**Dated** ***[INSERT DATE]***

**PARTICIPATION AGREEMENT**

**[*INSERT NAME OF YOUR ORG****]*

Administering Trust

**[*INSERT NAME****]*

Programme Participant

**[*Street address*]**

Site Location

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**THIS AGREEMENT** is dated ***[INSERT DATE]***

**PARTIES**

(1) **[*INSERT NAME OF YOUR ORG****]* ("**Administering Trust** ")

(2) **[*INSERT NAME*]** ("**Programme Participant**")

**RECITALS**

The Parties have agreed that the Administering Trust should grant the Programme Participant a sublicence to use the Licensed Area and any Common Area in accordance with the terms of this Participation Agreement. The Administering Trust currently has a licence to use the Licensed Area and any Common Area from the Owner, as set out in the Licence Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

# **DEFINITIONS**

## In this Participation Agreement, unless the context requires otherwise,

### "**Approval**" means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Participation Agreement.

### "**Authority**" means any government, semi governmental, statutory, administrative, or judicial body, department, commission, authority, tribunal, public or other person.

### "**Business Day**" means a day on which banks are open for general banking business in Christchurch, excluding Saturdays, Sundays and public holidays.

### "**Claim**" includes any claim, demand, remedy, injury, damage, loss, cost, charge, expense, liability, action, proceeding and right of action.

### "**Commencement Date**" means the date specified in Item 3 of the Schedule.

### "**Common Area**" means any area of land on which the Licensed Area is located, or buildings of which the Licensed Area forms a part, and which are provided for common use by the Owner, other occupants of the land or buildings or members of the public, including walkways, pavements, docks, driveways, access and egress roads, the entrances, corridors, passages, stairways, lifts, escalators, toilets, tearooms and washrooms.

### "**Holding Over Period**" means the period which commences on the expiry of the Initial Term and continues until expiry of the Notice Period.

### "**Initial Term**" means the period specified in clause 4.1.

### "**Law**" means any:

#### applicable law including legislation, ordinances, regulations, by-laws and other subordinate legislation; and

#### approval, including any condition or requirement under it.

### "**Licence Agreement**" means the head licence agreement between the Administering Trust and the Owner regarding the Licensed Area and any Common Area.

### "**Licensed Area**" means the area set out in the plan attached as Annexure A to this Participation Agreement.

### "**Notice Period**" means the period specified in Item 5 of the Schedule.

### "**Outgoings**" means any cost incurred for water, electricity, gas or any other utility used in relation to the Licensed Area.

### "**Owner**" means the owner of the Licensed Area.

### "**Participation Agreement**" means this agreement together with any schedule or annexure to those documents.

### "**Participation Fee**" means the amount specified in Item 6 of the Schedule.

### "**Party**" means either the Administering Trust or the Programme Participant as the context dictates, and **Parties** means the Administering Trust and the Programme Participant.

### "**People**" means any person under the control or supervision of a Party.

### "**Permitted Use**" means the use described in Item 7 of the Schedule.

### "**Term**" means the Initial term and any Holding Over Period.

### "**Termination Date**" means the date specified in Item 4 of the Schedule.

### "**Termination Notice**" means a written notice by one Party to the other Party to terminate this Participation Agreement at the expiry of the Notice period.

# **GRANT OF SUB-LICENCE**

## Subject to the terms of this Participation Agreement, the Administering Trust grants the Programme Participant a sub-licence to enter and use the Licensed Area for the Permitted Use (and any Common Area in connection with the Programme Participant's use of the Licensed Area) during the Term.

# **NO PROPRIETARY INTEREST**

## The Parties acknowledge that the Programme Participant:

### is not a tenant of the Administering Trust or the Owner; and

### has no proprietary interest in the Licensed Area or any Common Area.

# **TERM**

## The Initial Term:

### Commences on the Commencement Date and binds the Parties on and from that date; and

### Expires at 12:00pm on the Termination Date.

## Unless a Party has given a Termination Notice that the Term will end, the Programme Participant may continue to occupy the Licensed Area on the expiration of the Initial term for the Holding Over Period on the same conditions as those contained in this Participation Agreement.

# **FEE**

## The Programme Participant must pay the Administering Trust the Participation Fee during the Term.

## The Programme Participant must pay the Participation Fee directly into the Administering Trust's nominated bank account.

# **OUTGOINGS**

## The Programme Participant must pay to the Administering Trust all Outgoings specified in Item 8 of the Schedule or otherwise as is charged to the Administering Trust by the Owner in connection with the Programme Participant's use of the Licensed Area.

# **PERMITTED USE**

## The Programme Participant must not, without the Administering Trust's prior written consent, use any part of the Licensed Area or Common Areas for any use other than the Permitted Use.

# **TRADING HOURS**

## Subject to clause 8.2, the Programme Participant may use the Licensed area and any Common Area during the hours permitted under any relevant Approval.

## If the Licensed Area is located within a building with restricted access hours, the Programme Participant must obtain the Administering Trust's prior written consent to use the Licensed Area and any Common Area outside of those restricted hours.

# **NUISANCE**

## In engaging in the Permitted Use, the Programme Participant must not at any time during the Term:

### Do or permit others within the Programme Participant's control to do, on or in the Licensed Area or Common Areas, any act or thing which results in or may result in a nuisance, damage, obstruction or disturbance to the Administering Trust, the Owner or the owners or occupiers of any adjoining or neighbouring land or buildings; or

### Use the Licensed Area or Common Areas in any noisy, dangerous, noxious or offensive manner.

## If the Administering Trust determines, in its reasonable opinion, that any activity by the Programme Participant in or about the Licensed Area or any Common Area constitutes a nuisance, the Programme Participant will immediately cease engaging in such activity upon the Administering Trust's request.

# **ILLEGALITY**

## The Programme Participant must not at any time during the Term use, exercise or carry on (or permit or suffer to be used, exercised, or carried on) upon the Licensed Area or Common Areas, any activity, art, trade, business, occupation or calling, which is illegal or (in the Administering Trust's reasonable opinion) immoral, obscene or offensive.

# **CERTAIN PROHIBITIONS**

## The Programme Participant must not:

### Do anything which may affect the working or efficiency of any plant or equipment servicing the Licensed Area or Common Areas;

### Store or use flammable liquids or substances or other Hazardous Substances on the Licensed Area or Common Areas, without obtaining the Administering Trust's written consent (except as approved by the Administering Trust or the Owner in writing); or

### Obstruct or interfere with any entrance to the Licensed Area or Common Areas.

# **NOTICE OF DAMAGE AND INCIDENTS**

## The Programme Participant must notify the Administering Trust of any:

### Damage, accident to or defect in the Licensed Area or Common Areas that arise after the Commencement Date;

### Circumstance likely to cause any damage to the Licensed Area or Common Areas;

### Incident which causes injury to any person on or in the Licensed Area or Common Areas; and

### Circumstances likely to cause any damage or injury to the Licensed Area or Common Areas,

as soon as the Programme Participant becomes aware of them.

## The Programme Participant must fix any damage the Programme Participant causes to the Licensed Area or the Common Areas immediately after notifying the Administering Trust under clause 12.1.

## If the Programme Participant does not fix any damage under clause 12.2, the Administering Trust or the Owner may fix the damage and the Programme Participant must reimburse the Administering Trust or the Owner, as the case may be, on demand for the reasonable cost incurred including, without limit, the excess on the Administering Trust's or the Owner's insurance policy.

# **NO ALTERATION WITHOUT CONSENT**

## Unless otherwise permitted by this Participation Agreement, the Programme Participant must not erect any improvements or make any material additions or alterations to the Licensed Area or Common Areas without first obtaining:

### The Administering Trust's written consent which may be withheld or given on conditions in the Administering Trust's absolute discretion); and

### The consent of any Authority whose approval is necessary to enable the work to be lawfully carried out.

## All work carried out under clause 13.1 must be carried out by and at the Programme Participant's expense and to the Administering Trust's reasonable satisfaction.

## The Programme Participant must keep the Licensed Area clean and tidy.

# **RIGHTS OF ENTRY**

## The Programme Participant acknowledges and agrees that the Administering Trust or the Owner may enter the Licensed Area at any time during the Term with reasonable notice to the Programme Participant but at any time without notice in an emergency.

# **PROGRAMME PARTICIPANT'S REPRESENTATIONS AND WARRANTIES**

## The Programme Participant represents and warrants that the Programme Participant:

### Has the power to enter into and observe the Programme Participant's obligations under this Participation Agreement;

### Has in full force and effect all Approvals necessary to enter into this Participation Agreement;

### Has obligations under this Participation Agreement that are valid and binding, and are enforceable in accordance with the terms of this Participation Agreement; and

### Will not at any time during the Term do or permit to be done on or in the Licensed Area or Common Areas any act or thing which results in or may result in a nuisance, damage, obstruction or disturbance to the Administering Trust, the Owner or occupiers of adjoining or neighbouring lands or buildings.

# **ADMINISTERING TRUST'S REPRESENTATIONS AND WARRANTIES**

## The Administering Trust represents and warrants that:

### It has the power to enter into and observe its obligations under this Participation Agreement;

### It has the power to grant the sub-licence over the Licensed Area and any Common Area to the Programme Participant under this Participation Agreement; and

### The grant of the sub-licence does not infringe any third party right.

# **RELEASE AND INDEMNITY**

## The Programme Participant acknowledges and agrees that the Programme Participant and its People occupy and use the Licensed Area and Common Areas at their own risk. The Programme Participant releases, to the fullest extent permitted by Law, the Administering Trust from all Claims of any kind and from all liability which may arise from or in connection with any accident, damage or injury to any person or property occurring on or around the Licensed Area or Common Areas arising directly or indirectly from or in connection with:

### The use of the Licensed Area or Common Areas by the Programme Participant or its People; or

### A failure by the Programme Participant or its People to comply with the obligations set out in this Participation Agreement,

### unless caused by any wilful act, default or negligence of the Administering Trust.

## The Programme Participant indemnifies the Administering Trust from and against all Claims suffered or incurred by the Administering Trust arising directly or indirectly from or in connection with:

### Any matter associated with the Programme Participant's use of the Licensed Area or the Common Areas;

### Any breach of this Participation Agreement by the Programme Participant;

### Any accident, damage or injury to property on the Licensed Area or Common Areas to the extent caused by any act or omission of the Programme Participant or its People; and

### Any accident, damage or injury suffered by any person or the property of any person on or in the Licensed Area or Common Areas (to the extent that any accident, damage or injury is caused or contributed to by the Programme Participant or its People).

# **INSURANCE**

## The Administering Trust may require the Programme Participant to take out, with a reputable insurer, a policy of public risk insurance covering the Programme Participant's use of the Licensed Area, to any amount specified by the Administering Trust.

## The Programme Participant is responsible for procuring:

### A policy of insurance covering any contents the Programme Participant brings onto the Licensed Premises; and

### Any other insurance policy relevant to the Programme Participant's use of the Licensed Area or as otherwise required by Law.

## If the Administering Trust does not require the Programme Participant to take out insurance under clause 18.1, the Administering Trust will notify its insurer that the Programme Participant will be occupying the Licensed Premises to engage in the Permitted Use. The Programme Participant's coverage under the Administering Trust's general liability policy is subject to written approval by the Administering Trust's insurer.

## The Programme Participant must at all times during the Term:

### Abide by the terms of any insurance policies obtained by the Programme Participant or the Administering Trust in connection with this Participation Agreement ("**Policies**");

### Not engage in any conduct or on in the Licensed Area or Common Areas that is in breach of the terms and conditions of the Policies or might otherwise render the Policies void; and

### Not do anything that may make the Owner's insurance invalid or able to be cancelled, or that may increase the Owner's insurance premium.

# **TERMINATION**

## Either Party may terminate this Participation Agreement at any time during the Term by giving a Termination Notice to the other Party.

## This Participation Agreement will terminate immediately if the Licence Agreement is terminated for any reason.

## The Administering Trust may terminate this Participation Agreement immediately if:

### The Programme Participant becomes insolvent, bankrupt, enters into any form of administration, receivership or liquidation, whether voluntary or involuntary, formal or otherwise, or is unable to pay the Programme Participant's debts as and when they fall due; or

### In the Administering Trust's opinion the Programme Participant has breached any term or warranty set out in this Participation Agreement.

# **VACATING THE PREMISES**

## Upon termination of this Participation Agreement under clause 19, the Programme Participant must vacate the Licensed Area and Common Areas and leave the Licensed Area and Common Areas in no worse condition than it was at the Commencement Date.

# **PROMOTION AND PUBLICITY**

## The Programme Participant must consult with the Administering Trust and act in good faith with respect to any promotion and publicity the Programme Participant undertakes in connection with the Programme Participant's use of the Licensed Area under this Participation Agreement.

## The Programme Participant acknowledges and agrees that the Administering Trust may:

### Publicise the Programme Participant's use of the Licensed Area in any media (including the Administering Trust's website) in consultation with the Programme Participant;

### Upon reasonable notice, require the Programme Participant to make media appearances and the Programme Participant agrees to attend those appearances in accordance with the Administering Trust's reasonable instructions; and

### Use the Programme Participant's image, likeness, registered and unregistered trade marks or trade names, copyright works and subject matter, brands, logos and devices in any media (including the Administering Trust's website) to promote the Programme Participant's use of the Licensed Area.

21.3 The Programme Participant must comply with the Administering Trust's reasonable directions with respect to placement of any signs in the Licensed Area or Common Areas bearing the Administering Trust's logo.

# **WAIVER**

## A right or remedy created by this Participation Agreement cannot be waived except in writing signed by the Party entitled to that right.

## Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

# **DISPUTE RESOLUTION**

## **Dispute resolution process**:Subject to clause 23.6, no Party may commence any proceedings relating to any dispute between the Parties unless the Party has taken all reasonable steps to comply with this clause 23.

## **Dispute notice**: If there is a dispute between the Parties in relation to this Agreement, either Party may give the other Party notice of the nature and details of the dispute.

## **Negotiation**: Within 10 Business Days of receipt of the notice of dispute, the Parties shall meet to endeavour to resolve the dispute.

## **Mediation**: If the Parties are unable, within 20 Business Days of any notice of a dispute being given under clause 23.2 to resolve that dispute themselves then either Party may immediately refer the dispute to mediation. The mediation must be conducted by a mediator (and at a fee) agreed by the Parties. Failing agreement between the Parties, the mediator will be selected and his/her fee determined by the President for the time being of the New Zealand Law Society. The Parties shall bear the mediator’s fees equally.

## **Continued performance**: While any dispute remains unresolved each Party shall continue to perform this Agreement to the extent practicable, but without prejudice to their respective rights and remedies.

## **Urgent relief**: Nothing in this clause 23 will preclude a Party from seeking urgent interlocutory relief before a court.

# **GENERAL PROVISIONS**

## Nothing in this Participation Agreement:

### Constitutes a partnership between the Parties; or

### Except as expressly provided, makes a Party an agent of the other Party for any purpose.

## The content of this Participation Agreement constitutes the entire agreement between the parties and supersedes any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Participation Agreement, whether orally or in writing.

## A provision of this Participation Agreement can only be varied by a later written document executed by all Parties.

## A notice given to a party under this Participation Agreement must be addressed to the address set out in Item 1 or 2 of the Schedule or to the address last notified by that Party to the other Party. Notices must be in writing and signed by an authorised representative of the sender. Notice are taken to have been given or made (in the case of delivery in person, by email, fax or post) when delivered to the specified address (including when left by either Party at the specified address).

## Neither Party must assign, sub-licence, or otherwise deal with the Licensed Area or this Participation Agreement without the other Party's prior written consent, which may not be unreasonably withheld.

## The Laws applicable in New Zealand govern this Participation Agreement. The Parties submit to the exclusive jurisdiction of the courts of New Zealand and any courts competent to hear appeals from those courts.

# **SURVIVAL**

## Clauses 15, 16, 17, 20, 23, 24.6 and this clause 25 survive termination of this Participation Agreement.

**SIGNED AS AN AGREEMENT:**

**Signed by an authorised representative of the Administering Trust:**

Signature:

Name (PRINT):

Date:

**Signed by an authorised representative of the Programme Participant:**

Signature:

Name (PRINT):

Date:

**SCHEDULE**

**DETAILS OF PARTICIPATION AGREEMENT**

|  |  |  |
| --- | --- | --- |
|  | **ITEM** | **DETAILS** |
|  | Administering Trust | Name:  Contact:  Address:  Telephone:  Email: |
|  | Programme Participant | Name:  Contact:  Address:  Telephone:  Email: |
|  | Commencement Date | [*Insert date the Participation Agreement begins*] |
|  | Termination Date | [*Insert date the Initial Term ends*] |
|  | Termination Notice Period | [*insert amount of days*] |
|  | Participation Fee | [*$ insert amount*] per [*insert payment period, e.g. week, fortnight, month* |
|  | Permitted Use | *[insert the purpose for which the Licensed Area may be used]* |
|  | Outgoings | Power and water if applicable. |
|  | Further terms of sub-licence | All publicity material and print collateral will acknowledge LIVS’ role where possible and appropriate.  *[Add wifi unit if checked out, any stipulations from site license, etc]* |

**SCHEDULE A**

**PLAN OF LICENSED AREA**

[*insert detailed plan of Licensed Area*]