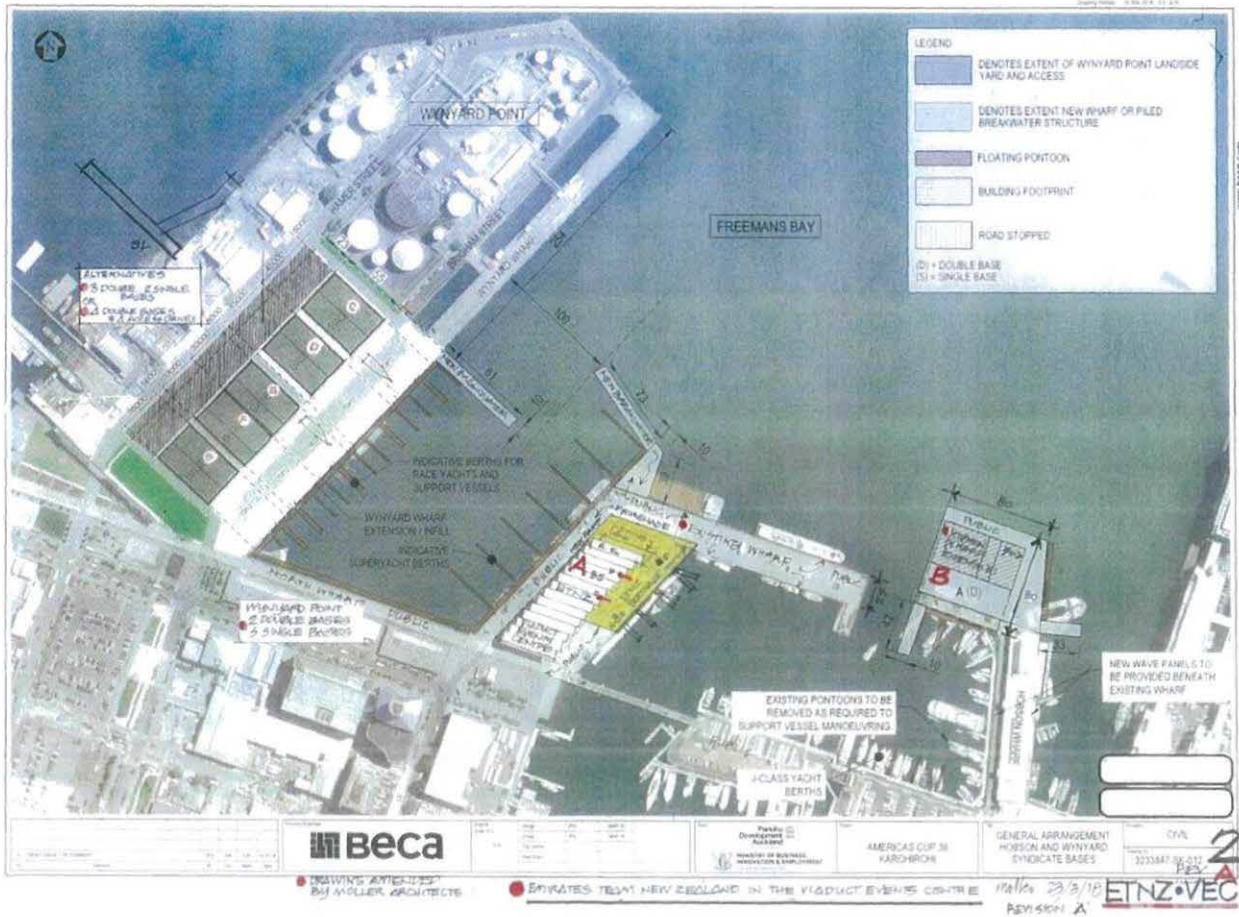
The Team Base Areas shall be supplied in accordance with the terms and conditions of a Master Base Supply Agreement with Panuku Development Auckland which will include but not be limited to the following requirements:

- Sealed surface (asphalt or concrete) levelled to a standard suitable for all operations of an America's Cup team, including accurate boat building and measurement of yachts;
- An area or pad suitable for the yacht launching crane;
- Surface to be flat from the rear to the launching area with a minimum fall for stormwater drain-off;
- Utilities hub at the boundary of each base area providing connections for electricity, fresh water, telecommunications, high speed internet/data, sewerage, wastewater and stormwater including meters, where appropriate for each utility;
- Site plans for each base area showing area, boundaries, site fall, any underground pipework, obstructions, areas suitable for crane pad location;
- Floating docks in a layout to be agreed with ETNZ and/or ACE;
- Base areas to be supplied clean, free of rubbish or debris

**SCHEDULE 6
SUPERYACHTS**

SCHEDULE 7

TEAM BASE AREA



SCHEDULE 8
Definitions and Interpretation

The following definitions and rules of interpretation apply to this Agreement:

I. Definitions

“ACE”	means America’s Cup Event Limited, a New Zealand Limited Company registered at the Companies Office under No 4753619, with its offices at 168 Beaumont Street, Auckland Central, Auckland 1010, New Zealand;
“ACPI”	means America’s Cup Properties Inc., a New York corporation and the holder of the America’s Cup trademark registrations;
“Agreement”	means this Agreement, including the Operative Terms and its Schedules;
“Ambush Marketing”	means any attempt by an individual or an entity to create an unauthorized or false association (whether or not commercial) with ACE, the Events, the America’s Cup, the Event Commercial Partners, any Team participating in the Events or any of their respective sponsors, suppliers, partners or other associates;
“America’s Cup Logo”	means the America’s Cup silhouette logo and any other official America’s Cup logo as may be provided by ACE to the Host from time to time;
“America’s Cup Marks”	means any trade name, logo, symbol, title or other mark or form of branding relating to the America’s Cup, including the America’s Cup Logo;
“ATEED”	means Auckland Tourism Events and Economic Development Limited.
“Branding Manual”	means the rules for branding of the Venue and any Event-related activities as designated and distributed by ACE from time to time (including as the same may be amended, replaced and/or supplemented from time to time);
“City”	means the City of Auckland;
“Clean”	means free from any third party branding, signage, advertising or other commercial names, logos, materials or other identification;
“Commencement Date”	has the meaning set out at Clause I of the Operative Terms;
“Confidential Information”	means all information that is not in the public domain and which is reasonably regarded by the disclosing party as being confidential, sensitive or proprietary, including financial affairs, business plans, customer lists, forecasts and strategies, technical information, technology and design information, inventions (whether patentable or not), data regarding marketing and/or sponsors, strategic information, computer software and data,

	advertising material and any other know-how or information not generally known to the public (in the case of ACE, whether related to ACE, the Events, any Teams and/or the America's Cup itself);
"Event Investment"	has the meaning set out in Clause 4 of the Operative Terms;
"Event(s)"	means the events identified in Clause 2 of the Operative Terms;
"Event Commercial Partners"	means the official sponsors, suppliers and other commercial partners of ACE and the Events, as appointed by or on behalf of ACE;
"Force Majeure Event"	means any event affecting the performance of any provision of this Agreement arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a party including, without limitation, any abnormal inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, lock-out or other industrial action, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant court or regulatory body exercising appropriate jurisdiction;
"Crown"	means the Government of New Zealand;
"Host Promotional Purposes"	means the purpose of City and/or Government tourism-related marketing activities in the context of the Host' role as Host of the Events;
"Inter-Agency Steering Group"	has the meaning set out at Clause 6 of the Operative Terms;
"Media and Broadcast Centre"	means the centre for media and broadcast personnel working in relation to the Events, as set out in Clause 3 of Schedule 4;
"Operational Office Space"	has the meaning set out at 4 of Schedule 4;
"Operative Terms"	means the terms identified as such at the beginning of this Agreement;
"Panuku Development Auckland"	means Panuku Development Auckland Limited, a New Zealand Limited Company registered at the Companies Office under No 3089645, with its offices at Ground Floor, 82 Wyndham Street, Auckland 1010, New Zealand;
"Race Area"	means the on-water 'field of play' for racing and training by Team Boats, as identified in accordance with Clause 17 of Schedule 4;

“Race Village”	means the area identified in Clause 2 of Schedule 4;
“Rights and Benefits”	has the meaning set out at Clause 3 of the Operative Terms;
“Team Base”	means the buildings and facilities constructed on the Team Base Areas;
“Team Base Areas”	means the foundations on which the Team Bases are to be built and for the avoidance of doubt do not include the buildings;
“Team Boats”	means the race boats and any support boats of the Teams;
“Team”	means a sailing team participating in one or more of the Events;
“Use Periods”	means the periods defined as such in Clause 6 of Schedule 4;
“Venue”	has the means the sites necessary for use by ACE to comply with its obligations for on-land delivery of the Events, and includes the Race Village but excludes all roads and footpaths; and
“VIP Hospitality”	means the official VIP hospitality programme for the Events operated by or on behalf of ACE.

2. Interpretation

- 2.1. The use of the word ‘including’ and similar words shall not imply any limitation to the words following such term.
- 2.2. A reference to the ‘Agreement’ includes a reference to this Agreement and its Schedules and, as amended or replaced from time to time.
- 2.3. Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing any gender include any gender.
- 2.4. The headings to the Schedules or Clauses of this Agreement are for convenience only, have no legal effect and should not be taken into account in the construction or interpretation of this Agreement.
- 2.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.