

Host Venue Agreement

relating to

36th America's Cup

America's Cup Event Limited

ACE

and

Auckland Council

Council

and

**The Sovereign in right of New Zealand, acting by and through the
Chief Executive of the Ministry of Business, Innovation and
Employment**

MBIE

and

Team New Zealand Limited

ETNZ

Date 4 April 2019

Contents

1.	Scope and construction of Agreement	2
2.	Acknowledgement	5
3.	Term.....	6
4.	Events.....	6
5.	Hosts' delivery obligations	9
6.	ACE's and ETNZ's delivery obligations	9
7.	Funding	13
8.	Hosts' Rights and Benefits	14
9.	The Venue	16
10.	Team Bases and Docks.....	19
11.	Health and Safety.....	20
12.	Project Governance.....	22
13.	Reporting.....	24
14.	Warranties	25
15.	Intellectual Property Rights	27
16.	Confidentiality and information	27
17.	Insurance.....	28
18.	Liability	30
19.	Escalation process	31
20.	Specific performance	32
21.	Dispute resolution	32
22.	Termination	32
23.	Force Majeure	34

24. General Provisions	36
25. Notices	38
Schedule 1: Definitions	41
Schedule 2: Rights and Benefits	50
Schedule 3: Funding Milestones and Payment Instalments	69
Schedule 4: Public Sector Delivery Obligations	75
Schedule 5: Venue	87
Schedule 6: Race Village	88
Annexure 1: Event Concept	98
Annexure 2: Master Base Supply Agreement	99
Annexure 3: City Logo and Logo Licence Agreement	100
Annexure 4: Final Event Report	102
Annexure 5: Yacht and Clothing Branding	104
Annexure 6: PAA Schedules	106

This **Host Venue Agreement** is made on

4 April 2019

between (1) **America's Cup Event Limited (ACE)**

and (2) Auckland Council (Council)

and (3) **The Sovereign in right of New Zealand acting by and through the Ministry of Business, Innovation and Employment (MBIE)**

and (4) **Team New Zealand Limited (ETNZ)**

Background

- A. ETNZ won the 35th America's Cup Match in Bermuda in June 2017 as the representative of the Royal New Zealand Yacht Squadron (**RNZYS**). RNZYS became the holder and trustee of the America's Cup pursuant to the Deed of Gift dated 24 October 1887 between George L. Schuyler and the New York Yacht Club, as amended from time to time, (the **Deed of Gift**) and subsequently entered into the Protocol governing the 36th America's Cup, dated 26 September 2017 (the **Protocol**).
- B. RNZYS has appointed ETNZ to conduct the defence of the 36th America's Cup on its behalf, including all aspects of the sporting campaign, the required event management and selecting the host venue for the Events. ETNZ has procured the establishment of ACE to undertake its event management responsibilities in relation to the Events.
- C. On 26 March 2018, the parties executed the 36th America's Cup Host City Appointment Agreement to record the essential terms and conditions in relation to the appointment of Auckland as the Host City, and New Zealand as the Host Country, for the 36th America's Cup (the **Host City Appointment Agreement**). The parties acknowledge and agree that:
 - i. as set out in the Host City Appointment Agreement, this Agreement supersedes the information set out in Schedules 1, 2, 3, 4 and 5 of the Host City Appointment Agreement; and
 - ii. if there is any conflict or inconsistency between information contained within the Host City Appointment Agreement and this Agreement, to the extent of any such conflict or inconsistency, the information contained in this Agreement will prevail over information contained in the Host City Appointment Agreement.

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

Government	Percentage
Current government	85%
Previous government	15%

[illegible]

Response	Percentage
Yes	75%
No	25%
Don't know	0%

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

- E. Pursuant to the Host City Appointment Agreement, ETNZ delivered to the Hosts prior to [REDACTED] an initial report confirming that ETNZ had secured at least [REDACTED] of the Total Funding Amount, and that ETNZ had put in place a plan to secure the remainder of the Total Funding Amount (the **External Funding Commitment**). Pursuant to a letter dated [REDACTED] (the **Funding Waiver Letter**):
- i. the Hosts agreed to waive the other Funding Condition Precedent being “completion of the Event Concept after full consultation and co-operation of the Hosts” on the condition that the Event Concept was to be completed by 30 September 2018 and that in completing the Event Concept, ACE and ETNZ were to engage, consult and co-operate fully with Council, MBIE, ATEED, RFA, Auckland Transport and Panuku at all stages of the development of the Event Concept (the **Event Concept Condition**). The parties acknowledge that ACE and ETNZ satisfied the Event Concept Condition prior to 30 September 2018; and
 - ii. the Host City Appointment Agreement was amended to reflect the above condition.
- F. On or around this time, and subject to the terms of the Funding Waiver Letter, ACE received from MBIE the first instalment of the Event Investment in accordance with the Host City Appointment Agreement, being equal to [REDACTED] of the total Event Investment.
- G. On [REDACTED], ACE received from MBIE part of the second instalment of the Event Investment in accordance with the Host City Appointment Agreement and the side letter dated [REDACTED], being equal to [REDACTED] of the total Event Investment.
- H. This Agreement sets out the relationship between, and the rights and obligations of, ETNZ, ACE and the Hosts in relation to the 36th America’s Cup and the appointment of Auckland as Host City and New Zealand as the Host Country for the 36th America’s Cup.
- I. The parties wish to recognise the role of the Challenger of Record to represent all of the Challengers and PRADA as the title sponsor (**Title Sponsor**), and who have rights in relation to the Events as set out in Appendix 2 of the Protocol.

It is agreed

1. Scope and construction of Agreement

1.1 Documents comprising this Agreement

As at the Commencement Date, this Agreement comprises the following documents, each of which are deemed to form, and to be read and construed as, part of this Agreement:

- (a) the Base Agreement;
- (b) each Schedule; and
- (c) each Annexure.

1.2 Precedence

- (a) Subject to clause 1.2(b), if there is any conflict or inconsistency between the documents which comprise this Agreement the order of precedence is:
 - (i) any amendment to this Agreement agreed in writing between the parties;
 - (ii) the Base Agreement and Schedule 1 (Definitions);
 - (iii) the Schedules (other than Schedule 1 (Definitions)); and
 - (iv) the Annexures.
- (b) If there is any conflict or inconsistency between information contained within the documents having the same level of precedence then, to the extent of any such conflict or inconsistency, the information contained in documents that are later in time will prevail over information contained in earlier documents.

1.3 Construction

In this Agreement:

(a) Definitions

unless the context otherwise requires, the terms used in this Agreement and set out in Schedule 1 (Definitions) have the meanings set out in that Schedule;

(b) Interpretation

unless the context otherwise requires:

- (i) a reference to **party** or **parties** means a party or parties to this Agreement;
- (ii) a reference to a **clause** is a reference to a clause in this Agreement;
- (iii) a reference to a **Schedule** or **Annexure** is a reference to a schedule or an annexure of this Agreement;
- (iv) a reference to a **payment** means the payment of, or mechanism of transferring consideration from one party to another in the form of cash, equity securities or otherwise, in accordance with this Agreement, and references to **paid**, **payable** and **pay** shall be construed accordingly;
- (v) a **gender** includes each other gender;
- (vi) the **singular** includes the plural and vice versa;
- (vii) a reference to **documentation** includes:
 - (A) a reference to that document as varied, supplemented, novated or substituted from time to time; and
 - (B) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;

- (viii) a reference to **materials** means a reference to materials of any kind whether in the form of documentation, software, hardware, network, componentry or otherwise;
 - (ix) any **agreement** not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;
 - (x) any reference to a **consent** requires the prior written consent of the party required to give that consent;
 - (xi) whenever the words **includes** or **including** are used in this Agreement, they are deemed to be followed by the words “without limitation”;
 - (xii) a reference to any **legislation, policy or standard** includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order in council and other instrument from time to time issued or made that legislation;
 - (xiii) **headings** to clauses in this Agreement and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
 - (xiv) a reference to a **person** includes a partnership and also a body of persons, whether corporate or unincorporated;
 - (xv) the **Background** forms part of this Agreement;
 - (xvi) a reference to a **day**, other than a Business Day, is a reference to any calendar day of the year;
 - (xvii) a reference to any **time** is a reference to New Zealand time;
 - (xviii) a reference to **currency** is a reference to New Zealand currency, unless expressly provided otherwise; and
 - (xix) if an **obligation fails** to be performed or a right is to be exercised, on or by a day that is not a Business Day, then unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day; and
- (c) **No contra preferentum**

none of its terms are to be construed against a party by reason of the fact that that term was first proposed or was drafted by that party.

1.4 Personnel and Subcontractors

Any act or omission or the misconduct of any Personnel, representative or Subcontractor of a party to this Agreement, is deemed to be the act, omission or misconduct of that party. Any subsidiaries or affiliates of:

- (a) ACE or ETNZ who perform any roles or responsibilities or exercise any rights under this Agreement will be Subcontractors of ACE or ETNZ (as applicable); and
- (b) Council or MBIE who perform any roles or responsibilities or exercise any rights under this Agreement will be Subcontractors of Council or MBIE (as applicable).

1.5 Costs

A party who has an obligation to do anything under this Agreement is to perform that obligation at its own cost, unless a term of this Agreement expressly provides otherwise.

1.6 Maps

The parties agree that the maps that form part of the Agreement are indicative and the exact limits of the Venue are subject to the Event Permit to be obtained by ACE from Council as provided for in clause 9.1(f)(iv).

2. Acknowledgement

- (a) The parties acknowledge that the overarching purpose of this Agreement is to facilitate the successful promotion and staging of the 36th America's Cup and the Events while showcasing and promoting Auckland and New Zealand.
- (b) ACE and ETNZ acknowledge that the Hosts have an interest in the Protocol which is limited to any future amendments that adversely impact on the Hosts' return on the Hosts' Contribution or that could increase the costs of the Hosts. ACE and ETNZ agree not to support any Protocol amendment which either creates an extra cost burden for the Hosts or could adversely impact on the return on the Hosts' Contribution (including impacting the Hosts' access to Rights and Benefits), or have the potential to do so, without obtaining the Hosts' prior approval of any such amendments.
- (c) Notwithstanding ACE and ETNZ's obligation in clause 2(b), ACE and ETNZ shall keep the Hosts informed of any other amendments to the Protocol as they are agreed to with the Challenger of Record.
- (d) Notwithstanding that the parties are not forming a legal partnership, 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.
- (e) The parties acknowledge and agree that the Events are to take place a substantial period of time after the Commencement Date. The parties agree that if events arise in connection with the Events that are unforeseen and that require additional resource from the Hosts and or ACE than that contemplated at the Commencement Date (each an **Unforeseen Event**), the parties will meet to discuss and work through the:
 - (i) detail of such Unforeseen Events;
 - (ii) consequences and potential consequences to the parties and the Events as a result of such Unforeseen Events; and
 - (iii) proposed remedies or actions to be undertaken in relation to the Unforeseen Events.

For the avoidance of doubt, nothing in this clause affects clause 7.2(b) and clause 23.

3. Term

3.1 Term

This Agreement will start on the Commencement Date and will, subject to clause 22 (Termination), expire on the date being six (6) months following the last day of racing of the Match or such later date as agreed between the parties (**Term**).

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

4. Events

4.1 The Events

- (a) In accordance with the Host City Appointment Agreement, ACE and ETNZ confirm that Auckland is the Host City and New Zealand is the Host Country in respect of the following events:
 - (i) the America's Cup Christmas Race (or such other name as may be selected by the Challenger of Record), currently scheduled to take place during December 2020/January 2021 (the **Christmas Race**);
 - (ii) the America's Cup Challenger Selection Series, known as the Prada Cup currently scheduled to take place during January/February 2021 (the **Prada Cup**); and
 - (iii) the 36th America's Cup Match, that is to take place during the period from 6 March 2021 to 21 March 2021 (the **Match**),
 (together, the **Events**).

4.2 Challenger of Record, Title Sponsor and the Protocol

- (a) ACE and ETNZ agree and acknowledge that it is their responsibility to manage their relationships with:
 - (i) the Challenger of Record in relation to the Venue and the Events generally and the Challenger of Record's rights under the Protocol and in particular the role of COR/D; and
 - (ii) the Title Sponsor in relation to the Venue and the Events generally and the Title Sponsor's contractual rights that arise from the Sponsorship Agreement and as specified in the Protocol.

- (b) The Hosts acknowledge and agree to act reasonably when considering any requests received from ACE in respect of:
 - (i) the Challenger of Record and/or the Title Sponsor in respect of the Events; and/or
 - (ii) support for ACE in respect of ACE's rights established in the Protocol,

provided that the Hosts are not obliged to spend any additional money in fulfilling such requests.
- (c) The parties agree that the Hosts are not required to engage with the Challenger of Record or the Title Sponsor in relation to the Events.

4.3 Event Dates, Race Dates, Race Times and Race Durations

- (a) The Hosts acknowledge subject to the terms of this Agreement, that:
 - (i) as at the date of this Agreement, the Event Dates (other than for the Match), the Race Dates, Race Times and the Race Durations are unable to be confirmed;
 - (ii) the Event Dates (other than for the Match), the Race Dates and the Race Times may change throughout the Term as a result of events outside of the control of ACE;
 - (iii) the Race Conditions (being the Match Conditions and the CSS Conditions collectively) for the Christmas Race, which include the format, scoring and logistics rules are to be agreed between the Defender and the Challenger of Record;
 - (iv) the notice of race and conditions governing the Races for the Match, which shall include particulars such as dates, times and the number and series of races (the **Match Conditions**) are to be agreed upon and finalised by the Defender and the Challenger of Record by 20 December 2019;
 - (v) the Match Conditions with such modifications deemed necessary to accommodate particulars such as dates, times and the number and series of races shall also govern the Prada Cup (the **CSS Conditions**) and shall be finalised by the Challenger of Record by 30 June 2020. Such modifications shall be subject to the approval of the Defender, which shall ensure that they are equitable to all Challengers;
 - (vi) the Defender and the Challenger of Record must cooperate with the Regatta Director on all issues such as schedules for Events and Race Course management;
 - (vii) during the Events, the Regatta Director will consult with the relevant competing Teams on the day in relation to any proposed delays or change in Race Dates and the Regatta Director has overall responsibility in relation to the conduct of all racing for the Events; and
 - (viii) the Regatta Director:
 - (A) requires the freedom to make decisions in relation to Race Dates and Race Times in the interests of sailing and to ensure the races are conducted in a professional and timely manner in accordance with the rules determined in accordance with the Protocol; and

- (B) notwithstanding the above, decisions of the Regatta Director are subject to and must be in full compliance with all applicable Laws and/or other lawful directives of the relevant government authorities (including the Harbourmaster and the New Zealand Police).
- (b) ACE and ETNZ agree to:
- (i) in relation to the Event Dates (other than for the Match on the basis that the Event Date for the Match is already confirmed), consult with the Hosts in relation to the setting of the Event Dates (other than for the Match) and any terms of the Race Conditions that relate to the Event Dates; and
 - (ii) in relation to the Race Dates and Race Times:
 - (A) consult with the Inter-Agency Steering Group in relation to the setting of the Race Dates and the Race Times in the Race Conditions;
 - (B) meet with the Inter-Agency Steering Group no later than 12 months prior to the commencement of the Event Period to discuss and agree with the Inter-Agency Steering Group all scenarios reasonably conceivable at the time that would impact on a decision with respect to the Race Dates and/or Race Times for each Event and the process for communicating such decisions (the **Agreed Scenarios**);
 - (C) only agree to the Race Dates and the Race Times in accordance with the Agreed Scenarios; and
 - (D) permit the Hosts to nominate one representative in writing to ACE prior to the Event Period that is entitled to attend meetings (including daily briefings) of the Regatta Director during the Event Period that relate to decision making as to Race Dates and Race Times of the Events for the purposes of coordinating its on land and on water operations (such representative to be in addition to the relevant operational partners of the Hosts that would usually be involved in such meetings, including the Harbourmaster and the New Zealand Police).

4.4 Other events

- (a) The Hosts acknowledge and accept that other events comprising or associated with the 36th America's Cup will be held in other venues outside of New Zealand, being the America's Cup World Series regattas (currently intended to be held around the world in 2020) (**International Events**).
- (b) ETNZ and ACE agree in relation to the International Events to provide to the Hosts the Rights and Benefits set out in Schedule 2 (Rights and Benefits) and in addition to use reasonable endeavours to:
 - (i) champion and promote New Zealand; and
 - (ii) procure that any such International Events do not conflict with, compromise or detrimentally affect the Events.

4.5 Event Concept and Events

- (a) In accordance with the Host City Appointment Agreement, ACE has developed and completed the Event Concept which is now detailed in Annexure 1.
- (b) ACE will deliver, and procure the delivery of, the Events, subject to the Hosts' compliance with their respective obligations under this Agreement, in accordance with the Event Concept and, should there be a cost overrun in delivering the Events above that budgeted by ACE, ACE will pay such cost overrun.
- (c) ETNZ guarantees that the Events will be delivered in accordance with the Event Concept and should there be a cost overrun in delivering the Events above that budgeted by ACE, ETNZ (as a separate and independent obligation) will pay such cost overrun.

5. Hosts' delivery obligations

5.1 Delivery obligations

In consideration of ACE performing its obligations under this Agreement, Council and MBIE will, as applicable:

- (a) host the Events in accordance with the terms of this Agreement;
- (b) fund ACE the Event Investment in accordance with clause 7 of this Agreement and Schedule 3 (Funding Milestones and Payment Instalments);
- (c) deliver (or procure the delivery of) the Sites for no fee (in respect of the ground rent) to ACE for the relevant Use Periods; and
- (d) deliver (or procure the delivery of) the Public Sector Delivery Obligations (as detailed in Schedule 4 (Public Sector Delivery Obligations)) without any charge to ACE, unless otherwise expressly provided for in this Agreement,

in each case in accordance with the terms of this Agreement.

5.2 Acknowledgement

- (a) Unless otherwise provided for in this Agreement, the Hosts acknowledge and agree that any costs or expenses incurred by the Hosts in satisfying the Hosts' obligations under this Agreement will not be on-charged to ACE.
- (b) Unless otherwise provided for in this Agreement, ACE and ETNZ acknowledge and agree that any costs or expenses incurred by either of them in satisfying their obligations under this Agreement will not be on-charged to the Hosts.

6. ACE's and ETNZ's delivery obligations

- (a) In consideration of the Hosts performing their obligations under this Agreement, ACE and ETNZ will, as applicable, provided always that COR and the Defender maintain their respective prerogatives and rights as per the COR Letter:
 - (i) be responsible for and will undertake:

- (A) the management of the Events and Event associated activities (but only those Event associated activities that ACE has the right to manage);
- (B) in connection with the management and delivery of the Events, the planning for:
 - (I) appropriate control measures to ensure that the Events are run within regulatory requirements;
 - (II) the management of the crowd, and the movement of the public, at the Venue; and
 - (III) the safety of the public at the Venue,
 and will deliver the Events in accordance with such plans;
- (C) all aspects of the on-water and on-land delivery of the racing for the Events, including, but not limited to the following aspects:
 - (I) competition and training for the Events;
 - (II) management of the Race Courses in coordination with the Regatta Director;
 - (III) management of the On-water Media Areas and On-water Spectator Areas;
 - (IV) all movement of Team Boats and media, spectators and other Event delivery related yachts, boats and vessels, including to and from the Race Courses (for competition and training), the On-water Media Areas and the On-water Spectator Areas (as applicable) and in the Race Access Corridors;
 - (V) proactively participating in the design and communication of the transport options and experience for spectators to and from the On-water Spectator Areas;
 - (VI) timely and comprehensive communications to the public regarding Race Courses and, in particular, communications relating to safe spectator options for spectators viewing from the water, including in relation to the On-water Spectator Areas;
 - (VII) on-water communication with the Team Boats, spectators and the Hosts and the Hosts' operational partners; and
 - (VIII) management of any event related aircraft engaged by ACE;
- (D) all aspects of the on-water and on-land delivery of the Events at the Venue, including bringing the Events to the Venue and for all other aspects relating to the staging and management of the Events; these include, but are not limited to the following aspects:
 - (I) racing and Event related entertainment at the Venue;
 - (II) crowd management (including crowd control and public safety) and security at the Venue;

- (III) providing for safe access for the public, residents and business personnel within and throughout the Venue;
 - (IV) waste management (other than waste relating to the amenities to be provided by the Council in accordance with clause 2.8 of Schedule 4) and cleaning within the Venue;
 - (V) proactively participating in the design and communication of the transport options and experience for spectators to and from the Race Village;
 - (VI) management of any event related aircraft engaged by ACE; and
 - (VII) establishing and delivering a volunteer programme for the purposes of, and in relation to, the Events within the Venue. The parties agree that the focus of the volunteer programme established by ACE, and any volunteer programme established by the Hosts for the purposes of, and in relation to, the Events outside of the Venue (as provided for in Schedule 2 (Rights and Benefits)) are to welcome visitors from overseas and New Zealand to Auckland, New Zealand and the Events and inform visitors about Auckland, New Zealand and the Events and, as such, the parties agree to cooperate and assist each other to create a coordinated approach across the ACE volunteer programmes inside the Venue and the Host volunteer programme outside of the Venue;
- (E) managing car parking at the Venue in accordance with the Venue Traffic Management Plan;
- (F) liaising with the Challenger of Record and all of the other Challengers in relation to the Events; and
- (G) delivering its obligations to the Challengers under the Protocol;
- (ii) to use reasonable endeavours and use all practical measures available to prevent and minimise the impact of actions and activities that are likely to breach the Major Events Management Act 2007 (**MEMA**) and applicable bylaws of the Council and ACE and ETNZ acknowledge and agree that if they are only using reasonable endeavours such standard may not be sufficient for the purpose of the Minister making a recommendation, or the chief executive making an appointment of enforcements officers, under MEMA;
 - (iii) in addition to clause 6(a)(ii), ACE agrees to use reasonable endeavours to preserve its own rights and the rights of its commercial partners in relation to the Events, including by using reasonable endeavours to ensure that all partners, sponsors and relevant contractors of ACE have contractually agreed to preserve the rights of ACE and its commercial partners (for example, by using reasonable endeavours to ensure broadcast and other media agreements have provisions to prevent broadcasters and other media from filming or otherwise covering attempts of Ambush Marketing, and therefore preventing international distribution and exposure of other brands) and ACE and ETNZ acknowledge and agree that if they are only using reasonable endeavours such standard may not be sufficient for the purpose of the Minister making a recommendation or the chief executive making an appointment under MEMA;
 - (iv) to house, if practicable and at no cost to ACE, the Harbourmaster, New Zealand Police, New Zealand Customs and other of the Hosts' operational partners within the Race Village for the Event Period;

- (v) to promote, manage, organise and deliver the Events in a professional manner and in accordance with:
 - (A) the terms and conditions of this Agreement; and
 - (B) generally accepted principles of good practice applicable to event organisation and management and any other fields of expertise relating to management of the Events,

to enable the Events to gain the maximum possible exposure and attendance, and to maximise the opportunity created by the Events to attract visitors to New Zealand;
- (vi) deliver the Events to a standard that a reasonable objective person would view as being no less than the corresponding events for the 35th America's Cup. Notwithstanding the foregoing, such a standard includes there being:
 - (A) quality on the water race management under the control of the independent Regatta Director supported by suitably qualified race officials;
 - (B) subject to clause 6(b), a minimum of four participating Teams;
 - (C) efficient on the water course management and spectator control;
 - (D) a vibrant Race Village that caters for the reasonable needs of all sponsors and stakeholders of the Events 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 public event space;
 - (E) local promotion of the Events; and
 - (F) a high standard Media Centre providing for the needs of international and local journalists and the Hosts' media;
- (vii) ensure and procure that general admission to the areas of the Venue that are not private areas is free of charge,

in each case in accordance with the terms of this Agreement.

- (b) The Hosts agree that any decrease in the number of Teams competing in one or more of the Events, from the number of Teams registered to compete in the Events as at 31 March 2019, as a result of mechanical failure in, or damage to, a Team Boat will not constitute a breach of clause 6(a)(vi)(B).
- (c) ACE acknowledges and agrees that, subject to clause 9.1(f)(v):
 - (i) the Hosts (and Panuku) are not responsible for applying for and obtaining any consents, licenses and permits (as applicable) in relation to the Events and the Venue;
 - (ii) ACE, or the relevant third party (not including the Hosts or Panuku), will apply for all consents, licenses and permits (as applicable) in relation to the Events and the Venue and will obtain all consents, licenses and permits (as applicable) before the delivery of the Events; and

- (iii) such consents, licenses and permits may impose obligations and costs on ACE, or the relevant third party, which are not covered in this Agreement.
- (d) ACE and ETNZ agree to comply with their respective obligations set out in Schedule 4 (Public Sector Delivery Obligations) to this Agreement.
- (e) For the avoidance of doubt, all on water activities will be undertaken in full consultation with the Harbourmaster and New Zealand Police.

7. Funding

7.1 Event Investment

- (a) In consideration for the rights and benefits of hosting the Events in Auckland in accordance with this Agreement, and in order to enable ACE to deliver the Events, MBIE will pay to ACE the sum of NZ\$40,000,000 (excluding GST or equivalent sales tax, which shall be payable in addition where applicable)) (the **Event Investment**). As set out in the Background and in Schedule 3 (Funding Milestones and Payment Instalments), MBIE has paid s 7(2)(b)(ii) of the Event Investment under the Host City Appointment Agreement and ACE acknowledges receipt of that amount. For the avoidance of doubt, payment of the Event Investment under this Agreement will discharge the Hosts' obligations to pay amounts under the Host City Appointment Agreement.
- (b) Subject to:
 - (i) clause 7.1(d); and
 - (ii) ACE and ETNZ being in compliance with this Agreement (including that all warranties provided under the Agreement are true) at the date that the Payment Instalment is to be made,

MBIE will pay the Event Investment to ACE in the percentage instalments identified in Schedule 3 (Funding Milestones and Payment Instalments) (each a **Payment Instalment**) on satisfaction of the form (including the quality) and content of the relevant Funding Milestone (**Payment Instalment Date**). ACE agrees that it will deliver to the Hosts the material to satisfy the relevant Funding Milestone (as applicable) no less than 30 days prior to the relevant Payment Instalment Date. The parties agree that if there is more than one component of a Funding Milestone then ACE needs to satisfy all components of that Funding Milestone.

- (c) Any events, matters or issues arising or occurring that a party determines (acting reasonably) as resulting in, or likely to result in, ACE failing to achieve a Funding Milestone should be raised as soon as possible by that party with the Event Steering Group. If the matter is unable to be resolved by the Event Steering Group, it should be escalated to the Joint Chief Executives Group and, if required, the Relationship Governance Board for discussion before MBIE has the right to withhold any payment of a Payment Instalment. For the avoidance of doubt, where such events, matters or issues arising or occurring are raised or escalated in accordance with this clause, the parties will procure that the relevant governance group will meet as soon as possible.
- (d) Each Payment Instalment must:
 - (i) following receipt by MBIE of an invoice in respect of the relevant Payment Instalment and subject to the parties agreeing that the relevant Funding Milestone has been satisfied, be paid by MBIE to ACE as soon as reasonably practicable and within thirty (30) days following satisfaction of the relevant

Funding Milestone and receipt by MBIE of the relevant invoice from ACE (whichever is the later);

- (ii) be paid 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;
 - (iii) be paid into the bank account which MBIE paid the first ~~57(2)(b)(i)(x)~~ instalment of the Event Investment into prior to entry into this Agreement, or as otherwise agreed between ACE and MBIE; and
 - (iv) be paid in New Zealand dollars unless expressly approved in advance by both ACE and MBIE in writing.
- (e) Where GST or an equivalent sales tax becomes payable, ACE shall invoice MBIE for an amount equal to such tax payable on the Event Investment and MBIE shall pay such amount in the manner and amount prescribed by Law at the relevant time.

7.2 Acknowledgements

ACE and ETNZ acknowledge and agree that:

- (a) except as expressly set out in this Agreement, ACE shall be responsible for all costs and expenses in relation to its delivery of the Events and ETNZ shall be solely responsible for conducting the sporting campaign for the Defence; and
- (b) the Event Investment, together with the Public Sector Delivery Obligations (including the provision of the required infrastructure for the Events) and any other obligations of the Hosts under this Agreement and any amounts that the Hosts determine to pay in connection with the ETNZ Team Base, (**Hosts' Contribution**) is the maximum financial contribution available from the Hosts and the risk of any increased costs either for the management of the Event or the conduct of the sporting campaign for the Defence over ACE and ETNZ's budgeted costs shall lie solely with ACE and ETNZ. Both ACE and ETNZ warrant not to seek (directly or indirectly, including through statements to the media and others) any contributions above the Hosts' Contribution from the Hosts.

8. Hosts' Rights and Benefits

- (a) In consideration of the Hosts performing their obligations under this Agreement, and in particular, in consideration of the Hosts' Contribution and the Hosts' commitment to ACE and ETNZ, ACE and ETNZ grant the Hosts the Rights and Benefits as detailed in Schedule 2 (Rights and Benefits). ACE and ETNZ agree that the Hosts can assign all or part of the Rights and Benefits to another entity in the Auckland Council Group or another part of the Crown (or a local or central partner of the Crown), subject to ACE and ETNZ receiving written notice of the name of the assignee prior to the exercise of any Rights and Benefits by the relevant assignee.
- (b) The Rights and Benefits are granted to the Hosts in addition to the:
 - (i) anticipated economic impact of the 36th America's Cup and the Events for the Hosts; and
 - (ii) appointment of the Host City and the Host Country for the 36th America's Cup and the Events.
- (c) ACE and ETNZ acknowledge and agree that throughout the Term the Rights and Benefits recognise and reflect the Hosts' partner relationship with ACE and ETNZ and

are to be at least as favourable (including in terms of quantum, nature and value of the Rights and Benefits) as to what ETNZ and/or ACE provide to other commensurate Event sponsors (the **Commensurate Level**). In order to maintain the Commensurate Level throughout the Term and provide the Hosts with the opportunity to request additional rights and benefits, ETNZ and ACE agree:

- (i) to offer to the Hosts any rights and benefits that are created or developed during the Term that ETNZ and/or ACE view (acting reasonably) as needing to be offered to the Hosts in order to ensure the Commensurate Level is maintained;
- (ii) prior to each meeting of the ESG, ACE will deliver to the ESG a report that includes a breakdown of all rights and benefits that ACE and/or ETNZ have contracted to deliver to the Event sponsors (including rights and benefits that ACE and/or ETNZ have entered into contracts for prior to the Commencement Date) and will identify the business category of, and the amount of sponsorship fees being delivered by, each such Event sponsor. For the avoidance of doubt, the Event sponsors will be anonymised in the report;
- (iii) to the extent that the Hosts identify a right and benefit relating to the Events during the Term, either by way of the report delivered to the ESG in accordance with clause 8(c)(ii) or by other means, that, in the Hosts view (acting reasonably) the Hosts should receive from ACE and/or ETNZ:

(A) to maintain the Commensurate Level; and/or

(B) as such right and benefit would be beneficial to the Hosts and/or the Hosts' objectives in relation to the Events,

the Hosts may request ACE and/or ETNZ provide such rights and/or benefit (**Additional Rights and Benefits**); and

- (iv) to consider and discuss with the Hosts any Additional Rights and Benefits requested by the Hosts and, if in ACE and ETNZ's view (acting reasonably) such Additional Rights and Benefits:
 - (A) are required to be delivered to the Hosts to maintain the Commensurate Level; or
 - (B) would be beneficial to the Hosts and/or the Hosts' objectives in relation to the Events and ACE and/or ETNZ can provide such Additional Rights and Benefits taking into account other Event sponsors,

ACE and/or ETNZ will provide the Hosts with such Additional Rights and Benefits.

- (d) The Hosts acknowledge and agree that, whilst the Rights and Benefits are provided free of charge to the Hosts by ACE and ETNZ, except as otherwise agreed, the costs (if any) of the actual exercise of such Rights and Benefits by the Hosts and any associated activation or leverage will be at the Hosts' cost. For example, the production of the international TV feed will be at the cost of ACE, but if the Hosts wish to reproduce any of the international TV feed content across social media for the Hosts' tourism purposes, the required advertising and promotion costs shall be borne by the Hosts.
- (e) ACE and ETNZ acknowledge and agree that if:
 - (i) the Event is declared to be a major event; and/or

- (ii) any Designations and/or Designation Logotypes are declared to be major event emblems or words,

under MEMA, then the exercise by the Hosts of the Rights and Benefits, and any other rights granted under this Agreement or otherwise by ETNZ or ACE, is authorised for the purposes of the MEMA.

- (f) If neither ETNZ nor ACE is the 'major event organiser' (as defined in the MEMA) of the Event, then ACE must procure that the major event organiser gives written authorisation to the Hosts in the form of the authorisation in clause 8(e).

9. The Venue

9.1 Venue (including the Race Village)

- (a) Council agrees to deliver to ACE, at no fee (in respect of the ground rent) to ACE for the Use Periods and in order for ACE to comply with its obligations for on-land delivery of the Events in accordance with this Agreement, the Sites within the Venue Boundary as identified in the map titled "Wynyard Quarter AC36 Race Village: Venue Boundary" set out in Schedule 5 (Venue), with the use of each such Site and the Venue Boundary being subject to the Event Permit (the **Venue**).
- (b) ACE and Panuku are to enter into leases or licence(s) to occupy (as relevant) the Sites as required by Panuku on or before the commencement of the relevant Use Period.
- (c) One month prior to the commencement of the relevant Use Period for each Site, the Council will produce and provide to ACE, a site handover report, and must give ACE the opportunity to be present while producing photos of all existing damage to each Site (**Existing Site Damage**).
- (d) ACE acknowledges and agrees that at the end of the relevant Use Period, the Venue and the facilities provided by the Council to ACE must be reinstated and delivered back to the Council in the same condition as such Sites and facilities were delivered to ACE (subject to any alterations or modifications approved by the Council from time to time as not having to be reinstated at the end of the relevant Use Period), and accept that ACE will not be required to repair any Existing Site Damage or damage as a result of wear and tear in the context of the Events (as determined by Council in its sole and absolute discretion). For the avoidance of doubt, ACE will repair any damage to the Venue and the facilities throughout the relevant Use Periods.
- (e) For the avoidance of doubt, the Venue includes the Race Village. A map of the Race Village, as well as further detail as to publically accessible spaces and certain areas designated for specific purposes within the Race Village are detailed in Schedule 6 (Race Village) to this Agreement. Notwithstanding clause 2.4(b) of Schedule 4 (Public Sector Delivery Obligations), ACE agrees that it will work with the Hosts in the situation where there is an overflow of the public/spectators during the Events.
- (f) The parties acknowledge and agree in relation to the Venue:
 - (i) the Council are to deliver, or procure the delivery of, to ACE for use:
 - (A) the Race Village; and
 - (B) each of the Sites (excluding the Race Village),

free of charge (as regards to access to physical space) for the purpose of staging the Events (including free of charge for the period of setting up and taking down all temporary infrastructure) during the Use Periods;

- (ii) ACE is to pay any and all government fees or taxes, provide any and all security deposit(s) and/or pay any and all permitting fees or outgoings whatsoever in respect of the Sites, except as provided for in this Agreement;
 - (iii) the Venue includes all roads and footpaths within the area of the Venue (subject to such roads and footpaths being open and accessible (as provided for in Schedule 4 (Public Sector Delivery Obligations) and as further clarified through the relevant permitting process));
 - (iv) the exact limits of the Venue will be subject to the Event Permit to be obtained by ACE from the Council prior to the first Event;
 - (v) as at the date of this Agreement, Panuku has obtained the Resource Consent for the development of the major infrastructure at the Venue. Notwithstanding this, the Hosts are responsible for obtaining all necessary amendments to the Resource Consent or any necessary additional resource consents that relate to development works (being the major infrastructure) at the Venue; and
 - (vi) ACE will support any resource consents in addition to the Resource Consent and any amendments to the Resource Consent in relation to the Venue (and, for the avoidance of doubt, any amendments to the Resource Consent, or any additional resource consents, that do not relate to development works (being the major infrastructure) at the Venue are the responsibility of ACE).
- (g) Notwithstanding any other provision of this Agreement, the obligations of MBIE and Auckland Council Group to deliver major infrastructure in connection with the Events is limited to delivery of the Alliance Works as described in Schedule 4 of the Project Alliance Agreement (the **PAA**) in accordance with the timeframes set out in Schedule 20 of the PAA, as amended, varied or supplemented from time to time. The form and content of Schedules 4 and 20 of the PAA as at the date of this Agreement are attached as Annexure 6 (PAA Schedules). The Hosts acknowledge that ACE and ETNZ have a material interest in the nature of the infrastructure and the timing of the infrastructure delivery as described in the PAA and agree not to permit any amendments to the PAA (and/or to the Alliance Works), which could materially adversely impact the ability of:
- (i) ACE and ETNZ to deliver the Events and the Venue as planned; and/or
 - (ii) the Hosts to deliver the major infrastructure as provided for in this Agreement,
- without fully consulting ACE and ETNZ on any such amendments.
- (h) ACE acknowledges that Panuku has obtained the Resource Consent and that Panuku may need to obtain additional resource consents in relation to the Event. ACE acknowledges and agrees that it will need to comply with certain conditions set out in the Resource Consent and may need to comply with certain consent conditions set out in additional resource consents and that this will be worked out through the permitting and licence process with Council in relation to the Event and the building of the Team Bases and through the entry into the resource consent support agreement between ACE and Panuku dated on or about the Commencement Date.
- (i) The parties agree that:
- (i) no later than 18 months' prior to the commencement of the Event Period the parties will meet to discuss and agree on the operation command centres to be

established for the purposes of Host City operations outside of the Venue, Event operations inside of the Venue and on-water operations in relation to the Events during the Event Period (**Operation Centre(s)**); and

- (ii) the Operation Centre(s) established, including the composition and mandate of such Operation Centre(s), are to be agreed between the parties based on major event operations best practice at the time the parties meet in accordance with clause 9.1(i)(i).

9.2 Unrestricted Venue Requirement and Clean Venue Requirement

- (a) Council acknowledges and agrees that:

- (i) as soon as possible following the Commencement Date and, in any event, within **1** months of the Commencement Date; and

- (ii) one month prior to the commencement of the relevant Use Period for each Site,

it will, or it will procure that Panuku will, take photos of the Venue to capture all existing commercial branding, advertising or marks that result in the Venue not being Clean. ACE shall receive reasonable notice in advance of such photos being taken and will have the right to accompany the Council or Panuku (as relevant) and use reasonable endeavours to provide ACE with a list in writing of all existing restrictions, commercial or contractual arrangements that would cause the Council to fail to deliver the Venue free from all restrictions or commercial obligations and Clean which is likely to limit ACE's ability to use the Venue for its required purpose (the **Clean Venue Requirement**).

- (b) Anything identified by the Council in accordance with clause 9.2(a) as being an exception to the Clean Venue Requirement will be discussed between Council and ACE prior to commencement of the Use Period of the relevant Site, including a discussion around any mitigating measures that the Council can undertake in respect of such exceptions.
- (c) Notwithstanding clause 9.2(a), Council agrees to use reasonable endeavours to ensure, or procure, that the Venue is delivered to ACE:
 - (i) free from any restrictions or commercial obligations including advertising, sponsorship, naming rights arrangements, third party commercial leases, supplier arrangements, catering arrangements and/or any other arrangements that would impact upon ACE's right to freely and exclusively use the Venue and to freely enter into commercial, advertising, sponsorship, supplier and/or catering agreements with parties ACE elects; and

- (ii) Clean, including the outside walls, fences, roofs and related parking areas,

for the purpose of staging the Events during the Use Period.

9.3 Race Courses

- (a) The parties acknowledge and agree that:

- (i) the Regatta Director, in compliance with Law and the directions of the relevant government authorities (including the Harbourmaster and the New Zealand Police), will select the relevant Race Course to be used for each day of racing of each Event;

- (ii) without limiting clause 4.3(b), ACE and ETNZ will consult with the Inter-Agency Steering Group (which will include the Hosts, the Harbourmaster and a representative of the New Zealand Police) in relation to access to and use of, the Race Courses, the Race Access Corridors and the On-water Spectator Areas;
- (iii) nothing in this Agreement limits the functions and powers of the Harbourmaster and the New Zealand Police;
- (iv) ACE, in coordination with the Challenger of Record and the Regatta Director, is responsible for all aspects of the on-water delivery of the Events, including for management of the Race Courses, the On-Water Spectator Areas and the Race Access Corridors, i.e., spectator management, including the adoption of a preventative approach to spectator safety and event management, and escorts in and out of the harbour; and
- (v) ACE and the Hosts will work in conjunction and co-operation with the Harbourmaster and the New Zealand Police to deliver to ACE, to the extent reasonably practicable and subject to any consents or permits or other regulatory approvals, unrestricted access to the Race Courses on the Race Dates, during the Race Times, and on official practice days for the Events (for such time period as may be required to conduct practices) for the purposes of:
 - (A) Team competition and training for the Events;
 - (B) media coverage of such competition and training;
 - (C) accredited spectator viewing of such competition and training; and/or
 - (D) other purposes and uses necessary to facilitate the Events as reasonably required by ACE.
- (b) The parties agree that all costs associated with ACE obtaining access to the relevant Race Courses will be met by ACE.

10. Team Bases and Docks

10.1 Master Base Supply Agreement

- (a) A master team base supply agreement and licence is to be entered into between ACE, Panuku and Council on or about the date of this Agreement in accordance with the Host City Appointment Agreement in relation to the Team Base Areas (excluding ETNZ's Team Base Area) (the **Master Base Supply Agreement**). A copy of the Master Base Supply Agreement is attached as Annexure 2 to this Agreement. The form of deed of lease to be entered into between ACE and Panuku in respect of all of the Team Base Areas (excluding the ETNZ Team Base) and the form of waterspace licence in respect of the Docks are attached to the Master Base Supply Agreement.
- (b) The Hosts acknowledge the importance of having the Team Base Areas (excluding the ETNZ Team Base) and Docks available for occupation by the Teams at a time in advance of the Events. As such, Council will use best endeavours to procure that the Team Base Areas (excluding the ETNZ Team Base) and Docks, are ready for occupation and use, by the dates in the Master Base Supply Agreement.

10.2 Team Bases post-Events

The parties agree that in the event ETNZ is:

- (a) successful in its Defence, the Team Bases (but not including ETNZ's Team Base) and the Docks, at the election of ACE (as sublessor/sublicensor in respect of any sublease/sublicence between ACE and the relevant Team) within ^{s7(2)(b)(i) Commercial Prejudice} following the final day of the Events, can remain at their then current locations for, and for the purposes of, the 37th America's Cup. If ACE elects to:
 - (i) leave a Team Base in-situ, ACE will enter into a new lease/licence of the relevant Team Base Area and Dock upon terms and conditions (including the payment of rental and a licence fee referenced to market rate at the time) to be agreed between ACE and Council within ^{s7(2)(b)(i) Commercial Prejudice} of the final day of the Events; or
 - (ii) remove a Team Base, ACE will remove the relevant Team Base and make good the relevant Team Base Area in accordance with the terms and conditions of the lease/licence between ACE and Council; or
- (b) unsuccessful in its Defence, the Hosts can require ACE to procure, and ACE will ensure, that the Team Bases (but not including ETNZ's Team Base) and any docks erected by the Teams will be removed within ^{s7(2)(b)(i) Commercial Prejudice} following the final day of the Events.

10.3 ETNZ Team Base

- (a) ETNZ (as lessee) and RFA (as lessor) have entered, or are to enter, into a deed of lease dated on or about the date of this Agreement in respect of ETNZ's Team Base located at 161 Halsey Street, Auckland (the **VEC Lease**).
- (b) The Council undertakes to procure ETNZ retain access to, and use of, its Team Base in accordance with the VEC Lease to enable the Events to take place at the Venue.

10.4 Acknowledgement

The parties acknowledge and agree that the exact locations of the Team Base Areas are subject to the resource consent applications and engagements with third parties that currently occupy or operate from such locations and the locations of the Team Base Areas identified in the Master Base Supply Agreement accordingly may change in order to address the outcome of this process.

11. Health and Safety

- (a) The parties acknowledge the importance of health and safety and their commitment to continuous improvement and co-operation with each other in good faith in relation to all matters of health and safety relating to the Venue and operation of the Events.
- (b) Without limiting any additional obligations set out in this Agreement:
 - (i) the Hosts must at all times comply with all Relevant Health and Safety Legislation; and
 - (ii) the Hosts must at all times ensure, so far as is reasonably practicable, the health and safety of the Hosts' Personnel, and any other parties associated with the satisfaction by the Hosts of their obligations under this Agreement, including workers, visitors, Subcontractors and service providers, the public, and visitors to any area under the control of the Hosts (if any).
- (c) Without limiting any additional obligations set out in this Agreement, ACE must at all times:

- (i) comply with all Relevant Health and Safety Legislation; and
 - (ii) ensure, so far as is reasonably practicable, the health and safety of its Personnel, and any other parties associated with the satisfaction by ACE of its obligations under this Agreement, including workers, visitors, Subcontractors and service providers, the public, and visitors to any area under the control of ACE (including the Venue).
- (d) The parties agree that the parties shall consult, cooperate and coordinate activities with each other where the parties have overlapping health and safety duties in respect of the same matter in relation to the Events.
- (e) ACE must prepare a health and safety management plan as part of the Event permitting process and provide a copy of the approved plan (the **Health and Safety Management Plan**) to each of the Hosts. ACE must:
- (i) ensure that the Health and Safety Management Plan takes into account any emergency plans that have been notified by the Hosts to ACE;
 - (ii) ensure that at all times the Health and Safety Management Plan reflects the requirements of Relevant Health and Safety Legislation;
 - (iii) periodically review and amend as required the Health and Safety Management Plan to reflect the requirements of Relevant Health and Safety Legislation;
 - (iv) continue to comply with any amended form of the Health and Safety Management Plan;
 - (v) provide a copy of each amended version of the Health and Safety Management Plan to each of the Hosts within 5 Business Days of the amended version coming into effect; and
 - (vi) provide the Hosts with:
 - (A) reports detailing compliance with the Health and Safety Management Plan five days after the commencement of the first race for each of the Events;
 - (B) interim reports regarding compliance with the Health and Safety Management Plan no less than monthly throughout the Event Period; and
 - (C) a wrap up report regarding compliance with the Health and Safety Management Plan no later than 14 days after the end of the Event Period, such report to include key learnings and process improvement recommendations for future events.
- (f) ACE must ensure that:
- (i) at all times and in respect of the rights and obligations to be delivered by ACE in accordance with this Agreement, ACE's Personnel comply with ACE's Health and Safety Management Plan;
 - (ii) it will notify the Hosts immediately:
 - (A) of any Notifiable Events (as defined in the Health and Safety at Work Act 2015);

- (B) of any serious near misses that would have otherwise been a Notifiable Event (as defined in the Health and Safety at Work Act 2015);
- (C) of any WorkSafe inspection, investigation or information request in relation to the Venue and operation of the Events; and
- (D) of any actual or potential damage to the environment (such as spills, emissions or discharges),

and provide the Hosts with a written report on any such matter(s) within 24 hours of the event. ACE will also keep the Hosts informed of any required investigation, and provide a copy of the investigation reports following completion of the same;

- (iii) it obtains safe work method statements from any Subcontractors performing any services or obligations of ACE under this Agreement, and supervise Subcontractors' compliance with those safe work method statements; and
- (iv) if the Hosts are of the opinion, acting reasonably in all respects, that ACE has failed to comply with the Health and Safety Management Plan, or has failed to comply with any part of this clause 11 or has failed or is failing to comply with Relevant Health and Safety Legislation, and the Hosts notify ACE of the same and give ACE reasonable notice, ACE will respond to any enquiries made by the Hosts (or the Hosts' nominated health and safety consultants or advisors) in relation to any such failure, and ACE will permit and facilitate any audit of ACE from time to time in relation to any such failure. The parties agree that the Hosts may issue an Escalation Notice (as provided for in clause 19(a) of this Agreement) in respect of any such failure where the Hosts consider (acting reasonably) such failure to be material, and the provisions of clause 19 of this Agreement will apply to such Escalation Notice.
- (g) If, due to any such material failure, the Hosts believe on reasonable grounds that there is a serious risk to the health and safety of members of the public, then the Hosts may advise ACE to, and ACE will, suspend Events until such time as ACE satisfies the Hosts that such risk has been resolved.
- (h) In addition to clause 11(g) above, the Hosts (or their nominated health and safety consultants or advisors) may audit the Venue at any time on reasonable notice, but not more than once per Event, for general monitoring purposes.
- (i) ACE acknowledges and agrees that nothing in this clause 11 restricts the regulatory or statutory functions, responsibilities, rights and obligations of any Auckland Council Group Member including in relation to the Event permitting process and the Health and Safety Management Plan.

12. Project Governance

12.1 Structure

- (a) In accordance with the Host City Appointment Agreement, the parties have established the:
 - (i) Relationship Governance Board (the **RGB**), as further detailed in clause 12.2; and
 - (ii) Event Steering Group (the **ESG**), as further detailed in clause 12.3.

- (b) In addition to the RGB and ESG, the parties acknowledge that:
 - (i) the Hosts have established the Inter-Agency Steering Group with the composition, functions and powers as set out in the Inter-Agency Steering Group terms of reference formally agreed on 18 September 2018; and
 - (ii) the Joint Chief Executive Group (**JCEG**) has been established with the composition, functions and powers as set out in the JCEG terms of reference to be formally agreed on or about the date of this Agreement.

12.2 Relationship Governance Board

The parties acknowledge and agree that:

- (a) the RGB has been established in accordance with the Host City Appointment Agreement and is made up of two members from ETNZ and ACE (collectively) and one from each of the Council and the Crown;
- (b) the role of the RGB will be to sort out issues that are unable to be resolved at a lower governance level; and
- (c) the RGB will convene on an “as required” basis, or at the reasonable request of any party to this Agreement, but it is expected that the members will keep in touch to ensure the relationship between the parties runs smoothly.

12.3 Event Steering Group

The parties acknowledge and agree that:

- (a) the ESG will be chaired by an ACE representative and will be attended by representatives of each of ATEED, Panuku, the Crown and mana whenua, along with COR and the Title Sponsor (as and when requested by ACE);
- (b) the ESG will have the functions and powers as set out in, and will operate in accordance with, the ESG terms of reference formally agreed on 15 August 2018 (the **ESG Terms of Reference**);
- (c) each member of the ESG shall provide such information as required to ensure that the ESG can operate effectively and efficiently in order for the ESG to perform its functions, subject to any requirements of confidentiality; and
- (d) ACE will deliver to the ESG, prior to each scheduled meeting of the ESG, a report:
 - (i) detailing ACE’s progress toward, and satisfaction of, the Funding Milestones;
 - (ii) detailing ACE’s progress against its ACE36 project plans;
 - (iii) attaching an updated risk register which is to include any potential risks to the Events that ACE and ETNZ are aware of and proposed mitigating actions; and
 - (iv) attaching ACE’s cashflow statement (actual and forecast) for ACE and the Events.

- (e) The Hosts will deliver to the ESG, prior to each scheduled meeting of the ESG, a report detailing:
 - (i) the Hosts progress towards satisfying the Public Sector Delivery Obligations, including any delays or likely delays;
 - (ii) the progress towards handover of the Team Bases Areas in accordance with the Master Base Supply Agreement; and
 - (iii) any potential risks to the Events that the Hosts are aware of and proposed mitigating actions.

12.4 Challenger of Record and Team management

ACE shall be solely responsible for liaising with the Challenger of Record and all of the other Challengers in relation to the Events and for delivering its obligations to the Challengers under the Protocol.

13. Reporting

13.1 General reporting obligation

In acknowledgement of the Hosts' contributions to the 36th America's Cup, which are significantly above a sponsor and more as an enabling partner, the parties agree that all information necessary to ensure a successful event for the Defence will be shared between the parties, subject to the obligations of confidentiality detailed in clause 16 (Confidentiality and information).

13.2 Quarterly Funding Reports

- (a) ETNZ must issue a written report signed by a director of ETNZ to the Hosts every quarter in respect of its External Funding Commitment and on-going funding commitments (each a **Quarterly Funding Report**). The first Quarterly Funding Report was delivered to the Hosts by ETNZ for the quarter ending 30 September 2018. Each Quarterly Funding Report must include:
 - (i) a confirmation as to, the level of funding that:
 - (A) has been committed by third parties;
 - (B) is under negotiation by third parties; and
 - (C) is contemplated to be committed/negotiated (i.e., where ETNZ and/or ACE are considering making approaches),
 as at the date of the relevant Quarterly Funding Report; and
 - (ii) to the extent not covered under clause 13.2(a)(i), an outline of the plan for raising the balance of the Total Funding Amount.
- (b) Each of the items identified in clause 13.2(a)(i) must be reported in such a way as to identify the number of sponsors or potential sponsors on a no names basis and the level of funding or potential funding each sponsor has committed, is proposing to commit or may commit.

- (c) The obligation on ETNZ to provide the Quarterly Funding Reports in accordance with clause 13.2(a) will cease on the delivery by ETNZ to the Hosts of a written notice confirming that ETNZ has secured ^{67(2)(b)(ii) Commercial Prejudice} of the Total Funding Amount.

13.3 Final Event report and KPIs

- (a) Within six months of the completion of the Events, ACE must produce and deliver to the Hosts a final Event report (the **Final Event Report**) which must:
- (i) include the items outlined in Annexure 4 (Final Event Report);
 - (ii) include results of the post-event key performance indicators which are to be agreed between the parties (both acting reasonably) no later than six months following the Commencement Date and are to be based on the Event objectives contained in the Event Concept (the **Key Performance Indicators**); and
 - (iii) include any other items which ACE and the Hosts agree (both acting reasonably) no later than six months following the Commencement Date are to be included in the Final Event Report.
- (b) ACE agrees to work cooperatively with the Hosts in commissioning and/or producing the post-event report material in order to align or gain efficiencies where practicable.

14. Warranties

14.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver, exercise its rights and perform its obligations under this Agreement;
- (b) its entry into, and the exercise of its rights and performance of and compliance with the obligations under, this Agreement do not and will not contravene any agreement to which it is a party; and
- (c) once executed this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

14.2 Council warranty

Council represents, warrants and undertakes that to the best of its knowledge and belief, having made due and careful enquiries, as at the date of this Agreement, 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 to take place in Auckland on the current proposed days the Events are to take place. ACE acknowledges that the women's cricket world cup may take place in Auckland on the current proposed days the Events are to take place and that this would not be a breach of this clause.

14.3 MBIE and Council warranties

MBIE and the Council each represent, warrant and undertake that:

- (a) they have the right to perform their respective obligations under this Agreement, including delivering the Public Sector Delivery Obligations and paying the Event Investment; and
- (b) that they will comply with all Laws in performing their obligations under this Agreement.

14.4 **ACE warranty**

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

14.5 **ETNZ and ACE warranties**

ETNZ and ACE represent, warrant and undertake that:

- (a) as the representatives of the RNZYS, ETNZ and ACE have the right under the Deed of Gift and Article 4 of the Protocol to:
 - (i) organise and conduct the Match;
 - (ii) select the venue for the Events; and
 - (iii) appoint Auckland as the Host City and New Zealand as the Host Country under the Host City Appointment Agreement and this Agreement;
- (b) neither of them will do anything during the Term, in relation to the Event that will, or is likely to:
 - (i) result in the Hosts or the Auckland Council Group or their representatives (being officials and elected representatives of MBIE (i.e. the Crown) and the Auckland Council Group) being subjected to reputational harm; or
 - (ii) harm the reputation of New Zealand as a major events capable destination;
- (c) they have the right to perform their respective obligations under this Agreement, including granting the Rights and Benefits to the Hosts and the use of the Rights and Benefits by the Hosts will not infringe the rights given by ACE to any other sponsor of the Events;
- (d) the Total Funding Amount is required to deliver the sporting campaign for, and management of, the Events;
- (e) it has been agreed with the Challenger of Record that, notwithstanding Articles 2.1 and 3.1 of the Protocol, ACE will also be responsible for the organisation and conduct of the Christmas Race and the Prada Cup in Auckland in coordination with the Challenger of Record; and
- (f) that ACE and ETNZ will comply with all Laws in performing their obligations under this Agreement.

14.6 **Continuous application**

To the extent applicable, the warranties, representations and undertakings set out in clauses 14.1, 14.3, 14.4 and 14.5, will be deemed to be given each day throughout the Term.

14.7 Notification

ACE and ETNZ will promptly notify the Hosts of any non-compliance with the warranties it has provided in this clause 14.

14.8 Other warranties excluded

All representations or warranties (statutory, express or implied) which are not expressly referred to in this Agreement are excluded to the fullest extent permitted by Law.

15. Intellectual Property Rights

No right, title or interest in any Intellectual Property Rights under the ownership or control of ACE arising out of or used or developed in connection with this Agreement will vest in the Hosts (unless otherwise agreed in writing) and to the extent that any right, title and/or interest does, the Hosts will assign such right, title and/or interest in and to such Intellectual Property Rights to ACE and will, at ACE's cost, do all things reasonably (including executing any documentation) required to give effect to this.

16. Confidentiality and information

16.1 Confidential information

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 consent of the disclosing party, provided that nothing in this clause shall prevent:

- (a) a party from disclosing Confidential Information:
 - (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
 - (ii) 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 and not prevented by Law, advise the other in advance of such disclosure; and
 - (iii) to its professional advisors for the purposes of rendering professional services in relation to this Agreement, provided that such advisors are under a duty of confidentiality no less stringent than that set out in this Agreement;
- (b) ACE from disclosing the terms of this Agreement or any information obtained pursuant to and/or in the course of this Agreement to ACPI and the Challenger of Record, provided that ACPI and the Challenger of Record are under a duty of confidentiality no less stringent than that set out in this Agreement and provided that prior to receipt of this Agreement or the information (as applicable), ACPI and the Challenger of Record (as applicable) agree that they will not disclose the same to any third party without the consent of the Hosts; and
- (c) either Host disclosing any Confidential Information in accordance with clause 16.3.

16.2 Return of Confidential Information

- (a) Subject to clause 16.2(b), 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 destroy, and certify in writing that all copies of such Confidential Information have been destroyed.

- (b) A party may retain a copy of the other parties' Confidential Information for its internal archiving and record keeping purposes.

16.3 Official Information Act

ACE and ETNZ acknowledge that the Crown is subject to the Official Information Act 1982 (the **OIA**), that the Council and its council-controlled organisations are subject to the Local Government Official Information and Meetings Act 1987 (the **LGOIMA**), and that MBIE and Council and its council-controlled organisations are obliged to disclose Confidential Information under the OIA and LGOIMA (as relevant) if so requested and if there is no good reason under the terms of the OIA or LGOIMA (as relevant) to withhold that information. MBIE shall use its reasonable endeavours to advise ACE and ETNZ of any request received by it under the OIA that relates to Confidential Information of ACE and ETNZ, to the extent permitted under the OIA.

17. Insurance

17.1 Council Insurance

Council will procure that the Auckland Council Group take out, effect and maintain, at the Auckland Council Group's own expense, including bearing the cost of any deductibles:

- (a) public liability insurance with a sum insured of \$15 million covering Auckland Council Group's legal liability in connection with the Events or the performance of its obligations under this Agreement (subject to any deductible and the terms and conditions of the policy), and naming ACE as an insured for vicarious liability ACE suffers or incurs as a result of the acts or omissions of the Auckland Council Group, such insurance to remain in place throughout the Term and for a period of one (1) year after expiry of the Term; and
- (b) any other insurances required at Law.

17.2 ACE Insurance

ACE will take out, effect and maintain, at its own expense, including bearing the cost of any deductibles:

- (a) public liability insurance with a sum insured of \$50 million, with a maximum deductible of \$50,000 per claim, covering ACE's legal liability in connection with the Events or the performance of its obligations under this Agreement (subject to any deductible and the terms and conditions of the policy), and naming each Auckland Council Group entity and MBIE as an insured for vicarious liability the entity suffers or incurs as a result of the acts or omissions of ACE, such insurance to remain in place throughout the Term and for a period of one (1) year after expiry of the Term;
- (b) Event cancellation insurance with a minimum sum insured of \$40 million covering ACE's financial losses in the event of cancellation, abandonment, postponement, interruption or relocation of the Event due to unforeseen circumstances, including specific cover for all amounts of the Event Investment to be repaid to the Hosts under this Agreement, such insurance to remain in place throughout the Term; and
- (c) any other insurances required at Law or as reasonably required by the Hosts from time to time.

17.3 Certificates of insurance and evidence

- (a) No later than three (3) months' prior to each Event:
 - (i) if requested by ACE, Council must procure that the Auckland Council Group deliver to ACE a valid certificate of insurance and any other evidence as may be reasonably requested by ACE to show that the insurance referred to in clause 17.1(a) is in place and that such insurance will remain in place throughout the remainder of the Term and for a period of one (1) years after expiry of the Term, and that all insurance premiums due have been paid; and
 - (ii) ACE must deliver to the Hosts a valid certificate of insurance, a copy of the insurance policy and any other evidence as may be reasonably requested by the Hosts to show that the insurance referred to in clause 17.2(a) and (b) is in place with an insurer with a credit rating of no less than Standard & Poor's A, and that such insurance will remain in place throughout the remainder of the Term and for a period of one (1) year after expiry of the Term (as applicable), and that all insurance premiums due have been paid.
- (b) If a party believes another party has not procured insurance coverage in accordance with the terms of this Agreement, the parties shall meet and discuss such coverage in good faith. If no resolution can be reached, the matter will be referred to the dispute resolution process in clause 21.

17.4 Non-invalidating

Council and ACE shall not, and Council shall procure that no Auckland Council Group Member shall, do anything (or make any omission) which invalidates (or is likely to invalidate) any insurance arrangements in place in accordance with this Agreement (**Insurance Policies**) at any time during the life of such Insurance Policies.

17.5 Parties to discuss co-insurance etc.

- (a) Following the date of this agreement, Council and ACE (including their respective insurance advisers as applicable) will discuss the extent to which the parties wish to:
 - (i) agree to add one or more additional insured parties under any of the policies required by this clause 17; and/or
 - (ii) put in place one or more event specific policies (in joint names) to provide any or all of the coverage contemplated by this clause 17.
- (b) Any agreement as to the matters contemplated by clause 17.5 (a) above must include agreement as to the responsibility for payment of applicable premiums and the party that is to bear the relevant deductible.
- (c) To the extent that any policy is agreed to be taken out in joint names:
 - (i) each insured party will be separately insured, such that the insurance will apply to them as separate insureds; and
 - (ii) any other agreed requirements will apply.

18. Liability

18.1 Maximum liability of the Hosts

Subject to clause 18.4, the maximum aggregate liability of the Hosts to ACE and ETNZ (in aggregate) under or in connection with this Agreement will be, in respect of all Losses of the relevant party, NZ\$40,000,000 (the **Maximum Liability**). For the avoidance of doubt, in determining whether the Maximum Liability has been reached, all amounts of the Event Investment that have been spent by ACE are to be excluded.

18.2 Maximum liability of ACE and ETNZ

Subject to clause 18.4, the maximum aggregate liability of ACE and ETNZ to the Hosts (in aggregate), under or in connection with this Agreement will be, in respect of all Losses of the relevant party, NZ\$40,000,000.

18.3 Indirect loss or damage

No party will under any circumstances be liable under or in connection to this Agreement for:

- (a) any special, indirect or consequential Loss;
- (b) any Loss to third parties, including any loss that arises from arrangements that ACE or ETNZ have with the Challengers or Title Sponsor;
- (c) any loss of profits or loss of opportunity;
- (d) to the extent that such liability is covered by insurance;
- (e) in the case of ACE and ETNZ, any Loss to the extent that it is caused by the prior default, breach, negligence, misconduct or any other act or omission of a Host; and
- (f) in the case of the Hosts, any Loss to the extent that it is caused by the prior default, breach, negligence, misconduct or any other act or omission of ACE or ETNZ,

arising out of or in connection with the performance or non-performance of this Agreement.

18.4 Exclusions

The limitations and exclusions of liability described in clause 18.1 and 18.2 will not apply to or limit the liability of any party:

- (a) for any fraudulent, malicious or criminal act or omission; and
- (b) to the extent that such liability cannot be limited or excluded by Law.

18.5 Source of liability

The limitations and exclusions of liability in this clause 18 will apply however liability arises, whether in contract (including indemnities), equity, tort (including negligence), breach of statutory duty or otherwise.

18.6 Mitigation

Each party will take reasonable steps to mitigate any claim or loss sustained or incurred as a result of any breach or default of the other parties under or in connection with this Agreement.

19. Escalation process

- (a) ACE and ETNZ acknowledge and agree that if at any time during the Term:
- (i) it is determined by ACE (or COR) that one or more of the Events is likely to occur in a country that is not New Zealand;
 - (ii) it becomes likely that a credible event with no less than four competing Teams is not going to take place (the Hosts acknowledging that there will only be two Teams competing in the Match); or
 - (iii) any other material adverse event occurs in relation to the management and delivery of the Events, including if the Hosts believe on reasonable grounds that there is a serious risk to the health and safety of members of the public in relation to delivery of the Events,

ACE will deliver to the Hosts a notice detailing the relevant event, or likely event, and how, if possible, ACE plans to remedy such event (if possible) and the timing in respect of such remedy or the Hosts will deliver to ACE a notice detailing the relevant event or likely event (an **Escalation Notice**).

- (b) The parties will meet within ^{s7(2)(b)(ii) Comm} Business Days of the Hosts receipt of an Escalation Notice to discuss a resolution of the event or likely event.
- (c) If the parties cannot agree a resolution, including a timeframe for effecting such resolution, within ^{s7(2)(b)(ii) Commercial Pres} Business Days of meeting to discuss the Escalation Notice, without prejudice to any other rights under this Agreement, the Hosts will have the right (but not the obligation) to, on notice to ACE:
- (i) if the event is one identified in clause 19(a)(i), clause 19(a)(ii) or clause 19(a)(iii), terminate this Agreement in accordance with clause 22.1;
 - (ii) exercise the rights held by ACE to run the Events;
 - (iii) withhold any further Event Investments due and payable to ACE; and/or
 - (iv) require that ACE repay to the Hosts the amount of the Event Investment already paid to ACE at the time of giving the Escalation Notice and not yet spent by ACE.
- (d) ACE confirms that:
- (i) on receipt of the notice referred to in clause 19(c) above, it will assign to the Hosts all of the rights held by it to run the Events; and
 - (ii) such an assignment will not breach the Protocol or any other agreement in relation to the Events.

20. Specific performance

The parties acknowledge that, in the event of any breach or threatened breach of this Agreement by a party, damages may not be an adequate remedy and a party may seek specific performance of the terms of this Agreement or injunctive relief or any similar remedy, in addition to any other rights, powers or remedies provided under this Agreement or by Law (including equity).

21. Dispute resolution

21.1 Dispute resolution

In the event of any dispute, 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.

21.2 Mediation

- (a) Unless the parties agree otherwise, where a dispute has been referred to mediation in accordance with clause 21.1 or otherwise by the parties, mediation between the parties 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:
 - (i) the mediation will be conducted on a without prejudice basis;
 - (ii) any party may terminate its involvement in the mediation at any time but only after consultation with the mediator;
 - (iii) 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
 - (iv) the costs of mediation will be borne equally by the parties to the mediation.
- (b) If mediation is not completed, or it is determined through the mediation process that no resolution can be reached, within 40 days of the mediation commencing, the dispute resolution process detailed in this clause 21 will be deemed to be exhausted,

21.3 Legal proceedings

No party may commence legal proceedings in relation to a dispute until the process detailed in this clause 21 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 this Agreement.

22. Termination

22.1 Termination by the Hosts

- (a) The Hosts may terminate this Agreement by written notice to ACE and the other parties to this Agreement with immediate effect on the date of termination specified in

that notice and without limiting any other rights or remedies available to the Hosts under this Agreement or at Law:

- (i) if there is an Insolvency Event in respect of ACE or ETNZ; or
 - (ii) if ACE or ETNZ commits a material breach of this Agreement (which does not include a failure to the extent that failure arises from a Force Majeure Event) or any warranty becomes untrue at any time (a **Material Breach**) which is:
 - (A) not capable of being remedied; or
 - (B) capable of being remedied and the Material Breach has not been remedied by 30 Business Days following written notice from the Hosts to ACE (specifying in detail the nature of the Material Breach) to remedy such Material Breach; or
 - (iii) if the Hosts have the right to terminate under clause 19(c)(i); or
 - (iv) if it is determined that any Personnel of ACE or ETNZ are defrauding, or attempting to defraud or conspiring to defraud the Hosts or are committing any offence under any laws in respect of fraud or corruption in relation to the Events or the Event Investment is misused, misapplied or misappropriated (an **Offence**) and ACE or ETNZ is unable to remedy the Offence to the Hosts satisfaction, for example by way of refunding any amount of misappropriated Event Investment or terminating the relevant Personnel's employment, within 30 Business Days following written notice of determination of the Offence from the Hosts to ACE.
- (b) Without limiting any other rights or remedies of the Hosts, but subject to clause 22.1(c), if the Hosts terminate this Agreement, ACE must repay to the Hosts the amount of the Event Investment already paid to ACE at the time of termination, less:
- (i) any amounts already spent by ACE; and
 - (ii) any amounts incurred as a debt due which are unable to be refunded or cancelled but not yet paid by ACE to any third party.
- (c) Without limiting any other rights or remedies of the Hosts, if the Hosts terminate this Agreement as a result of any event or circumstance under the event cancellation insurance to be taken out by ACE in accordance with clause 17.2(b) (the **Event Cancellation Insurance**), ACE is to repay to the Hosts the amount of the Event Investment already paid to ACE at the time of termination (**Event Cancellation Amount**). However, if ACE is not successful in its claim under the Event Cancellation Insurance or if the proceeds from the claim are less than the amount of the Event Cancellation Amount, ACE must repay to the Hosts the greater of:
- (i) all such proceeds from the claim under the Event Cancellation Insurance; and
 - (ii) the amount that would have been payable under clause 22.1(b) above but for the Event Cancellation Insurance.

(For the avoidance of doubt, ACE shall not be entitled to any unpaid amounts of the Event Investment following such termination).

22.2 Termination by ACE

ACE may terminate this Agreement by written notice to the Hosts and the other parties to this Agreement with immediate effect on the date of termination specified in that notice and

without limiting any other rights or remedies available to ACE under this Agreement or at Law, if the Hosts (or one of the Hosts) commit a Material Breach of this Agreement which is:

- (a) not capable of being remedied; or
- (b) capable of being remedied (the parties acknowledging that all of the obligations of the Hosts under this Agreement are capable of being remedied) and the Material Breach has not been remedied by 30 Business Days following written notice from the ACE to the Hosts (or the relevant Host) (specifying in detail the nature of the Material Breach) to remedy such Material Breach.

22.3 Preservation of rights and remedies

Except as is otherwise provided in this Agreement, termination, cancellation or expiry of this Agreement will not affect:

- (a) any rights and remedies available to a party under this Agreement which have accrued up to and including the date of termination, cancellation or expiry; and
- (b) all other provisions of this Agreement which expressly, or by their nature, survive termination, cancellation or expiry, including clauses 1.2 (Precedence), 1.3 (Construction), 15 (Intellectual Property Rights), 16 (Confidentiality), 18 (Liability), 22 (Termination), 24 (General Provisions) and Schedule 1 (Definitions) and including any definitions given to terms used in any such provision.

22.4 Return of property

After expiry or termination of this Agreement for any reason, each party will, within five Business Days of written notice from one of the other parties, return to each other party all of that other party's:

- (a) property (including documentation); and
- (b) Confidential Information (or destroy such Confidential Information, if requested),

and will use reasonable endeavours to seek the return of Confidential Information that has been provided to a third party in accordance with clause 16. The provisions of this clause 22.4 do not apply to Confidential Information or documentation that is required to be retained by the Public Records Act 2005 or any other Law.

23. Force Majeure

23.1 No default

Subject to the other provisions of this clause 23, no party will be deemed to be in default or breach of this Agreement in relation to that party's obligations to the extent that a Force Majeure Event affects that party.

23.2 Force Majeure Notice

If a Force Majeure Event affects a party (the **Affected Party**), then the Affected Party will, as soon as possible but in any event within one Business Day of it becoming aware of the occurrence of that Force Majeure Event, serve written notice on the other parties (a **Force Majeure Notice**) specifying:

- (a) the nature of the Force Majeure Event;

- (b) the obligations of the Affected Party that have been rendered impossible or illegal to perform, or which the Affected Party is prevented or materially adversely affected from performing or complying with (the **Affected Obligations**);
- (c) the extent to which the Force Majeure Event renders it impossible or illegal for the Affected Party to perform, or prevents or materially adversely affects the Affected Party from performing or complying with, the Affected Obligations (the **Precluded Extent**);
- (d) the reasons why the Affected Party considers that the occurrence of the Force Majeure Event renders it impossible or illegal to perform, or prevents or materially adversely affects the Affected Party from performing or complying with the Affected Obligations to the Precluded Extent; and
- (e) the estimated duration of the Force Majeure Event.

23.3 Effect of Force Majeure Notice

- (a) If the Affected Party complies with clause 23.2 then, subject to the outcome of any dispute between the parties:
 - (i) the Affected Party's obligation to comply with or perform the Affected Obligations will be suspended to the Precluded Extent, for the time:
 - (A) it continues to be impossible or illegal to perform the Affected Obligations; or
 - (B) the Affected Party is prevented or materially adversely affected from complying with or performing those Affected Obligations as a direct result of that Force Majeure Event,
 (the **Period of Suspension**); and
 - (ii) from the date of service of the Force Majeure Notice each party's obligation to perform any obligations dependent on the Affected Obligations (excluding the Host's obligation to pay any amounts of the Event Investment due and payable in accordance with the terms of this Agreement) will be suspended until the Affected Party can resume full performance of its obligations.
- (b) Upon resumption of full performance of its obligations, the Affected Party will be entitled to an extension of time (if relevant) for the Affected Obligations that is commensurate with the Period of Suspension or such other period as the parties agree is reasonable, in the circumstances.

23.4 Mitigation or avoidance

During the Period of Suspension:

- (a) the Affected Party will use its reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event; and
- (b) each party will agree such reasonable arrangements with the other parties that all parties believe to be prudent to avoid or mitigate the effect of the Force Majeure Event on the Affected Obligations.

24. General Provisions

24.1 Relationship of the parties

- (a) Nothing expressed or implied in this Agreement will, of itself, be deemed to constitute a party as the partner or joint venture of the other party.
- (b) Except as provided in this Agreement, a party will not be deemed by virtue of this Agreement to be the agent of another party.

24.2 Regulatory capacity

For the avoidance of doubt, nothing in this Agreement affects or fetters any statutory or regulatory power or authority of any part of the Crown, including MBIE, Council or any of Council's council-controlled organisations. When the Hosts act in their respective statutory or regulatory capacity, the Hosts are not bound to grant any consent or permission which ACE or ETNZ or any third party needs to give effect to this Agreement and the Hosts will have no liability under this Agreement if they decline any consent or permission in their respective regulatory or statutory capacity. In addition, ETNZ and ACE have no recourse under this Agreement with respect to the exercise (or not) of such powers or authority, including on licensing or consenting matters.

24.3 Audit and records

ACE and ETNZ must:

- (a) maintain true and accurate records in connection with the use of the Event Investment and the carrying out of the Event sufficient to enable the Crown to meet its obligations under the Public Finance Act 1989 and the Public Records Act 2005 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Crown or its agent, auditors or other advisers to access from time to time (such access will be solely at MBIE's expense):
 - (i) during the Term (but not during the Event Period), any of ACE or ETNZ's premises and Personnel, and
 - (ii) any of ACE's or ETNZ's relevant records,

as may reasonably be required to verify that ACE and ETNZ have complied with their respective obligations under this Agreement; and

- (c) if requested by the Crown, appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Event Investment.

24.4 Assignment

No party may assign, novate, transfer or otherwise dispose of the whole, or any part, of its rights and obligations under this Agreement without first obtaining the written approval of each of the other parties to this Agreement.

24.5 Change of control

If the:

- (a) power to directly or indirectly vote on 50 per cent more of the voting interest of ACE changes;
- (b) the ownership in 50% or more of ACE changes; or
- (c) such other arrangement occurs which affects ACE and which results in a change in the effective control of ACE,

this change is deemed to be an assignment subject to clause 24.4.

24.6 **Amendment**

This Agreement (including change in scope) may only be amended by agreement in writing signed by the authorised representatives of each party.

24.7 **Severability**

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable it will be severed from this Agreement without affecting the legality, validity or enforceability of the remaining provisions.

24.8 **Waiver**

No party will be deemed to have waived any right under this Agreement unless the waiver is in writing and signed by the parties. Any failure or delay by a party to exercise any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a party of any breach, or failure to exercise any right, under this Agreement will not constitute a waiver of any subsequent breach or continuing right.

24.9 **Remedies cumulative**

Except as is expressly stated otherwise in this Agreement:

- (a) the rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Agreement; and
- (b) the exercise of any of the rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or existing at Law.

24.10 **Entire agreement**

- (a) This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all previous agreements (but excluding the Host City Appointment Agreement), arrangements, understandings or representations relating to that subject matter. As provided for in Recital C of this Agreement, the parties acknowledge and agree that, if there is any conflict or inconsistency between information contained within the Host City Appointment Agreement and this Agreement, to the extent of any such conflict or inconsistency, the information contained in this Agreement will prevail over information contained in the Host City Appointment Agreement.
- (b) The terms of this Agreement prevail over the terms contained in any standard conditions of sale, invoices, packing slips, delivery dockets and other communications

from either party or its Personnel, even if the other party signs or otherwise purports to accept any such terms.

24.11 Counterparts

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all of which together are to constitute a single instrument.

24.12 Privity

For the purposes of the Contract and Commercial Law Act 2017, ACE and ETNZ acknowledge and declare that Panuku is entitled to enforce against ACE and ETNZ each provision of this Agreement which confers a benefit on Panuku (as the case may be). However, Panuku need not consent to any amendment made to this Agreement.

24.13 Governing law and jurisdiction

This Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. Subject to clause 21, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

25. Notices

25.1 Addresses and references

Each notice under this Agreement is to be in writing and sent by personal delivery or email to the addressee at the address or email address, and marked for the attention of the person or office holder, from time to time designated for this purpose by each party and notified to the other party in accordance with this clause 25. The initial address, email address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

25.2 Timing of receipt

In the absence of earlier receipt, a notice will be deemed to have been received:

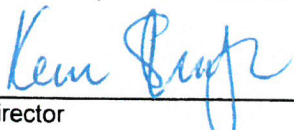
- (a) if delivered by hand, when left at the address of the recipient; or
- (b) if sent by email, on the date and time at which it enters the addressee's information system unless a delivery failure notice has been received by the sender, in which case the notice will be deemed not to have been served,

provided that if a notice is received or deemed to be received on a day which is not a Business Day, or is after 5.00 pm on a Business Day (addressee's time), that notice will be deemed to have been received by the recipient at 9.00 am on the next Business Day.


Execution

Signed as an agreement

SIGNED by Team New Zealand Limited by:



Director
Kew Shoenbrooke
Print Name




~~Director~~ WITNESS
RUSSELL LEONARD HAMILTON GREEN
Print Name
OCCUPATION: RULES & LEGAL ADVISOR
ADDRESS: AUCKLAND


With Notices to:

Address: 161 Halsey Street, Auckland Central,
Auckland 1010, New Zealand
Email Address: S 7(2)(a) Privacy
Attention: Russell Green, Legal and Rules Advisor

SIGNED by America's Cup Event Limited
by:



~~Director~~
TINA SYNNAARDS
Print Name

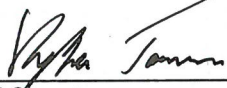


~~Director~~ WITNESS
RUSSELL LEONARD HAMILTON GREEN
Print Name
OCCUPATION: RULES & LEGAL ADVISOR
ADDRESS: AUCKLAND

With Notices to:

Address: 161 Halsey Street, Auckland Central,
Auckland 1010, New Zealand
Email Address: S 7(2)(a) Privacy
Attention: Grant Calder

SIGNED by Auckland Council by:



Authorised Signatory
STEPHEN TOWN

Print Name

Authorised Signatory

Print Name

With Notices to:

Address: 135 Albert Street, Auckland 1010, New Zealand
Email Address:
Attention:

With a copy to:

SIGNED by The Sovereign in right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment by:

Authorised Signatory

Print Name

Authorised Signatory

Print Name

With Notices to:

Address: 15 Stout Street, Wellington 6011, New Zealand
Email Address:
Attention:

With a copy to:

SIGNED by Auckland Council by:

Authorised Signatory

Authorised Signatory

Print Name

Print Name

With Notices to:

Address: 135 Albert Street, Auckland 1010, New Zealand

Email Address:

Attention:

With a copy to:

SIGNED by The Sovereign in right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment by:



Authorised Signatory

Authorised Signatory

CAROLYN TREMAIN

Print Name

Print Name

With Notices to:

Address: 15 Stout Street, Wellington 6011, New Zealand

Email Address:

Attention:

With a copy to:

Schedule 1: Definitions

In this Agreement, unless the context otherwise requires:

ACE means America's Cup Event Limited, a New Zealand Limited Company registered at the Companies Office under No 4753619, with its offices at 161 Halsey 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 Marks;

Affected Obligation has the meaning given in clause 23.2 of this Agreement;

Affected Party has the meaning given in clause 23.2 of this Agreement;

Agreed Asset Library has the meaning given in clause 6.3 of Schedule 2 (Rights and Benefits);

Ambush Marketing means any attempt by an individual or an entity to create an unauthorised or false association (whether or not commercial) with any of 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;

Amenities has the meaning given to that term in clause 2.8(a) of Schedule 4 (Public Sector Delivery Obligations);

America's Cup Logo means the America's Cup silhouette logo and any other official America's Cup logos owned by ACPI;

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;

America's Cup Trophy means the official trophy of the America's Cup;

America's Cup World Series means the America's Cup World Series regattas to be organised by the Challenger of Record in accordance with Article 2 of the Protocol;

Ancillary Sites has the meaning given to that term in clause 2.4(b)(ii) of Schedule 4 (Public Sector Delivery Obligations);

Approved Radio Engineer has the meaning given to that term in the Radiocommunications Act 1989;

ATEED means Auckland Tourism Events and Economic Development Limited;

Auckland Council Group means the Council, Council-controlled organisations and subsidiaries;

Auckland Council Group Member means a member of the Auckland Council Group;

Auckland Transport means the Auckland Council-controlled organisation responsible for transport projects and services within Auckland;

Base Agreement means clauses 1 to 25 of this Agreement;

Brand Manual has the meaning given to that term in clause 3(a) of Schedule 2 (Rights and Benefits);

Broadcast Centre means the centre for broadcasting personnel and national and international broadcasters accredited by ACE working in relation to the Events;

Business Day means any day in New Zealand, other than Saturday or Sunday, any public holiday in Auckland or any day from Boxing Day up to and including the day after New Year's Day (as those terms are defined in the Holidays Act 2003) other than if an Event or an official training day for an Event is taking place over a Saturday, Sunday, a public holiday in Auckland or a day from Boxing Day up to and including the day after New Year's Day in which case those days will be treated as Business Days;

Challengers means all challengers whose notices of challenge have been accepted by the RNZYS in accordance with the Protocol;

Challenger of Record or **COR** means, as at the date of this Agreement, Circolo della Vela Sicilia and includes its representative team, Luna Rossa, and Challenger of Record 36 S.r.l., being the entity established by Luna Rossa to carry out the event related and organisational duties of Luna Rossa as the Challenger of Record of the 36th America's Cup;

Christmas Race has the meaning given in clause 4.1 of this Agreement;

City Logo means the Host City logo detailed in Annexure 3;

Clean means free from any third party branding, signage, advertising or other commercial names, logos, materials or other identification;

Commencement Date means the date of execution of this Agreement;

Commensurate Level has the meaning given to that term in clause 8(c) of this Agreement;

Commercial Branding Space means the space within the Race Village, including suitable railings and/or banner sites, for use as a commercial branding space;

Competitor means the Defender or the Challenger as the context requires;

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 and supplier lists and data, 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 36th America's Cup itself);

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

COR/D means RNZYS and the Challenger of Record;

Country Logo means the Host Country logo detailed in Annexure 3;

Crowd Management Plan means ACE's plan in relation to the supervision of the orderly movement and assembly of people, which includes the evaluation of projected levels of occupancy, adequacy of means of ingress and egress, processing procedures such as gate entry and exit and expected types of activities within the Venue and group behaviour;

Crown means the Government of New Zealand;

Deed of Gift has the meaning given in Recital A of the Background;

Defence means the campaign by ETNZ to win the Match and includes the Preliminary Regattas, and all activities of ETNZ associated with its defence of the America's Cup;

Defender means the RNZYS and the sailing team that represents RNZYS in the AC36 being ETNZ;

Designation Logotype(s) means the logos to be created in accordance with the Protocol by the Challenger of Record and the Title Sponsor for the Events or an Event incorporating the Hosts' key words and to be provided to the Hosts by ACE as soon as reasonably practicable following entry into this Agreement;

Designation(s) has the meaning given to that term in clause 4.1(a) of Schedule 2 (Rights and Benefits) and also includes any other designation(s) approved in accordance with clause 4.1(c) of Schedule 2 (Rights and Benefits);

Docks means the docks identified in, and to be delivered to ACE in accordance with, the Master Base Supply Agreement (attached to this Agreement as Annexure 2);

Escalation Notice has the meaning given to that term in clause 19(a) of this Agreement;

ESG Terms of Reference has the meaning given to that term in clause 12.3(b) of this Agreement;

ETNZ Logo means ETNZ's logo notified by ETNZ to the Hosts from time to time during the Term;

ETNZ Marks means any trade name, logo, symbol, title or other mark or form of branding relating to ETNZ, including ETNZ's Logo;

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;

Events Concept means the event concept as set out in Annexure 1 (as developed or amended from time to time);

Event Dates means the date of the first Race of an Event and the date of the scheduled last Race of that Event;

Event Images means still and moving photographs, film, video and other recordings and any other form of pictorial reproducing showing each and/or all of the Events filmed photographed, produced or reproduced by or on behalf of ACE;

Event Investment means the amount of NZ\$40,000,000 (forty million New Zealand dollars);

Event Period means the period commencing one month before the first Event and continuing until one month after the final day of the last day of racing of the Match;

Event Permit means an event permit to be obtained from the Council by ACE in relation to the Events;

Event Steering Group or **ESG** means the event steering group established in accordance with Host City Appointment Agreement;

Events has the meaning given in clause 4.1 of this Agreement, and **Event** shall mean any one of them;

Existing Site Damage has the meaning given in clause 9.1(a) of this Agreement;

External Funding Commitment has the meaning given in Recital D of the Background to this Agreement;

Final Event Report has the meaning given to that term in clause 13.3(a) of this Agreement;

Force Majeure Event means any of the following events:

- (a) fire, flood, storm, tempest, earthquake, tsunami, tornado, typhoon, cyclone, landslide, volcanic eruption, lighting and other natural disasters;
- (b) act of God;
- (c) failure or shortage of power supplies, nuclear, chemical or biological contamination; or
- (d) terrorist acts, sabotage, war, military operations, riot, crowd disorder, strike, lock-out or other industrial action, civil commotion or national emergency (whether in fact or law),

but does not include an event to the extent that the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:

- (e) implementation of a reasonable business continuity (including disaster recovery) arrangement; or
- (f) exercising a reasonable standard of care,

and, in respect of a party, includes an event that would be a Force Majeure Event as defined above, that affects a Subcontractor of that party;

Force Majeure Notice has the meaning given in clause 23.2 of this Agreement;

Funding Condition Precedent has the meaning given to that term in the Host City Appointment Agreement;

Funding Milestone means the milestones detailed in the column titled "Funding Milestones to be satisfied prior to payment of Payment Instalment" of the table in Schedule 3 (Funding Milestones and Payment Instalments);

Funding Waiver Letter has the meaning given to that term in Recital E of the Background;

GST means tax as defined in the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Harbourmaster the Auckland Harbourmaster;

Host City means Auckland, New Zealand, the city appointed the rights to host the 36th America's Cup in accordance with the Host City Appointment Agreement and confirmed in this Agreement;

Host City Appointment Agreement has the meaning given in Recital C of the Background;

Host Country means New Zealand, the country in which the Host City is located;

Host Promotional Purposes means the purposes of associating the Council and/or the government of New Zealand with the 36th America's Cup, the Events and the Hosts' role as Host City and Host Country of the Events;

Hosts means Council and MBIE and **Host** means either one of them;

Hosts' Contribution has the meaning given to this term in clause 7.2(b) of this Agreement;

Insolvency Event means, in relation to ACE or ETNZ:

- (a) an application or an order is made, proceedings are commenced, a resolution is passed or an application to a court is made (other than any frivolous or vexatious application, proceeding or

resolution which is withdrawn or dismissed within 30 days) for the winding up or dissolution of that person;

- (b) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not reasonably demonstrated prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (c) ACE or ETNZ (as applicable) making an assignment for the benefit of, or making an arrangement or composition with, some or all of its creditors other than a solvent reconstruction;
- (d) the appointment of a liquidator, voluntary administrator, statutory manager, or similar official;
- (e) any step is taken for the appointment of a receiver, receiver and manager or similar officer of it or all or any of its assets and undertakings, or a receiver or receiver and manager is appointed to, all or substantially all of the assets and undertakings of that person or any part thereof;
- (f) that person is declared or states that it is insolvent, is unable to pay its debts when they fall due or is presumed unable to pay its debts in accordance with section 287 of the Companies Act 1993;
- (g) the suspension or threatened suspension by ACE or ETNZ (as applicable) of the payment of its debts;
- (h) that person ceases, suspends or threatens to cease or suspend the conduct of all or substantially all of its business or disposes of or threatens to dispose of substantially all of its assets, except as part of a solvent reorganisation by that person that the Hosts have consented to;
- (i) the enforcement of any security against the whole or a substantial part of its assets; or
- (j) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Intellectual Property Rights means all intellectual property rights and interest, including copyright, trade marks, designs (registered and unregistered) and patents and other proprietary rights, at any time recognised or protected by Law, including any application or right to apply for registration of such rights;

International Events has the meaning given to it in clause 4.4(a) of this Agreement;

Inter-Agency Steering Group means the inter-agency steering group established in accordance with the Host City Appointment Agreement

Joint Chief Executive Group or JCEG means the joint chief executives group as provided for in clause 12.1(b)(ii) of this Agreement;

Key Performance Indicators has the meaning given to that term in clause 13.3(a)(ii);

Law means:

- (a) any statute, regulation, by-law, ordinance or subordinate legislation in force;
- (b) the common law and the law of equity as applicable;
- (c) any binding court order, judgment or decree;

- (d) any applicable industry code, policy, standard, consent, authorisation or permit that is enforceable by statute or regulation,

to which any of the parties is subject from time to time, and includes any consolidations, amendments, re-enactments or replacement of any of them;

Legacy Logo has the meaning given to it in clause 8(a) of Schedule 2 (Rights and Benefits);

Loss means all claims, proceedings, actions, liabilities, damages, costs, expenses or losses;

Marketing and Communications Plan has the meaning given in clause 5.7(a) of Schedule 4 (Public Sector Delivery Obligations);

Master Base Supply Agreement has the meaning given in clause 10.1 of this Agreement and a copy of which is attached as Annexure 2;

Material Breach has the meaning given in clause 22.1 of this Agreement;

Match means the 36th America's Cup Match that is to take place during the period from 6 March 2021 to 21 March 2021;

Media Centre means the centre for media personnel, national and international media and members of the press accredited by ACE and COR working in relation to the Events, at the location identified in Part B (Site Descriptions) of Schedule 6 (Race Village);

Minister has the meaning given to that term in the MEMA;

Official Logo(s) means any trademarks, logos, logotypes, signs, names or other designations created for the Events, to be used in accordance with the Brand Manual;

Official Title(s) means the official title of each AC36 Event advised by ACE to the Hosts from time to time;

On-water Media Areas means the on-water areas adjacent to each Race Course designated as "On-water Media Areas" within which media accredited for the Events will be located;

On-water Spectator Areas means any area surrounding the Race Courses or the Race Access Corridors where on-water vessels, either chartered or private, are gathered because of the Event taking place;

Panuku 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;

Period of Suspension has the meaning given in clause 23.3 of this Agreement;

Personnel includes employees, agents, officers and individual independent contractors of the relevant person;

Prada Cup has the meaning given in clause 4.1(a) of this Agreement;

Precluded Extent has the meaning given in clause 23.2 of this Agreement;

Preliminary Regatta means the series lead-up regattas proposed to be held in 2019 and 2020 including the America's Cup World Series and the Christmas Race in accordance with the Protocol;

Premium means a high-value item of merchandise in a category approved by ACE (such approval not to be unreasonably withheld or delayed) that bears the Designation Logotype(s);

Project Alliance Agreement or **PAA** means the project alliance agreement dated 23 November 2018 (as amended, varied or supplemented from time to time) between the Hosts and the Other Alliance Participants (as defined therein);

Promotional Activities means the Hosts' own communication initiatives or campaigns in any way using the Designation and/or the Designation Logotype for Host Promotional Purposes, as per the terms of this Agreement;

Protocol has the meaning given in Recital A of the Background and can be located via the following hyperlink: <https://www.americascup.com/en/official/the-protocol>;

Public Sector Delivery Obligations has the meaning given in clause 1.1(a) of Schedule 4 (Public Sector Delivery Obligations);

Quarterly Economic Data has the meaning given to that term in Annexure 4 (Final Event Report);

Quarterly Funding Report has the meaning given in clause 13.2(a) of this Agreement;

Race means each sailing race that makes up each Event;

Race Access Corridors means the on-water area within which Team Boats and spectator boats will travel to and from the Venue to the Race Courses;

Race Courses means the on-water 'field of play' for any Event or Events and training by Team Boats as set out in the Event Concept and agreed with the Hosts;

Race Conditions means the Match Conditions and the CSS Conditions;

Race Date means each date on which a Race occurs;

Race Durations means the duration of each Race;

Race Times means the time of day the commencement of each Race is scheduled to start and finish;

Race Village means the areas that make up the race village, comprising a mix of publicly owned and/or publicly accessible spaces on the waterfront and Auckland Central Business District as identified in Schedule 5 (Venue) and further detailed in Schedule 6 (Race Village);

Regatta Director means the person appointed pursuant to Article 20 of the Protocol;

Relationship Governance Board or **RGB** means the relationship governance board established in accordance with the Host City Appointment Agreement;

Relevant Health and Safety Legislation means the Health and Safety at Work Act 2015, any regulations under that Act, rules, standards, approved codes of practice, guidelines and all other statutes, regulations and other subordinate legislation in force, or that comes into force, in New Zealand throughout the Term in respect of health and safety law relating to the Events;

Resource Consent means the resource consent decision no. [2018] NZEnvC 179 dated 25 September 2018 and includes all amendments and alterations to such consent;

RFA means Regional Facilities Auckland Limited (Co No 3089627);

Rights and Benefits means the rights and benefits of the Hosts detailed in Schedule 2 (Rights and Benefits) and any further rights and benefits granted to the Hosts in accordance with this Agreement;

RNZYS means the Royal New Zealand Yacht Squadron;

Rules has the meaning given in Article 16.1 of the Protocol;

Scenario Maps means the maps titled “AC36 Race Village: Scenario 3”, “AC36 Race Village: Scenario 2” and “AC36 Race Village: Scenario 1” in Schedule 6 (Race Village);

Sites means:

- (a) each of the sites as set out in Part B (Site Descriptions) of Schedule 6 (Race Village); and
- (b) the Team Base Areas (as set out in further detail in the Master Base Supply Agreement);;

Social Media Guidelines has the meaning given in clause 5.1(e) of Schedule 2 (Rights and Benefits);

Sponsorship Agreement means the agreement dated 18 March 2018 between ACE, COR and the Title Sponsor;

Subcontractor means any person to whom any party has subcontracted any part of its obligations under this Agreement or who is a supplier to any party in respect of this Agreement and includes the Personnel and subcontractors of that person;

Team Base means the buildings and facilities constructed on each Team Base Area and **Team Bases** means all such buildings and facilities collectively;

Team Base Area means each “Base” identified in the Master Base Supply Agreement on which a Team Base is to be built and **Team Base Areas** means all such foundations collectively;

Team Boats means the boats competing in the Events and support boats of the Teams;

Team means a sailing team participating in one or more of the Events;

Term has the meaning given to that term in clause 3.1 of this Agreement;

Title Sponsor has the meaning given in Recital I of the Background;

Total Funding Amount means the ^{57(2)(b)(ii) Commercial Prejudice 3rd Parties} of funding required by ACE and ETNZ to deliver the sporting campaign for, and the management of, the Events;

Use has the meaning given to that term in clause 5.1(b) of Schedule 2 (Rights and Benefits);

Use Period means in respect of the Race Village, the period from the “Delivery Date” to the “Return Date” as identified for each Site as set out in Part B (Site Descriptions) of Schedule 6 (Race Village);

VEC Lease has the meaning given in clause 10.3(a) of this Agreement;

Venue means all of the Sites shown inside the redline on the Schedule 5 (Venue) map and listed in Schedule 6 (Race Village) that are necessary for use by ACE to comply with its obligations for on-land and on-water delivery of the Events, and includes the Race Village, any other Sites agreed between ACE and Panuku and includes all road and footpaths; and

Venue Boundary means the Venue boundary identified in the map titled “Wynyard Quarter AC36 Race Village: Venue Boundary” set out in Schedule 5 (Venue); and

Venue Traffic Management Plan has the meaning given to that term in clause 5.2(a) of Schedule 4 (Public Sector Delivery Obligations).

Schedule 2: Rights and Benefits

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



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

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

Schedule 4: Public Sector Delivery Obligations

1. Overview

1.1 General

- (a) This Schedule sets out the public sector requirements that the Council and/or MBIE, as applicable, must deliver to (or must procure the delivery of) ACE in relation to the Events and the Event-related activities in consideration of the mutual promises contained in this Agreement (the **Public Sector Delivery Obligations**).
- (b) The Public Sector Delivery Obligations will be delivered without charge to ACE, unless otherwise expressly provided for in this Agreement.
- (c) This Schedule also sets out certain obligations of ACE, and acknowledgements and agreements from ACE, in respect of the Public Sector Delivery Obligations.
- (d) The parties acknowledge and agree that they will work together in relation to the Public Sector Delivery Obligations to ensure that the delivery of the Venue to ACE is co-ordinated and ACE acknowledges and agrees that they will adopt a phased approach to pack-in which will be communicated to the Hosts (and Panuku) in advance of the Event Period.

1.2 Obligations

References in this Schedule 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 or arm's length charges for the delivery of the relevant services or goods, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable;
- (b) provide any other valuable consideration to or for the benefit of any person other than a party to this Agreement; or
- (c) agree to commercially onerous or unreasonable conditions.

1.3 Scenarios

For the purpose of this Schedule 4 (Public Sector Delivery Obligations), a reference to the "Relevant Scenario" is a reference to Scenario 1, Scenario 2 or Scenario 3 (as each such scenario is described in the Event Concept).

2. Venue requirements

2.1 Development

In accordance with the terms of this Agreement, the Hosts shall, subject to clause 9.1(g) of the Base Agreement, ensure that the development of the Venue takes place in accordance

with the terms this Agreement and, in any event, is completed no later than the Event Period, other than:

- (a) the superyacht berths in Wynyard South Basin which have a target date under the Project Alliance Agreement of 30 November 2020;
- (b) the Team Bases, which are to be completed in accordance with the Master Base Supply Agreement; and
- (c) as otherwise agreed between the parties.

2.2 Reticulation sites

Council agrees to advise ACE in writing of the location of the reticulation sites for power, water and internet at each Site prior to the commencement of the relevant Use Period.

2.3 Race Village

- (a) As part of the Venue, Council shall provide the Race Village, being part of the Venue, for no fee (in respect of the ground rent), that is suitable for hosting a world class international event of equivalent status to the Events during the Event Period. The Sites that make up the Race Village are identified in Part B (Site Descriptions) of Schedule 6 (Race Village) and are subject to the Event Permit.
- (b) The Hosts agree to procure that all publicly accessible areas of the Race Village will be open and remain open to the public throughout the Event Period, subject to the Hosts having the right to restrict access as required by Law, as a result of any actual or threatened risk to public safety or in order to perform any of its obligations under this Agreement.

2.4 Ancillary Sites

LGOIMA s7(2)(i) Negotiations

- (b) The parties acknowledge and agree that:
 - (i) as this Agreement is being entered into a significant period of time prior to the first Event, ACE and/or the Council may determine during the Term that certain Sites, amenities and/or facilities are insufficient to deliver the Events;
 - (ii) if both ACE and the Council determine that the relevant Sites, amenities and/or facilities are insufficient, ACE may, or the Council may, identify ancillary Sites, amenities and/or facilities to be made available for use by ACE (**Ancillary Sites**); and
 - (iii) Council will use reasonable endeavours to make such Ancillary Sites available for use by ACE for an agreed period of time during the Event Period at no fee, or at a fair market rate for comparable sites, amenities and/or facilities (such decision regarding the fee or the fair market rate to be at the sole discretion of the Council).

2.5 Availability and use

- (a) The Council will ensure that each Site within the Venue shall be made available for use by ACE in relation to the Events during the relevant Use Period. For the

avoidance of doubt, the Race Village will, subject to clause 9.1(g) of the Base Agreement, be made available by the Hosts for the Event Period.

- (b) The Hosts and Panuku will not be responsible for obtaining any consents and permits that relate to the operations of the Venue, including temporary build and demount and such consents and permits will be obtained or procured by ACE. Notwithstanding the foregoing, the Council will support ACE in ensuring that such consents and permits offer as much flexibility in hours of working as is practically possible.
- (c) The Council must provide to ACE access to each Site within the Venue upon ACE's reasonable written notice, being no less than 3 Business Days' notice, at times to be agreed between ACE and Council (acting reasonably and in good faith) outside of the Use Periods, for the purposes of planning the Events and monitoring the Council's compliance with its obligations under this Agreement. Any such request by ACE will be subject to Council's usual permitting and approval processes.

2.6 Access control

- (a) ACE and the Council acknowledge and agree that:
 - (i) subject to the rights of any emergency services, maintenance service providers and other business as usual service providers (including service providers that will need access to the Venue to enable the Hosts to perform their obligations under this Agreement) and access arrangements for existing businesses, for the Event Period, ACE shall be entitled to control access into the relevant Access Control Points (for the purpose of the Relevant Scenarios) through its management of an accreditation system elected and established by ACE. For the purpose of this clause, the "Access Control Points" are the areas of the Venue that are provisionally identified in Schedule 6 (Race Village) as the "Access Control Points" with such areas to be finalised through the Event Permit process; and
 - (ii) public access to, and within, the Venue must be maintained at all times by ACE in accordance with all Laws (including in accordance with the all public conveyance restrictions (for example conservation covenants) in relation to the Venue) and in some areas of the Venue where it is not possible to restrict public access, ACE and the Council will work together to manage access to such areas of the Venue.
- (b) The map titled "Wynyard Quarter AC36 Race Village: Pedestrian Access and Road Management" sets out the provisional requirements for pedestrian access and managed access and such requirements are to be finalised through the Event Permit and finalisation of the licence for the Venue.

2.7 Content

- (a) In so far as the Hosts hold such rights, ACE shall be entitled to film, record and photograph the Events, within and around the Venue, as is necessary to deliver ACE's desired coverage of the Events, provided that ACE must:
 - (i) adhere to all legal (including regulatory and authorising) requirements; and
 - (ii) in respect of any acts by ACE to film, record and photograph the Events around the Venue, obtain all relevant permits and licenses and obtain access rights from third parties as required.
- (b) ACE must make copies of such films, recordings and photographs taken by ACE within and around the Venue and make such copies available to the Hosts.

2.8 Amenities

- (a) The Council must provide the following public amenities within the Venue during the Event Period:
 - (i) rubbish and recycling facilities - no less than the number of rubbish and recycling facilities existing immediately prior to the Event Period;
 - (ii) toilets - no less than the number of toilets existing immediately prior to the Event Period; and
 - (iii) lighting - being lighting no less than that existing immediately prior to the Event Period,
 (the **Amenities**).
- (b) The Council must maintain the Amenities in a satisfactory state of working condition (including in relation to cleaning, servicing and supervising at the use level of the Amenities at the date being one year prior to the first day of the Event Period) during the Event Period, which shall include fully provisioning such Amenities with all appropriate materials and consumables throughout the day during all hours each area is available or accessible.
- (c) The Council agrees to provide ACE with a breakdown of the type of materials and consumables the Amenities are provisioned with and the cost to the Council of provisioning the Amenities on a monthly basis no later than one year prior to the first day of the Event Period.
- (d) Anything required by ACE to keep the Amenities in a state above a satisfactory state of working condition or requiring cleaning, servicing, supervising or materials and consumables above the level at the date one year prior to the start of the Event Period will be managed and paid for by ACE. ACE shall have the right to appoint a third party to deliver such services and provide such materials and consumables in relation to the Amenities but only after Panuku and ACE have discussed the existing service providers for such Amenities and Panuku has consented to the third party delivering such services and providing such materials and consumables.
- (e) If there is damage to the Amenities during the Event Period, the Council will repair or fix such damage as soon as reasonably possible and, to the extent such damage is more than as a result of fair wear and tear, will on-charge any costs associated with such damage to ACE.

2.9 Utilities

- (a) The Council must use best endeavours (subject to any actions of ACE and/or ACE's Subcontractors) to make available all utilities within the Race Village, that are existing in the area at the beginning of the Event Period, for the Event Period for use in relation to the Events, including at a minimum:
 - (i) power sources (63amp, 3 phase 380v 50Hz);
 - (ii) fresh water supply;
 - (iii) maintenance of sites for waste water; and
 - (iv) high speed wired broadband fibre,
 (the **Utilities**).

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

- (c) ACE warrants to the Council, and subject to paragraph (d) below, the Council warrants to ACE, that they will not undertake any activity during the Event Period which endangers or prevents the supply of the Utilities.
- (d) The Council may need to repair or replace the Utilities during the Event Period and the parties acknowledge and agree that any such action (by the Council or its Subcontractors) will not be a breach of sub-paragraph (c) above, subject to the Council:
 - (i) notifying ACE in advance of such action to repair or replace the Utilities; and
 - (ii) using reasonable endeavours to mitigate the adverse impact in relation to the Events of such action to repair or replace the Utilities.

2.10 Permitted branding space

During the Event Period, subject to Schedule 2 (Rights and Benefits), ACE shall be responsible for all Event-related branding in the Race Village and shall be entitled to erect Event-related branding on all existing infrastructure (including any fencing and flagpoles) within and along the perimeter of the Race Village where such infrastructure is owned by the Hosts, subject to and in accordance with:

- (a) a signage and wayfinding plan developed as part of the Event Permit process which, for the avoidance of doubt, must adhere to all consents and permits obtained by ACE and the Resource Consent; and
- (b) any contractual arrangements in place with third parties prior to the date of this Agreement that apply to branding in areas within and along the Race Village and that have been notified to ACE in accordance with clause 9.2(a) of this Agreement.

2.11 Relocation of car parks

- (a) The Council will procure that the following commercial operator carparks, being:
 - (i) Te Wero Island;
 - (ii) Eastern Viaduct;
 - (iii) Halsey Wharf Extension; and
 - (iv) Hobson Wharf,

are removed/relocated from within the Venue prior to the beginning of the relevant Use Period so that ACE can use such areas for the Event but not for car parking. [REDACTED]

[REDACTED] ACE agrees that it will work with Panuku in so far as the removal/relocation of the commercial operator carparks from Te Wero Island affects adjacent berth management.

LGOIMA s7(2)(i) Negotiations

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LGOIMA s7(2)(i) Negotiations

- (c) The parties acknowledge and agree that the Council's obligations in respect of clause 2.11(a) and 2.11(b) of this Schedule 4 are subject to allowance for:
 - (i) business as usual operations for the purpose of servicing businesses and the marina, for example through loading zones; and
 - (ii) disabled carparks that exist as at the date of this agreement.
- (d) The parties agree that, to the extent that an arrangement between an Auckland Council Group member and a third party in relation to the areas identified in clause 2.11(a) and 2.11(b) is identified after the date of this Agreement, the parties will (both acting reasonably) meet and work together to try and find a resolution. Such resolution it to take into account the third party arrangement and the need for ACE to have sufficient space within the Venue to deliver the Events to the standard outlined in this Agreement.

2.12 Storage

- (a) The parties acknowledge and agree that ACE and each of the Teams are responsible for the transportation of their own respective equipment and cargo to and from the Venue at their own cost.
- (b) As a result of shipping schedules, it may be necessary for some equipment and/or cargo of ACE and/or the Teams (other than ETNZ) (the **Challenger Teams**) to arrive in New Zealand prior to the beginning of the Use Periods for the storage facilities (including the Team Base Areas) within the Venue or depart New Zealand after the end of the Use Periods for the storage facilities (including the Team Bases) within the Venue. If such a situations arises, the Council agrees to assist ACE to procure suitable storage facilities (subject to availability), unloading/loading coordination and associated services (including security) (as required) within or in close proximity to the Venue for ACE and/or the Challenger Teams (as required).
- (c) The parties agree that, notwithstanding the Council's obligation in 2.12(b) above, and in relation to each Challenger Team, for the period from the date of handover of the relevant Challenger Team's Team Base Area until the expiry date of the relevant lease between ACE and Panuku in relation to the relevant Team Base Area (**Team Base Period**), each Challenger Team will use its Team Base Area for storage and, during the Team Base Period for each Challenger Team, there is no obligation on the Council to assist ACE to procure suitable storage facilities, unloading/loading coordination and associated services (including security) for each Challenger Team.
- (d) The Council agrees that, neither ACE nor any of the Challenger Teams will be charged for the use of existing storage within the Venue during the period beginning on 31 July 2019 and ending on the date at which the Team Base Area for the relevant Challenger Team is handed over to ACE. Any other storage costs (for example costs of storage outside of the Venue and costs of storage that does not exist at the date of this Agreement for example, the Team Bases) and services relating to storage and the shipment of equipment and/or cargo will be payable by ACE or the relevant Challenger Team to the Council or a third party.

2.13 Standard of Sites and facilities

- (a) The Council must ensure that all Sites and facilities provided by the Council in accordance with this Agreement are provided and maintained throughout the relevant Use Period to which the Site or facilities relate to a standard (as determined by the Hosts acting reasonably) that would be reasonably expected of a major international sporting event that is to accommodate the maximum number of people on any Race Day (as agreed in the Crowd Management Plan) (which standard, for the avoidance of doubt, does not reflect any arrangements that ACE or ETNZ enter into with the COR (including under the Sponsorship Agreement) or third parties) (the **Baseline Standard**) and, without prejudice to the foregoing, at a standard no less than the standard maintained at the Sites and facilities during a period of the same length as the relevant Use Period at the same time in the year prior to that Use Period. To the extent that any provision or maintenance is required by ACE to increase the standard of a Site and/or any facilities over and above the Baseline Standard, this will be at ACE's own cost.
- (b) At the same time as the Council is required to report on any Existing Site Damage in accordance with clause 9.1 of the Base Agreement, both the Council and ACE will complete a "dilapidation report" prior to the Events which will detail:
 - (i) any issues or damage in respect of all Sites and facilities (as agreed between Council and ACE);
 - (ii) a statement as to who bears responsibility for any damage (as agreed between Council and ACE); and
 - (iii) any timeframes (as agreed between Council and ACE) for the repair of any damage.

For the avoidance of doubt, the reference to ACE in clause 2.13(b)(ii) will not limit the obligations of the Council detailed in clause 2.13(a).

3. City Logo and Country Logo

- (a) Council grants to ACE the right to use the City Logo (attached at Annexure 3, as may be amended from time to time and advised by Council) throughout the Term anywhere in the world for the purpose of advertising, marketing and promoting the Events in any medium, provided ACE will obtain the Council's prior written approval (such approval not to be unreasonably withheld or delayed) for each type of use.
- (b) Subject to the entry into a licence agreement with MBIE (the **Logo Licence Agreement**), MBIE will grant to ACE the right to use the Country Logo (attached at Annexure 3, as may be amended from time to time and advised by MBIE) throughout the Term anywhere in the world for the purpose of advertising, marketing and promoting the Events in any medium on the terms set out in the Logo Licence Agreement, provided ACE will obtain MBIE's prior written approval (such approval not to be unreasonably withheld or delayed) for each type of use.

4. Event requirements

The Hosts shall use reasonable endeavours to assist ACE with on-water support for racing and practice sailing for each Event, such support to be identified and requested by ACE and agreed through the Inter-Agency Steering Group.

5. Public services

5.1 Emergency services

The Hosts agree to provide to ACE, free of any charge, full support for the Events (on-water and on-shore and including in respect of the Venue) from all emergency services (including the police, ambulance and fire services and for the avoidance of doubt, emergency services does not include on-site medical services), for the purpose of emergency management as deemed necessary by the relevant emergency service provider. For the avoidance of doubt, this does not include non-emergency management, non-emergency first aid requirements or remove the role of ACE as event delivery agent under the Relevant Health and Safety Legislation and the Event Permit. While the New Zealand Police and the Harbour Master are responsible for emergency management, ACE agrees to explore all opportunities to share capability for enforcement e.g. co-location of the New Zealand Police personnel on event organiser supplied marshal vessels.

5.2 Venue Traffic Management Plan

- (a) Council, in co-ordination with ACE, agree to develop and implement a transportation plan that is approved in accordance with clause 5.2(b) below, for the Events at the Venue which must:
 - (i) reflect that ACE is responsible for all matters of transportation at the Venue, which includes the servicing of the Venue's Crowd Management Plan requiring road closures, security or transport movements;
 - (ii) reflect the requirements of any relevant resource consent (including the Resource Consent) and any applicable Laws; and
 - (iii) aim to reduce demand for private vehicle trips to Events and encourage and support the use of public transport to the Events at the Venue,
 (the **Venue Traffic Management Plan**).
- (b) In order to implement the Venue Traffic Management Plan:
 - (i) Council will deliver the Venue Traffic Management Plan to Auckland Transport for review and approval (with the approval of Auckland Transport to be obtained no later than three months prior to the start of the Event Period); and
 - (ii) after Auckland Transport has approved the Venue Traffic Management Plan, the plan will be delivered to the Inter-Agency Steering Group to enable co-ordination with other members of the Auckland Council Group.
- (c) The Council will assist ACE in identifying any planned public works to be undertaken by any member of the Auckland Council Group which could impact the Events at the Venue to ensure that these are fully considered within the development of the Venue Traffic Management Plan.
- (d) Without limiting the Event Permit and the responsibility of ACE for the management of people and vehicles into the Venue (including the access points into the Venue), the Council agrees to manage, or procure the management of, all traffic outside of the Venue, that does not relate to the Venue Traffic Management Plan.
- (e) The Venue Traffic Management Plan will have a footprint outside the Venue which will be finalised through the development of the plan (as set out on 5.2(a)) and the Event Permit process. For the purpose of this Agreement, the Hosts have provided the

Scenario Maps to identify the indicative footprint of the Venue Traffic Management Plan (subject to the Event Permit process) as identified in the “Managed Access” areas and illustrate the variance to the Traffic Management Plan in the different Relevant Scenarios identified in the maps. The cost and management of the Venue Traffic Management Plan will be the responsibility of ACE.

- (f) The map titled “Wynyard Quarter AC36 Race Village: Scenario B.A.U. and Public Transportation” sets out the anticipated business as usual requirements and public transportation, with such requirements to be finalised as part of the Event Permit process and the finalisation of the licence for the Venue and the Venue Traffic Management Plan.

5.3 Car parking

Council agrees to assist ACE by way of identifying available supporting car parking infrastructure for the purpose of supporting ACE’s car parking requirements for the Events.

5.4 Crowd and Public Safety

- (a) During the Event Period, without limitation to ACE’s obligations under the Crowd Management Plan, the Hosts must, at the Hosts’ cost, provide sufficient policing and security arrangements (both, as required at the Hosts’ discretion) outside the immediate perimeter of the Venue, to ensure public safety and compliance with all applicable Laws that apply to the Hosts and will collaborate with any existing security providers in such areas to create a co-ordinated approach.
- (b) In respect of the obligation set out in 5.4(a) above, the Hosts shall use reasonable endeavours to prevent any breach of security in relation to the Events during the Event Period (including both on-land and on-water). ACE shall use reasonable endeavours to prevent any breach of security within the Venue in relation to the Events during the Event Period (including both on-land and on-water).
- (c) For the avoidance of doubt, ACE will be responsible for (and will meet all costs for) crowd control and public safety at the Venue, which includes the servicing of the Crowd Management Plan enabling entry and exit to the Race Village and the Venue. The parties acknowledge that the Crowd Management Plan will have a footprint outside of the Venue which will be finalised through the Event Permit process. For the purpose of this Agreement, the Hosts have provided the Scenario Maps to identify the indicative “Managed Access” areas to be included in the Crowd Management Plan (subject to the Event Permit process) and illustrate the variance to the Managed Access areas in the different Relevant Scenarios identified in the maps. ACE acknowledges that it will need to put in place controls (at ACE’s cost) outside of the Venue in accordance with the Crowd Management Plan.
- (d) The Hosts and ACE will jointly discuss and agree the details of the security needed based on operational requirements and taking into account any operations centres agreed between the Hosts and ACE to be established in accordance with clause 9.1(i) of the Base Agreement (for example, whether it is possible to have one approved provider appointed to manage all security requirements). Without limitation to ACE’s obligations under the Crowd Management Plan and subject to ACE electing to contract any third parties to provide security arrangements over and above that provided by the Hosts outside of the Venue, ACE shall not be responsible for any costs of any security arrangements outside of the Venue.

5.5 Cleaning and waste management

- (a) The Council will ensure that, throughout the Event Period, all publicly accessible areas immediately adjacent to the Venue are cleaned, maintained and kept free from litter, in accordance with the standard usually maintained for such areas in a period of

equivalent length to the Event Period in the year prior to the Event Period, and in accordance with any applicable Laws. ACE is responsible for any additional requirements over and above usual cleaning and maintenance levels, and the costs of any additional cleaning and maintenance must be borne by ACE.

- (b) ACE will be responsible for all waste management within the Venue (other than waste relating to the amenities to be provided by the Council in accordance with clause 2.8 of this Schedule) and will ensure that the Venue is cleaned and kept free from litter, in accordance with the usual standards applicable to such areas and all applicable Laws.

5.6 Air space

The Hosts will connect ACE with the relevant authorities in order to enable ACE to commence the regulatory processes in regards to the use of the air space above the Venue and surrounding the Venue, including use for the purposes of allowing helicopters and drones.

5.7 Marketing and Communications

- (a) The Hosts will have their own marketing and communications plan for the Events (the **Marketing and Communications Plan**) and will work with ACE to ensure that the Events are marketed and promoted in the most effective manner in order to maximise visitors to the Events.
- (b) ACE and ETNZ agree that any actions taken by the Hosts under the Marketing and Communications Plan do not diminish ACE's obligations to market and promote the Events.

6. Delivery Services

6.1 Vessels

- (a) The Hosts shall use reasonable endeavours to provide existing marina and on-water support to ACE in respect of ACE's engagement and cooperation with:
 - (i) Panuku;
 - (ii) the Harbourmaster; and
 - (iii) the New Zealand Police.
- (b) ACE will be responsible for the provision of all vessels required to operate the Event other than those referred to in clause 6.1(a) above.

6.2 Management of promotional events and communications

- (a) The Hosts will be responsible for the management of all of the Hosts' activations and comply with the relevant provisions of this Agreement.
- (b) The Council will be responsible for setting up and operating a sufficient and adequate number (such number to be determined by Council in its sole discretion) of information points throughout Auckland (and outside of the Venue) to provide information to the public regarding the Events, the Races, the Race Village (including Race Village maps) and Event related activities. For the avoidance of doubt, this does not remove the obligation on the Hosts to obtain the approval of ACE in relation to all promotional and advertising material in accordance with Schedule 2 (Rights and Benefits).

- (c) Host activations and information points referred to in this clause 6.2 are to be provided for in the Marketing and Communications Plan.

7. Legal/Regulatory

7.1 Border services

Once ACE has applied to the relevant government agency or agencies for “major events border facilitation”, and provided such facilitation has been granted (**Facilitation Approval**), the Inter-Agency Steering Group will work in partnership with ACE to enable a coordinated border experience in accordance with the terms and conditions of the Facilitation Approval. For the avoidance of doubt, nothing in this clause 7.1 limits the functions and powers of any New Zealand border agency.

7.2 Building compliance and permits

The Council agrees to:

- (a) respond to ACE in respect of any queries received from ACE in relation to building compliance standards in respect of all buildings and structures in the Race Village or otherwise made available to ACE or any Team in accordance with this Agreement;
- (b) provide all practical assistance reasonably requested by ACE in respect of meeting all legal requirements in respect of building compliance standards. For the avoidance of doubt, the Hosts will not be responsible for the costs in respect of building compliance standards; and
- (c) without limiting clause 24.2 of the Base Agreement, assist ACE by facilitating that all necessary permits required under Law are obtained in relation to the Events and, in particular, the Venue in respect of the Use Periods. For the avoidance of doubt, the Hosts will not be responsible for the cost of obtaining such necessary permits in relation to the Events.

7.3 Major event status and anti-ambush marketing

- (a) If ACE elects to apply for major event status for the Events under the Major Events Management Act 2007 (the **Act**), and if the Events are 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 and any relevant local body bylaws (the **Enforcement Plan**). The Enforcement Plan will include how any associated costs are to be met.
- (b) The Hosts shall use reasonable endeavours to preserve the rights of ACE and its commercial partners in relation to the Events under the Act and any relevant local body bylaws, in order to minimise and reduce the impact of:
 - (i) Ambush Marketing; and
 - (ii) selling, offering for sale or giving away any goods or services that breach the Act and/or any relevant local body bylaws,

provided that the Hosts shall not be obligated to observe any of the requirements of this clause 7.3(b) if the Hosts determine, at their sole discretion, that an activity described in paragraphs (i) and (ii) does not meet the threshold for action as set out in the Enforcement Plan.

7.4 Frequencies and satellite

- (a) MBIE will use best endeavours to assist ACE to apply for and subsequently secure and maintain for the Event 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:
 - (i) radio frequency;
 - (ii) 5G spectrum (to the extent allocations are available from MBIE); and
 - (iii) satellite uplinking support.
- (b) ACE will engage an Approved Radio Engineer to undertake all radio planning, engineering and licence certification duties before and during the Event Period. ACE will be responsible for all charges incurred in relation to engaging an Approved Radio Engineer. The Hosts will work with the Approved Radio Engineer, once engaged, for the purposes of this clause 7.4.
- (c) Any charges incurred by ACE in the use of frequency, radio spectrum and satellite support, including charges incurred from existing radio or spectrum licence holders, will be the responsibility of ACE.

7.5 Licences and permits

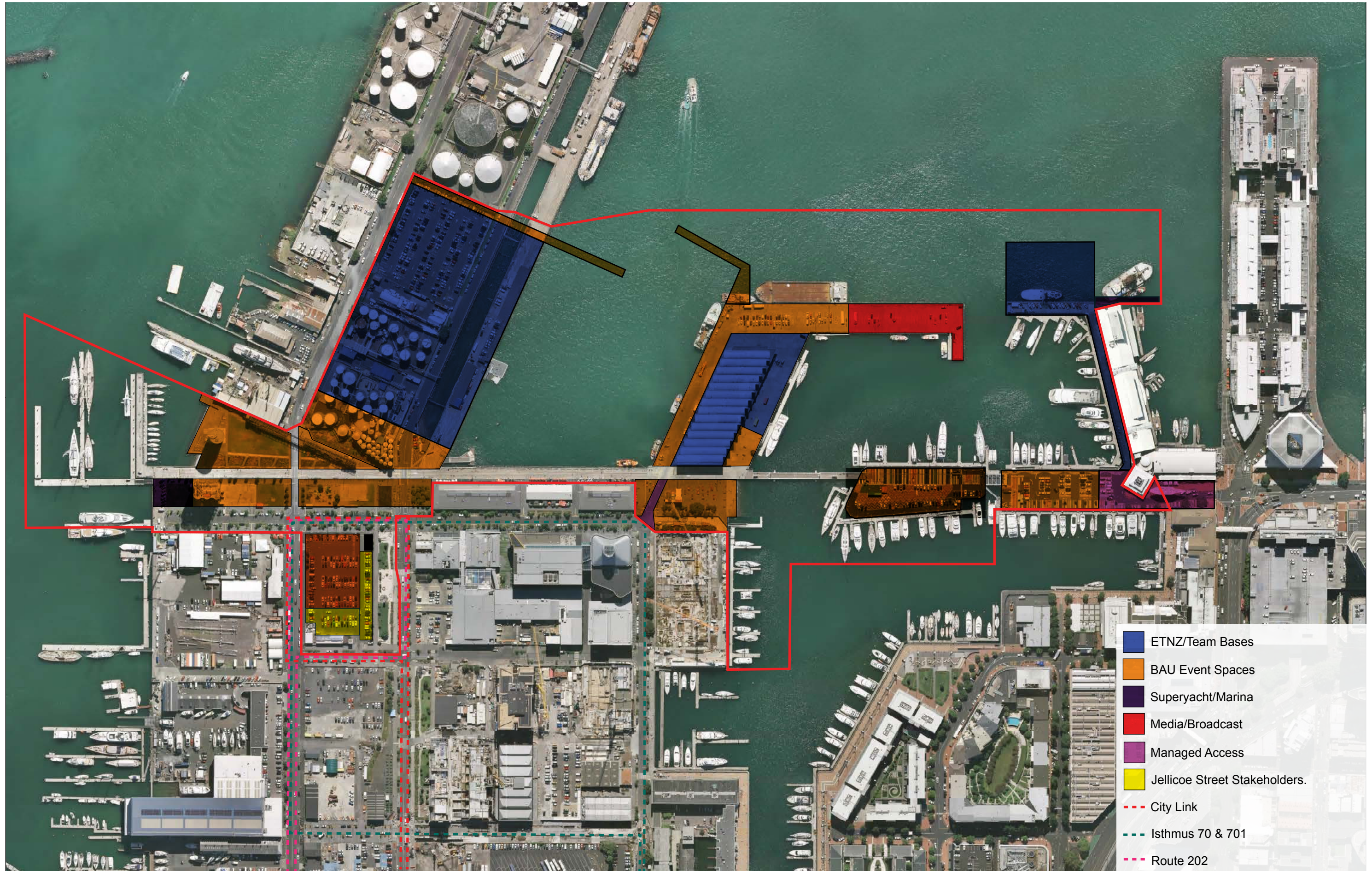
- (a) The Hosts agree to work with ACE to engage with, and gain the support of, all of the necessary public authorities, including the port authority, the Harbourmaster, civil aviation authority and the Ministry for the Environment in relation to the Events and any Event-related activities. Nothing in this clause 7.5(a) is to be construed as limiting any such public authorities in the performance of their usual functions and powers and ACE agrees to engage in and co-operate with all permitting processes and regulatory, venue and associated functional requirements as may be required in accordance with standard major event practice.
- (b) The Hosts shall use 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 in relation to entertainment, alcohol, food, health and safety, live music, broadcasting, advertising, construction and security licences and licences from police and fire departments.
- (c) The parties agree that the Hosts obligations in clauses 7.5(a) and 7.5(b) do not require the Hosts to apply to obtain such licences and other approvals listed in clause 7.5(b) and that the Hosts will not be responsible for any costs associated with obtaining the licenses and other approvals set out in clause 7.5(b) above.

Schedule 5: Venue



Schedule 6: Race Village

Part A: Race Village Maps



SCHEDULE 6 - AC36 RACE VILLAGE: SCENARIO B.A.U AND PUBLIC TRANSPORTATION

Note: Base infrastructure subject to
WEA PAA.

PROJECT
WYNYARD QUARTER

DRAWN
PN

DATE
03.12.2018

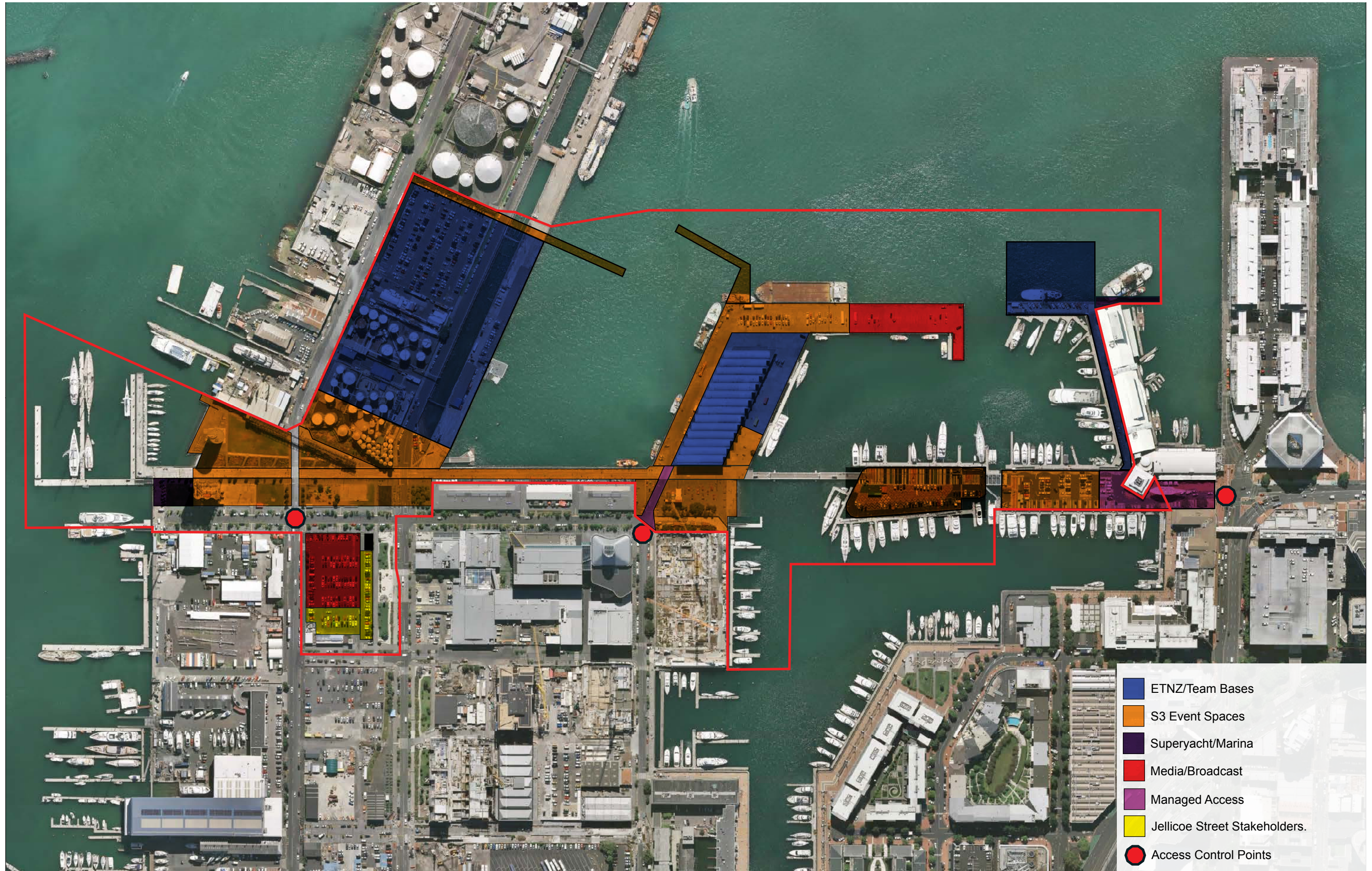
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SCHEDULE 6 - AC36 RACE VILLAGE: SCENARIO 3

Note: Base infrastructure subject to
WEA PAA.

PROJECT
WYNYARD QUARTER

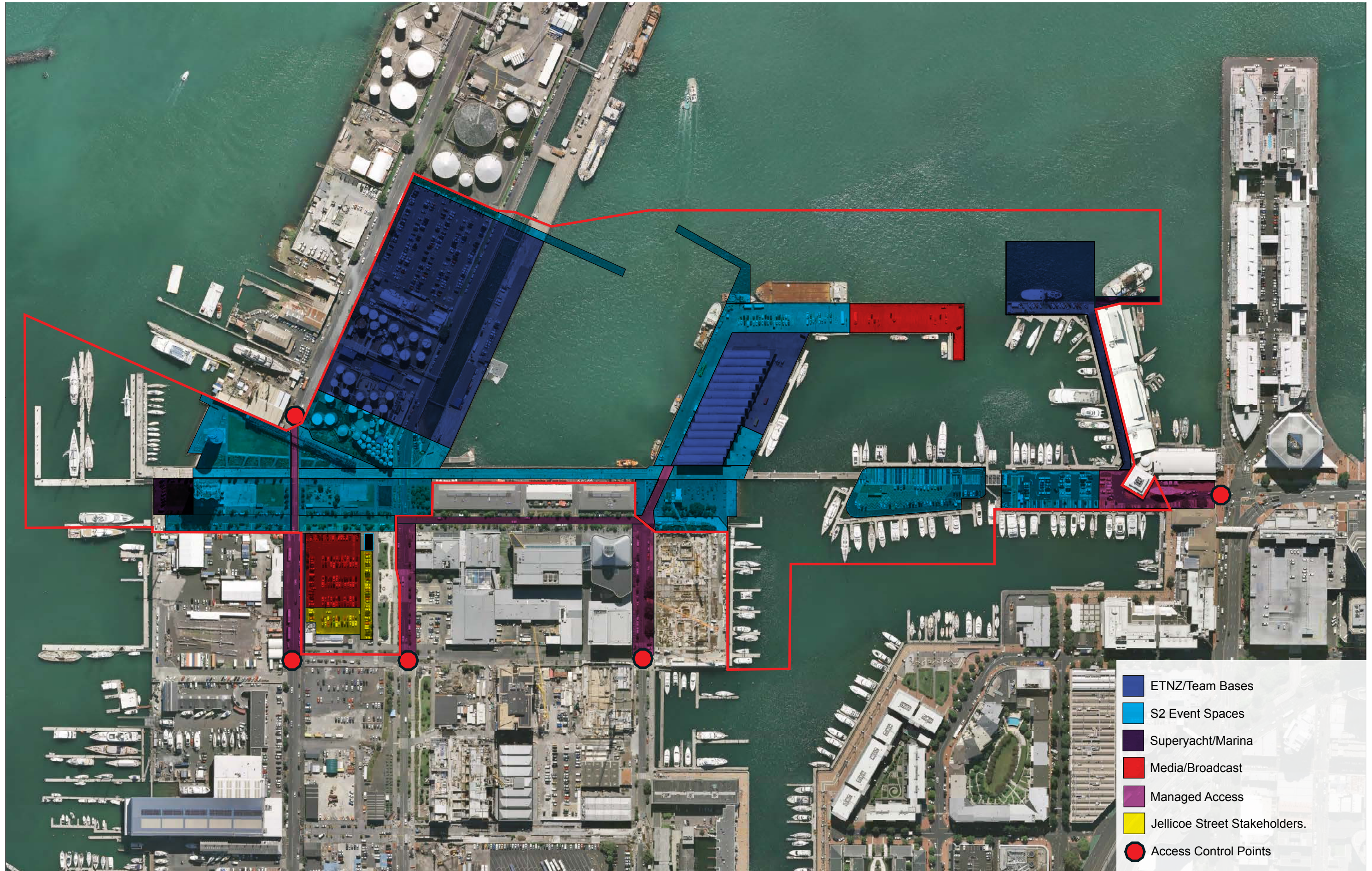
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SCHEDULE 6 - AC36 RACE VILLAGE: SCENARIO 2

Note: Base infrastructure subject to
WEA PAA.

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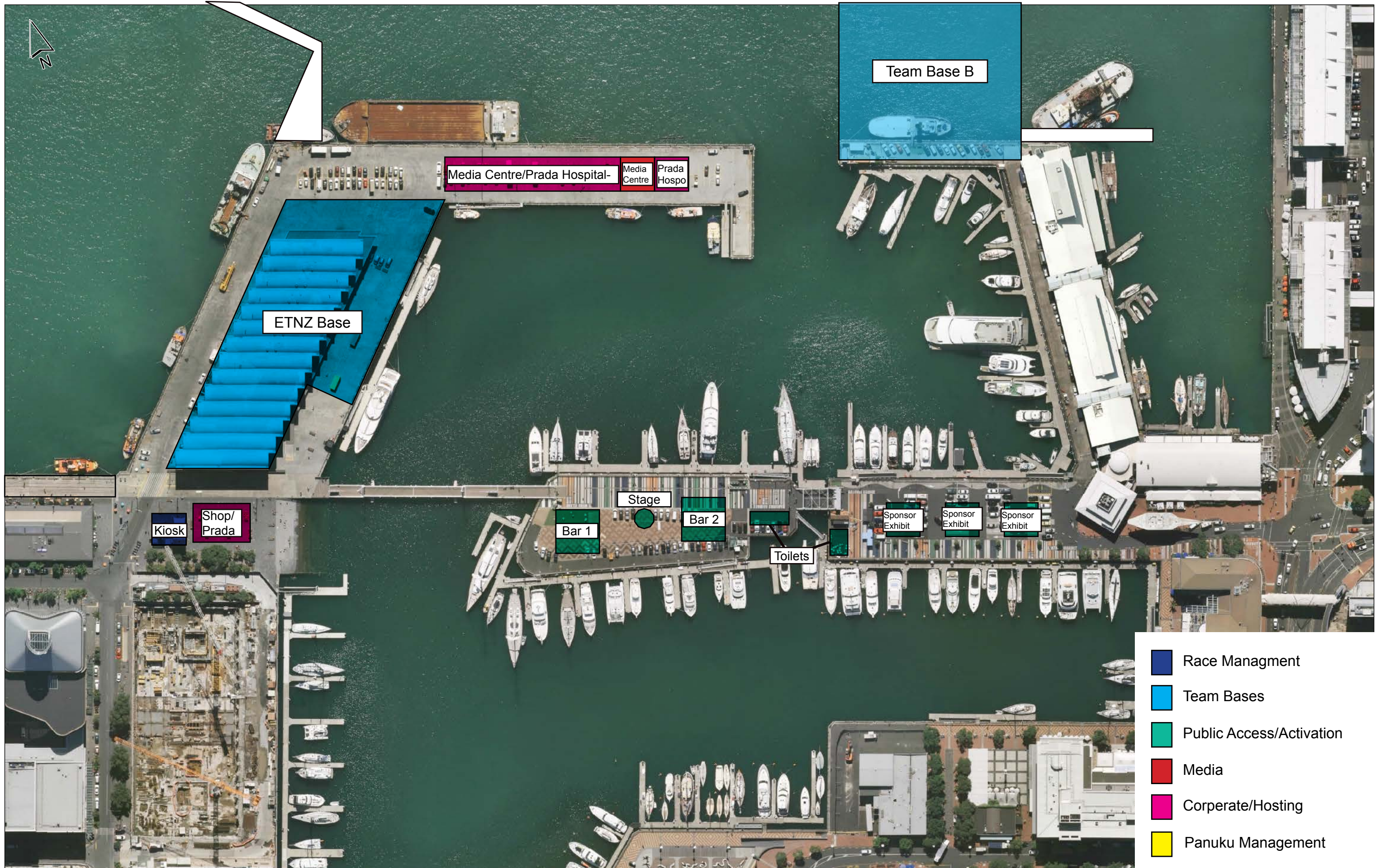
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- ETNZ/Team Bases
- S1 Event Spaces
- Superyacht/Marina
- Media/Broadcast
- Managed Access
- Jellicoe Street Stakeholders.
- Access Control Points



SCHEDULE 6 - AC36 RACE VILLAGE EXPECTED OVERLAY: VIADUCT BASIN

Note: Base infrastructure subject to WEA PAA.

PROJECT
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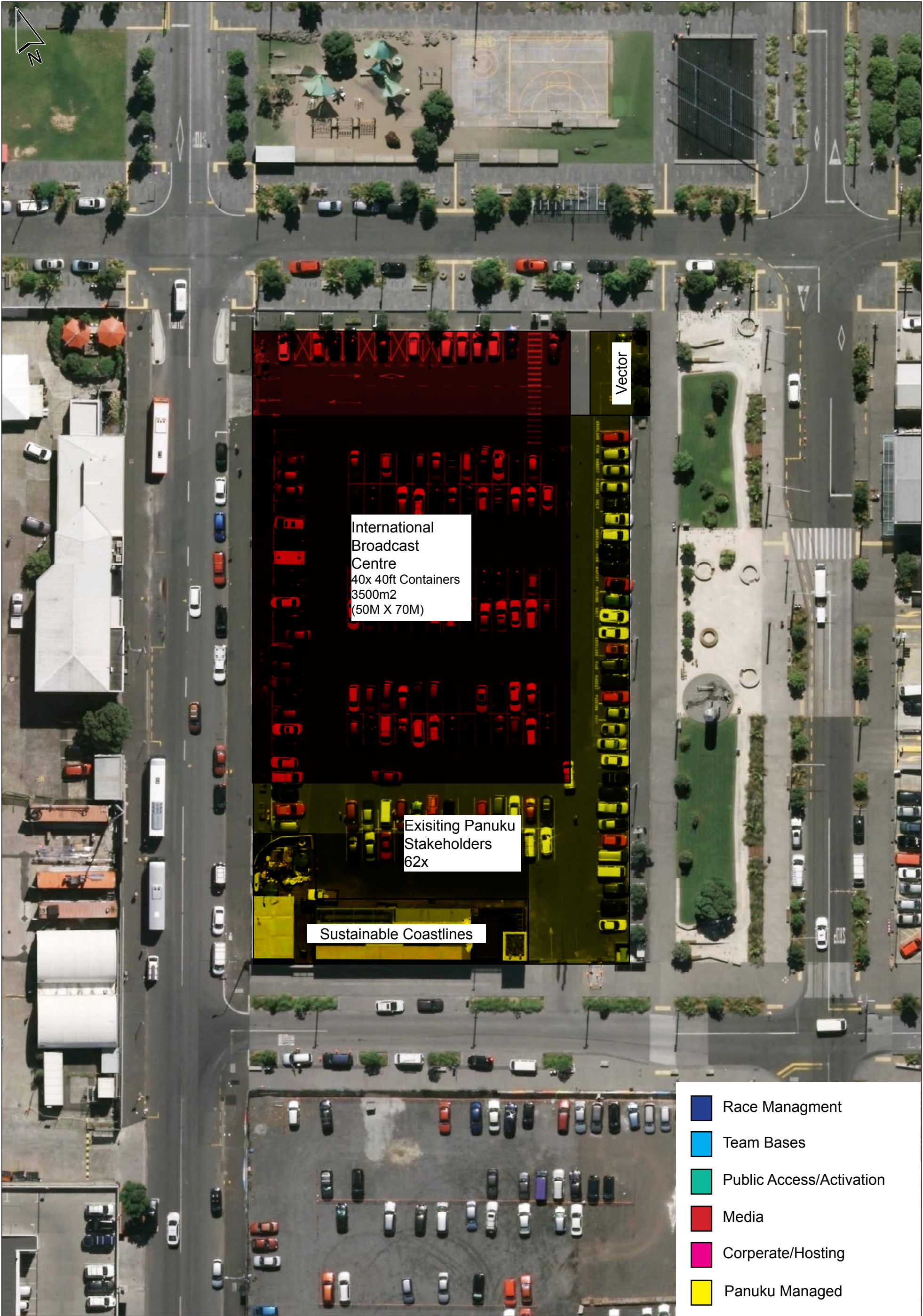
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Part B: Site Descriptions

Site Address	Record of Title Identifier	Legal Description	Anticipated use	HVA clause	Delivery Date	Parking Requirements/Relocations	Return Date
81 Jellicoe Street			Police, Coastguard, Race Management RIBs Event tour Pick up/drop off.	SC4 6.1	First day of the Event Period		Last day of the Event Period
77 - 81 Jellicoe Street	550132	SEC 7 SO 415995	Super Yacht Storage/Ops		1-Oct-21		31-Mar-21
65 - 75 Jellicoe Street	550134	SEC 9 SO 415995	Race Management.	9.1 SC4 5.4	First day of the Event Period		Last day of the Event Period
65 – 75 Jellicoe Street	550134	SEC 9 SO 415995	Food and Beverage		First day of the Event Period		Last day of the Event Period
4 – 12 Hamer Street	NA30C/1191	Lot 2 DP 74831	Hospitality		First day of the Event Period		Last day of the Event Period
4 – 12 Hamer Street	NA30C/1191 NA30C/1192 550133	Lot 2 DP 74831 Lot 3 DP 74831 SEC 8 SO 415995	Family entertainment, Stage		First day of the Event Period		Last day of the Event Period
37 – 55 Madden Street	NA767/226 NA767/243 NA767/233	Lot 2 DP 25871, Lot 3 DP 25871, Lot 4 BLK II DP 25871, Lot 1 DP 25871, Lot 7 BLK II Deeds Reg 226, Lot 8 BLK II Deeds Reg 226, Lot 9 BLK II Deeds Reg 226, Lot 10 BLK II Deeds Reg 226, Lot 11 BLK II Deeds Reg 226, Lot 1 BLK II Deeds Reg 226, Lot 2 BLK II	IBC use only Approx. 50m x 70m (the red box on HVA SC6) No event car parking	SC4 2.11(a)	First day of the Event Period	Existing agreements maintained: 20x Fish Markets 10x North Wharf Tennants 32x WQ Relocations	Last day of the Event Period
49 – 63 Jellicoe Street	536231 550135	SEC 4 SO 415995, Lot 2 DP 119658, SEC 5 SO 415995, SEC 10 SO 415995	Low activation/pedestrian access		First day of the Event Period		Last day of the Event Period
		Title not issued yet.	Low activation/pedestrian access		First day of the Event Period		Last day of the Event Period
1 - 47 Jellicoe Street	Pt Lot 34 DP 131567 , SEC 6 SO 427663, Pt Lot 35 DP 131567, SEC 4 SO 427663		Pedestrian access, No activations Sponsor/flags(?)	9.2 SC4 2.10	First day of the Event Period		Last day of the Event Period
141 Halsey Street	537036	SEC 1 SO 404153	Info area incorporating AC36 info but being able to operate as BAU.	9.2 SC4 2.10	First day of the Event Period		Last day of the Event Period
177 Halsey Street	537036	SEC 1 SO 404153	Prada and AC36 Merchandising		First day of the Event Period		Last day of the Event Period
177 Halsey Street			Media Centre, Prada Hospitality15m x 60m (WIP), Public viewing, Super yacht servicing.	10.4 SC4 2.11	First day of the Event Period	Parking relocation with fishing fleet: 40x Sanfords	Last day of the Event Period
220 Quay Street	158709	Lot 1 DP 338555, Lot 2 DP 338555	2x Food and Bev Stage, Entertainment zone Awards area.	SC4 2.11	First day of the Event Period	Berth holder relocation: 72 Berth holders	Last day of the Event Period
210 Quay Street	NA91C/82	Lot 4 DP 153316	3x Sponsors Exhibit Drop off/access	SC4 2.11	First day of the Event Period	VHHL/Maritime Museum/COR/Stakeholder Loading/unloading maintained	Last day of the Event Period
161 – 173 Quay Street			Challenger of Record Team Base	10.1	As per Master Base Supply Agreement.		Last day of the Event Period

Annexure 1: Event Concept

Annexure 2: Master Base Supply Agreement

Annexure 3: City Logo and Country Logo

Part A: City Logo

For the avoidance of doubt, ACE must obtain Council's prior written approval for each type of use in accordance with clause 3(a) of Schedule 4 (Public Sector Delivery Obligations).



Part B: Country Logo

For the avoidance of doubt, ACE must obtain MBIE's prior written approval for each type of use in accordance with clause 3(b) of Schedule 4 (Public Sector Delivery Obligations).



Annexure 4: Final Event Report

ACE will produce a Final Event Report as soon as possible following the final day of racing of the Events and, in any event, within six months of the last day of racing of the Events. The production of the Final Event Report, including the gathering of all information for the production of the Final Event Report, will be the responsibility of ACE unless otherwise agreed between the parties.

The items identified in the table below are to be included in the Final Event Report to be produced and delivered by ACE in accordance with clause 13.3 of the Base Agreement.

Through the Governance Structure, an 'Evaluation Workstream' will be established. This work stream will include representation from both ACE and the Hosts. Through the Evaluation Workstream, ACE and the Hosts will seek to agree further detail and measures for the items listed in the table below as well as identifying any additional areas for evaluation in relation to the Events. Through the Evaluation Workstream ACE and the Hosts will also identify roles and responsibilities of the Hosts and ACE in relation to any such additional areas for evaluation. The Evaluation Workstream will complete this work by 31 October 2019.

1.	About the Events, and a success report in relation to the Events	<p>A summary of the Events and the key successes of the Events which shall include:</p> <ul style="list-style-type: none"> (a) The outcomes of the Events against the Event Concept, including the vision, mission and objectives; (b) Performance against measures agreed by ACE and the Hosts through the Evaluation Workstream; (c) The governance structure and delivery model; (d) People and human resources, including volunteers; (e) Marketing, communications and stakeholder engagement; (f) Operational delivery outcomes/successes; (g) The number of, and key information relating to, Competitors; (h) The commercial components of the Events including sponsorship, suppliers; and (i) Spectator attendance across the Events in both the Race Village and on-water broken down to allow analysis by day and time band.
2.	Financial reporting	<ul style="list-style-type: none"> (a) A report on the estimated spend of Competitors in relation to the Events. (b) ACE's financial reporting as per the ESG reporting framework.
3.	Use and visibility of Hosts designation logotype	<ul style="list-style-type: none"> (a) Supporting visuals, including photography and screen grabs of the Hosts' Designation Logotypes in situ. (b) A summary of the use by ACE of the Hosts' Designation Logotypes across the Events.
4.	Economic outcomes	<ul style="list-style-type: none"> (a) An independent assessment of the economic impact of the Events will be commissioned by the Hosts and conducted using MBIE's cost-benefit methodology. ACE will contribute to developing the report in relation to such independent assessment by gathering and facilitating gathering of all data relevant for such assessment (the Quarterly Economic Data). Relevant data should be collected by ACE and reported on a quarterly basis from early 2019. The collected data will be used for interim modelling and reporting as well as feeding into the post-event evaluation. The Quarterly Economic

		<p>Data includes:</p> <ul style="list-style-type: none"> (i) B2B expenditure in Auckland and New Zealand in the lead up to and during the Events (for example, Competitor spend, Event sponsor spend, Event media spend and other yachting organisation's spend, accepting that some parties may refuse to share this information); (ii) superyacht activity and expenditure in Auckland and New Zealand; and (iii) information pertaining to ETNZ's spend and impact on the marine (and other) sector(s). <p>(b) Any additional data required to be collected by ACE in addition to that identified above in (a) will be agreed by ACE and the Hosts through the Evaluation Workstream.</p> <p>(c) The way in which data is collected by ACE will be developed by ACE and the Hosts through the Evaluation Workstream.</p>
5.	Domestic and international media exposure	A report listing all international and domestic media output generated by ACE in relation to the Events, including broadcast, print, digital, social.
6.	Cultural and social impact report	<p>A summary of any direct cultural and social impact of the Event generated or managed by ACE and ETNZ as applicable, including:</p> <ul style="list-style-type: none"> (a) how the Event has helped develop the expertise of Aucklanders/New Zealanders involved in delivering the Event; (b) opportunities for Aucklanders/New Zealanders to experience the Event, reflecting diversity and inclusivity; (c) how Auckland was showcased nationally and internationally through the events; (d) opportunities for communities in Auckland to engage with the event; (e) opportunities for communities and regions outside of Auckland to be showcased nationally and internationally; (f) opportunities to directly impact on relevant sectors such as sport and the marine sector (and others); and (g) opportunities to demonstrate and showcase sustainability.
7.	Leverage	The leverage outcomes achieved directly by ACE and/or ETNZ (if any) and/or a summary of how the event platform supported the Hosts and other stakeholders (e.g. iwi, marine sector etc.) to achieve their leverage outcomes.
8.	Legacy	The legacy outcomes achieved, or expected to be achieved directly by ACE and/or the Event (if any) and/or a summary of how the event platform supported the Hosts and other stakeholders (e.g. iwi, marine sector, sustainability, jobs etc.) to achieve their legacy outcomes.
9.	Assets	Quotes from Event participants and key stakeholders regarding the success of the Event, Auckland as a host city and New Zealand as a host country (that the Hosts can use in promoting Auckland and New Zealand).

Annexure 5: Yacht branding and ETNZ clothing

The parties acknowledge that the final designs of the yacht and clothing branding identified in this Annexure will be subject to Fernmark Licence approval.

Part A: Yacht branding

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



Annexure 6: PAA Schedules

Part B: ETNZ clothing branding

