

## **5.11. RESOURCE AND PERFORMANCE AGREEMENT - REEF TO REEF / TRIPLE R**

<b>REPORT AUTHOR</b>	Paul Smyth, Events Officer
<b>MANAGER</b>	Lisa Golding, Acting Manager People and Community Services
<b>DEPARTMENT</b>	People and Community Services

### **RECOMMENDATION**

#### **That Council:**

- 1. Sponsors the Reef to Reef and Triple R Event with a Resource and Performance Agreement over three (3) years for:**
    - a. \$20,000 (GST Exc) and \$10,000 in-kind support per year, or**
    - b. \$15,000 (GST Exc) and \$10,000 in-kind support per year.**
  - 2. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters associated with the Agreement.**
- 

### **EXECUTIVE SUMMARY**

The Reef to Reef and Triple-R organisers, Iron Man Oceania, wrote to the Douglas Shire Council on 24 June 2021 requesting sponsorship over three years from 2021 until 2024 to provide financial support for the Reef to Reef / Triple R staged mountain bike event.

After COVID-19 cancellations, the next Reef to Reef / Triple R will take place over four days in the heart of Tropical North Queensland from Thursday 18 to Sunday 21 August 2022.

Each day's stage has its own unique terrain and character to keep things interesting, with a mix of fast flowing single trail, farm track, groomed downhill trails and fire trails – many through private land that can only be ridden while racing the Reef to Reef.

The Reef to Reef and Triple-R attracts over 1,000 participants and 2,000 visitors for the event that finishes in Port Douglas. The event utilises the Bump Track in the Douglas Shire, a section of the Wangetti Trail, and has the potential to promote the trail as a tourism experience for mountain bikers to enjoy year-round.

Based on previous years, organisers forecast an economic benefit to the region of over \$1M.

### **BACKGROUND**

Council had an existing Resource and Performance Agreement supporting the event from 2019 until 2021, however that agreement was cancelled in 2020 due to the COVID-19 pandemic and would have seen the 2020 and 2021 events supported by Council to the \$20,000 amount currently requested.

The event utilises trails, parks, foreshores and rainforest in the Shire and actively promotes the region including sections of the Wangetti trail.

Douglas Shire Council provides assistance to commercial organisations through Events Funding, which is aligned with the themes of the Council's Corporate Plan.

This Sponsorship funding will see the organisation enter into a Resource and Performance Agreement that will outline funding, key milestones and timelines, key performance outcomes, acknowledgement and acquittal requirements.

## COMMENT

The event demonstrates social and economic benefits and addresses Council's Corporate objectives. Council has a program that focuses on activating mountain biking trails across the shire, including the Black Mountain, Twin Bridges and Bump Track legs of the Reef to Reef / Triple R event.

Council's Economic Development Strategy references a tourism priority as: *Douglas is well-positioned to attract new markets with fresh experiences, grow the health and well-being sector and capitalise on our appeal to the lucrative sports tourism and adventure markets.* This event aligns with that objective.

Reef to Reef and Triple-R event has been considered based on:

### Social impacts

- Encourages and promotes physical activity which encourages health and well-being.
- Opportunity for participation in competitive and non-competitive sport and recreation.
- Activation of parks and mountain bike tracks.
- Opportunity for community to take part in volunteering and spectating.

### Economic impacts

- Anticipated economic impact of over \$1M for the region.
- Anticipated 1,000 entrants and over 2,000 expected visitors.
- National marketing and media coverage for the event.
- Finish Line event occurs in Port Douglas with potential for increased overnight.

Council Officers have negotiated with the organisers to discuss the proposals in more detail and provide two options for consideration.

The sponsorship / partnership options provided vary in two areas.

**Option A:** \$20,000 (GST Exc) and \$10,000 in-kind support per year, will see the IRONMAN group Ocean offer the Douglas Shire Council the following benefits:

- Non-exclusive use of the designation of Event Partner of the Triple-R.
- Opportunity for The IRONMAN Group Oceania and Council to collaborate in developing tourism activations, including creating unique 'money-can't-buy' prizes to utilise through marketing in the lead up to the event, memorable familiarisations for media and key influencers surrounding the event, and iconic digital videos to distribute throughout and after the event.
- Logo will appear on the partners page of the website with web link.
- Logo will appear on the partners page of the Official Mobile App with web link.
- Logo will appear in the Ride Guide.
- Logo will appear on marketing material.

- Promotional messages included in commentary on onsite.
- Opportunity to place an advertisement or content piece in one e-newsletter.
- Opportunity to place one full page colour advertisement in the Ride Guide.
- Logo will appear on the Reef to Reef/Triple-R finish arch.
- Opportunity to display up to 20m of barrier mesh and 4 flags at Reef to Reef/Triple-R.
- 4 invitations to any VIP function.
- 4 entries in Triple-R event.
- Access to use event logos in Council marketing material.

**Option B:** \$15,000 (GST Exc) and \$10,000 in-kind support per year, will include most benefits from option A, but will see 2 (two) changes made being,

- A reduction in barrier mesh display from 20m to 10m.
- The removal of the logo from marketing material including t-shirts, stubby coolers, caps, racewear etc.

## PROPOSAL

That Council:

1. Sponsors the Reef to Reef and Triple R Event with a Resource and Performance Agreement over three (3) years for
  - a. \$20,000 (GST Exc) and \$10,000 in-kind support per year, or
  - b. \$15,000 (GST Exc) and \$10,000 in-kind support per year.
2. Delegates authority under section 257 of the *Local Government Act 2009* to the Chief Executive Officer to finalise any and all matters associated with the Agreement.

## FINANCIAL/RESOURCE IMPLICATIONS

Funding for the proposed sponsorship will come out of 2021/2022 Operational financial year and subsequent year's budgets. Council officers will be responsible for administering payment and acquittal.

## RISK MANAGEMENT IMPLICATIONS

The risks in relation to allocating public funds through Council's sponsorship are:

### Failure to acquit funds.

Risk Management procedures in relation to outstanding sponsorship acquittal/outcome reports will consist of the following:

- Resource and Performance agreements will outline funding, key milestones and timelines, key performance outcomes, acknowledgement and acquittal requirements.
- Requests for extension of project timelines and /or Outcome report deadlines are to be submitted in writing to appropriate Council Officer.
- Council grants extensions of project timelines and/or Outcome Report deadlines on a case by case basis when such requests are deemed to be justified.
- At times unforeseen circumstances impact on project timelines so Council officers will try to support recipients to achieve the original outcomes of the sponsored projects.

## SUSTAINABILITY IMPLICATIONS

- Economic:** The objectives of Council's funding streams include assisting organisations develop programs, projects or activities (including events) that provide economic benefits to the Shire through increased visitation and patronage of local accommodation and tourism providers.
- Environmental:** Events sponsored by Council will be encouraged to adopt practices which are environmentally responsible.
- Social:** The objectives of the Council funding streams include assisting organisations develop programs, projects or activities (including events) that encourage community vibrancy through involvement and participation.

## CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

### Corporate Plan 2019-2024 Initiatives:

#### Theme 1 - Celebrating Our Communities

Douglas Shire Council embraces the diversity of our communities and values the contribution that all people make to the Shire. We recognise that it is a core strength of the region. We acknowledge our past so that it may guide us in the future. We recognise the wrongs done to our Indigenous community and we actively seek to reconcile so that we may all benefit from and enjoy our Shire. We acknowledge early European settlers who forged an agricultural base for our economy and we welcome all new arrivals as part of our broader community.

**Goal 4 - We will promote arts and cultural programs and events that bring vibrancy to the community and compliment the tourist experience.**

## COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

- Funder** Council often partly funds services, events or community organisations through grants, donations, subsidies and in-kind support. Council will apply robust governance to ensure that such funding is fair and appropriate.

## CONSULTATION

- Internal:** Acting Manager People and Community Services, Sports and Recreation Officer.
- External:** Regional Director, Ironman Oceania.

## COMMUNITY ENGAGEMENT

Nil

## ATTACHMENTS

1. DSC IRONMAN Letter [5.11.1 - 3 pages]
2. Draft Agreement Reef to Reef - Triple R ( IM 17 Aug 2021) [5.11.2 - 21 pages]



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24 June 2021

Mayor Michael Kerr  
Douglas Shire Council  
PO Box 723  
Mossman QLD 4873

Dear Mayor Kerr,

The IRONMAN Group Oceania and Douglas Shire Council have had a long partnership through the Cairns Airport IRONMAN Asia-Pacific Championship Cairns and more recently with the Reef to Reef and Triple-R Mountain Bike races. Each of these events have built the reputation of being held on some of the most spectacular courses in the world.

In 2020 & 2021 the ongoing impact of the COVID-19 pandemic meant we weren't able to hit the trails of Tropical North Queensland, however, we're thrilled to be able to confirm that planning is in full swing to have Reef-to-Reef and Triple-R back on the event calendar in 2022.

The 2022 edition of the Reef to Reef and Triple-R will once again see participants ride down the 'Bump Track' and finish off travelling along the iconic Four Mile Beach – it simply doesn't get any better! To help celebrate the 30<sup>th</sup> edition of the Triple-R we are looking to work with local businesses in Port Douglas to create a Finish Line 'Clubhouse' that will be open for the community to come down and interact with riders and entertainment. This event comes at an exciting time for Mountain Biking and Tropical North Queensland with the completion of the Wangetti Trail due in 2022-23. This development will cement the region as a Mountain Biking destination for years to come. It is our hope that we can utilise a portion of the Wangetti Trail in future editions of the Reef to Reef and Triple-R and highlight just how fantastic a development it will be.

Reef to Reef and Triple-R are forecast to deliver:

- Around 1,000 participants annually.
- More than 2,000 visitors.
- Economic impact of over \$1.05 million.
- Community opportunities via the volunteer program, participating or spectating at the events.
- Significant local, state and national marketing and media coverage of the region.



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### Reef to Reef and Triple-R

The Triple-R will be held for the 30<sup>th</sup> time in 2022 and the combined Reef to Reef and Triple-R event will be held for the third time in 2022.

Some key features of the event will include:

- The event is modelled from the existing, successful “sister” multi-day stage race events, Port to Port (held in New South Wales in May) and Cape to Cape (held in Western Australia in October) with riders able to coordinate their own accommodation, catering and transport options to suit their preference.
- The event is a stage race for recreational, amateur and elite Mountain Bikers and endurance athletes, with a course that is achievable for a wide range of riders of varying abilities.
- It is held over four stages across four days and riders can choose whether they race hard or simply ride and enjoy the destination.
- Participants will have the option of being able to ride as individuals or teams of two (teams of two ride the whole race together as a pair, not more than two minutes apart, rather than in a relay format).
- The event schedule will also include the one-day Triple-R Mountain Bike Challenge.
- The course will transition through a variety of trails within rainforest, tablelands, farmlands and Mountain Bike parks providing participants with a broad range of riding surfaces, trail types and environments.
- The event format includes:
  - Day 1 Smithfield 18km
  - Day 2 Davies Creek 51km
  - Day 3 Mt Molloy 70km
  - Day 4 Mt Molloy - Port Douglas 51km (& 35km/51km Triple-R)

### Forecast Participant Numbers

<b>Region</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
<b>Local</b>	419	439	461
<b>Intrastate</b>	233	244	256
<b>Interstate</b>	214	224	236
<b>International</b>	65	68	72
<b>TOTAL</b>	<b>930</b>	<b>976</b>	<b>1025</b>



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IRONMAN would like to request that Douglas Shire Council continue your support for this event from 2022 through to 2024 at the following levels:

Year	CASH	VIK
2022	\$20,000 + GST	\$10,000
2023	\$20,000 + GST	\$10,000
2024	\$20,000 + GST	\$10,000

Within the partnership The IRONMAN Group Oceania will offer Douglas Shire Council the following benefits:

- Non-exclusive use of the designation of Event Partner of the Triple-R
- Opportunity for The IRONMAN Group Oceania and Council to collaborate in developing tourism activations, including creating unique money can't buy prizes to utilise through marketing in the lead up to the event, memorable familiarisations for media and key influencers surrounding the event, and iconic digital videos to distribute throughout and after the event.
- Logo will appear on the partners page of the website with web link.
- Logo will appear on the partners page of the Official Mobile App with web link.
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- Opportunity to display up to 20m of barrier mesh and 4 flags at Reef to Reef/Triple-R
- 4 invitations to any VIP function
- 4 entries in Triple-R event
- Access to use event logos in Council marketing material.

Thank you for your continued support, and we look forward to building on our successful partnership.

Yours sincerely,

Rob Stalling

Regional Director, Oceania





# **Event Strategy**

## **Resource & Performance Agreement**

**2022 - 2024**

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**Reef to Reef / Triple R**

**Douglas Shire Council (ABN 71 241 237 800)**

**("Council")**

**and**

**USM Events Pty Ltd (ABN 67 052 342 239)**

**("Recipient ")**

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## Parties

<b>Douglas Shire Council (ABN 71 241 237 800)</b> PO Box 723 MOSSMAN QLD 4873	<b>("Council")</b>
<b>USM Events Pty Ltd (ABN 67 052 342 239)</b> 24 Lionel Donovan Drive NOOSAVILLE QLD 4566	<b>("Recipient")</b>

## Background

- A. The Recipient intends to organise, promote and deliver the Event or Project described herein and has sought financial assistance from Council to do so.
- B. Council has agreed to provide Funding to the Recipient towards the Event or Project and the Recipient has agreed to accept the Funding on the terms and conditions set out in this Agreement.

## The Parties Agree:

### 1. SPECIFIC INFORMATION

ITEM NO.	DATA	DETAILS
Item 1	<b>Recipient:</b>	USM Events Pty Ltd (ABN 67 052 342 239)
	<b>Address for Notices:</b>	24 Lionel Donovan Drive NOOSAVILLE QLD  with a copy to: IRONMAN Attn: Chief Legal Officer 3407 West Dr. Martin Luther King Jr. Blvd, Suite 100 Tampa, Florida 33607 Email: Legal@ironman.com
	<b>Email:</b>	rob.stalling@ironman.com
	<b>Telephone:</b>	0414 971 191
Item 2	<b>Commencement Date:</b>	TBC
	<b>Expiry Date:</b>	15th September 2021

Item 3	<b>Funding:</b>	<p>For the 2022 Event or Project - \$TBC+ GST and \$10,000 In Kind Support;</p> <p>For the 2023 Event or Project - \$TBC + GST and \$10,000 In Kind Support; and</p> <p>For the 2024 Event or Project - \$TBC + GST and \$10,000 In Kind Support.</p> <p>In Kind Support means resources and other support provided by Council to ensure the smooth operation of the Event or Project.</p>
Item 3A	<b>Funding Schedule:</b>	<p>For each calendar year in which an Event or Project will occur:</p> <ul style="list-style-type: none"> <li>• the Funding that is a monetary payment will be provided in the following installments: <ul style="list-style-type: none"> <li>○ 15% [3 months prior to date of commencement of the Event or Project];</li> <li>○ 70% [1 month prior to date of commencement of the Event or Project]; and</li> <li>○ 15% [within 5 Business Days after the Council receives the report under clause 6.3]; and</li> </ul> </li> <li>• the Funding that is In Kind Support will be provided in the Council's discretion.</li> </ul>
Item 4	<b>Description of the Event or Project to be organised, promoted and delivered by the Recipient:</b>	<p>The Events or Projects are:</p> <ol style="list-style-type: none"> <li>1. the 2022 combined Reef to Reef and Triple-R events;</li> <li>2. the 2023 combined Reef to Reef and Triple-R events; and</li> <li>3. the 2024 combined Reef to Reef and Triple-R events.</li> </ol> <p>The Triple-R will be held for the 30<sup>th</sup> time in 2022 and the combined Reef to Reef and Triple-R event will be held for the Third time in 2022.</p> <p>Some key features of the Event include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Event is modelled from the existing, successful “sister” multi-day stage race events, Port to Port (held in NSW in May) and Cape to Cape (held in WA in October) with riders able to coordinate their own accommodation, catering and transport options to suit their preference;</li> <li><input type="checkbox"/> The Event is a stage race for recreational, amateur and elite mountain bikers and endurance athletes, with a course that is achievable for a wide range of riders of varying abilities;</li> <li><input type="checkbox"/> The Event is held over four stages across four days and riders can choose whether they race hard or simply ride and enjoy the destination;</li> <li><input type="checkbox"/> Participants will have the option of being able to ride as individuals or teams of two (teams</li> </ul>

		<p>of two ride the whole race together as a pair, not more than two minutes apart, rather than in a relay format);</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Event schedule will also include the one-day Triple-R Mountain Bike Challenge;</li> <li><input type="checkbox"/> The course will transition through a variety of trails within rainforest, tablelands, farmlands and Mountain Bike parks providing participants with a broad range of riding surfaces, trail types and environments.</li> <li><input type="checkbox"/> The Event format includes: <ul style="list-style-type: none"> <li>o Day 1 Smithfield 18km</li> <li>o Day 2 Davies Creek 51km</li> <li>o Day 3 Mt Molloy - Mt Molloy 70km</li> <li>o Day 4 Mt Molloy - Port Douglas 51km (&amp; 35km/51km Triple-R)</li> </ul> </li> <li><input type="checkbox"/> The Event finish line and celebrative event will occur in Port Douglas on Day 4.</li> </ul>
	<p><b>Description of how the Funding will be used:</b></p>	<ul style="list-style-type: none"> <li>• Event promotion</li> <li>• Event planning, registration and implementation</li> </ul>

## 2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless inconsistent with the context or subject matter:

**"Address for Service"** means the address of each party appearing in this Agreement or any other address nominated in writing by a party to the other party as its new address for notices or service;

**"Agreement"** means this Resource & Performance Agreement including its schedules, attachments and exhibits;

**"Approvals"** means any approvals required to be issued by any Authority in connection with the Event or Project and all changes to those Approvals which may need to be agreed to by that Authority;

**"Authority"** means any federal, state or local government, semi government, quasi-government, administrative, fiscal, judicial or quasi-judicial, department, commission, authority, tribunal, agency, entity, statutory authority or regulator;

**"Business Day"** means between 9am and 4pm on a day other than a Saturday, Sunday or public holiday on which the Council is open for business at the Council's address;

**"Commencement Date"** means the 'Commencement Date' in Item 2;

**"Corporations Act"** means *Corporations Act 2001* (Cth);

**"Council Logo"** means the current graphic representation/symbol of the Council (as updated by the Council by notice to the Recipient from time to time);

**"Event or Project"** means the 'Event or Project' in Item 4;

**"Event Photos"** means any photographs or footage of the Event or Project, which photographs or footage are owned by the Recipient or any Recipient official third-party photo or footage service provider, subject to any third-party intellectual property rights therein;

**"Expiry Date"** means the 'Expiry Date' in Item 2;

**"Force Majeure"** means an act, omission or circumstance over which the party could not reasonably have exercised control, including without limitation:

- a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, or insurrection of military or usurped power;
- b) an act of God, fire, storm, flood, cyclone, earthquake, explosion, epidemic, quarantine restriction, declared disaster weather event or other natural disaster; and
- c) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, and which affect an essential portion of the Agreement, but excluding any industrial dispute which is specific to the performance of this Agreement;

**"Funding"** means the payment and/or other consideration in Item 3;

**"Funding Schedule"** means the schedule in Item 3A;

**"GST"** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation;

**"Insolvency Event"** occurs if with respect to the Recipient:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- f) it is the subject of an event described in section 459C(2)(b) or 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- g) it is otherwise unable to pay its debts when they fall due; or
- h) something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction;

**"Intellectual Property Rights"** means all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the Commencement Date.

**"Item"** means the item number in Clause 1 Specific Information;

**"Key Performance Indicators"** or **"KPIs"** are the key performance indicators in Schedule Two;

**“Laws”** means acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and Queensland and where appropriate, includes the applicable common law;

**“Partnership Benefits”** means the ‘Partnership Benefits’ in Schedule One;

**“Information Privacy Act”** means *Information Privacy Act 2009* (Qld).

**“Personal Information”** has the meaning given:

- a) for the purpose of the Information Privacy Act – in that Act; or
- b) for the purposes of the Privacy Act – in that Act.

**“Privacy Act”** means *Privacy Act 1988* (Cth).

**“Recipient’s Application”** means the Recipient’s application as per Attachment One;

**“Safety Laws”** means a Law regulating or otherwise relating to safety including:

- a) *Work Health and Safety Act 2011* (Qld); and
- b) *Work Health and Safety Regulation 2011* (Qld);

**“Specific Information”** means the information table in Clause 1 of this Agreement;

**“Supply”, “Supplier” and “Tax Invoice”** have the same meaning as given to these terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

**“Term”** has the meaning in clause 3.1.

### 3. AGREEMENT

- 3.1 The Agreement commences on the Commencement Date and remains in full force and effect until the Expiry Date, unless terminated earlier under this Agreement (“Term”).
- 3.2 The Agreement may not be varied other than by written agreement between and signed by the parties expressly stating that the terms of this Agreement are varied.
- 3.3 Any waiver or relaxation by Council partly or wholly of any provision of this Agreement is valid only if in writing and signed by Council. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to that particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other provision.
- 3.4 Reference to \$ or money in this Agreement is to Australian dollars.

### 4. FUNDING

- 4.1 Council will provide the Funding to the Recipient, and in consideration, the Recipient will comply with the conditions imposed by Council under this Agreement.
- 4.2 The Recipient must only use the Funding towards the operation (including but not limited to the promotion, planning, registration, and implementation) of the Event or Project.
- 4.3 Council will provide the Funding to the Recipient in accordance with the Funding Schedule subject to the Recipient
  - (a) providing a valid Tax Invoice (unless GST is not applicable, upon which the Recipient will provide Council with an invoice) for the Funding; and
  - (b) demonstrating to Council’s satisfaction and providing evidence to Council of same, that the Funding is due and payable by Council.
- 4.4 Notwithstanding Clause 4.3:

Where the Recipient's expenditure for a particular Event or Project is less than the amount of Funding allocated for that Event or Project, or Council has provided Funding to the Recipient which the Recipient has not outlaid on the Event or Project,

- (a) Council will only provide the Recipient with the portion of Funding that is equal to the Recipient's expenditure for that Event or Project; OR
- (b) Council may require the Recipient deduct or set off the portion of Funding that is equal to the Recipient's expenditure for that Event or Project against a future Funding for an Event or Project; OR
- (c) if Council has already provided the full amount of Funding, then Council may require the Recipient to repay to Council unexpended Funding.

4.5 Where the Recipient's expenditure for a particular Event or Project Milestone is more than the amount of Funding allocated for that Event or Project Milestone, the Recipient must bear the difference between these amounts.

## 5. EVENT OR PROJECT; APPROVALS

5.1 The Recipient must:

- (a) complete the Event or Project during the Term;
- (b) conduct the Event or Project in accordance with the details set out in the Recipient's Application (although the Recipient may make minor changes to the Event or Project without Council's consent if such changes do not alter the level of community benefit that the Event or Project will deliver compared to that contained in the Recipient's Application);
- (c) obtain, maintain, hold and comply with all Approvals required for the Event or Project;
- (d) use its best endeavours to promote the Event or Project to potential participants within a reasonable time before the Event or Project is held;
- (e) conduct the Event or Project in accordance with good industry practice, professionalism and competence and in a manner that protects people and property, prevents injury to or death of persons, and prevents damage to property;
- (f) conduct the Event or Project in compliance with all Laws including the Safety Laws and in accordance with the requirements of all applicable Authority;
- (g) conduct the Event or Project in a manner that discharges its obligations for the health and safety and security of all persons and members of the public under its duty of care at common law and all applicable Approvals and Laws; and
- (h) comply with any reasonable requests or directions by Council in respect of the Event or Project.

5.2 The Recipient must provide, or must procure the provision of, the Partnership Benefits to the Council during the Term.

5.3 The Recipient warrants to Council that the contents of the Recipient's Application (subject to any change under clause 5.1(b)), reports and all other information provided by it to Council are true and correct, and the Recipient must notify Council within 24 hours of any changes to the details of these.

5.4 Each party warrants to the other party that:



- (a) Such party has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms;
- (b) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof;
- (c) Neither the execution, delivery nor performance of this Agreement by such party breaches or violates, or will breach or violate any other agreement or obligation to which such party is a party or to which it is bound; and
- (d) Such party is duly organised and validly existing under the laws of its jurisdiction of incorporation or formation, with full power and authority to conduct its business as it is now being conducted and to own or to use the properties and assets that it purports to own or use.

## 6. REPORTING

- 6.1 Prior to the Commencement Date, the Recipient must conduct, on terms satisfactory to Council, a thorough assessment of risks of any nature in respect of the Event or Project which could impose liability on the Recipient, and provide a report detailing these risks to Council.
- 6.2 The Recipient must maintain and retain, for seven (7) years following the Event or Project, accurate records of the information described in clause 6.3(a) and (c).
- 6.3 Within twelve (12) weeks of the completion of the Event or Project, the Recipient must provide, on terms satisfactory to Council, a final report to Council containing the following in respect of the Event or Project:
  - (a) the income, expenditure and any other details necessary to ascertain the financial performance of the Event or Project;
  - (b) statistical data in respect of the participants and spectators at the Event or Project (including the number of and locality of these persons) and other pertinent details regarding the Event or Project;
  - (c) a financial statement (including evidence of expenditure reports);
  - (d) a report quantifying the performance of the Event or Project (both financial and otherwise) against the projections and Key Performance Indicators;
  - (e) economic impact summary to the region;
  - (f) digital copies of promotional material undertaken in the lead up to the Event or Project including 4 high resolution images (of Council's choice) to be used by Council with Triple R / Reef to Reef / Douglas Shire Council logos embedded; and
  - (g) any other pertinent information in respect of the performance of the Event or Project (including but not limited to copies of media coverage, date list of television and radio interview and publications regarding the Event or Project).
- 6.4 Council may at any time during the Term reasonably request that the Recipient provide to it other details in respect of the Event or Project and the Recipient must promptly comply with any such request to the extent the Recipient is reasonably able to do so.
- 6.5 To the extent Council has prior written approval from the Recipient, Council may use the Recipient's reporting information and any other details in respect of the Event or Project for any promotional and other purposes as Council considers appropriate.

## 7. PUBLICITY AND PROMOTION

- 7.1 **(Promotional material – by Recipient)** In all marketing, advertising, signage, promotional brochures, displays, press releases, media material, notice of any awards and any other promotional information in respect of the Event or Project (“promotional material”), the Recipient must use the statement “*The Triple R is sponsored by Douglas Shire Council*” or subject to clause 7.2, Council’s Logo is to be conspicuously displayed.
- 7.2 The Recipient must gain approval from the Council for use of Council’s Logo on promotional material prior to use.
- 7.3 The Recipient will promptly provide Council with copies of all promotional material.
- 7.4 **(Promotional material – by Council)** All promotional material provided by or on behalf of, or to be used for, Council in connection with this Agreement are subject to Recipient’s prior written approval, which will not be unreasonably withheld. Council shall send all such approval requests to the “Approvals” email address in Exhibit A and any approval will be subject to the terms of Exhibit A including for deemed approvals. Any such item rejected by Recipient shall not be used.
- 7.5 All artwork and copy for signs are subject to the written approval of Recipient *prior* to commencement of sign writing.
- 7.6 **(Promotional material – generally)** All promotional material generated or used by either party in connection with this Agreement or any Event or Project must not include references likely to offend the general public or to reflect unfavourably on the good name, goodwill, reputation and image of either party, or, their respective affiliates, any Event or Project, or any of such entity’s brand, race, or event, or be contrary to any applicable Law.
- 7.7 **(Event Marks)** During the Term, Council will have a limited, non-exclusive license to use the logos, names or marks pertaining to the Event (collectively, the “**Event Marks**”), provided that:
- (a) such use is solely for purposes of advertising Council’s sponsorship of the Events; and
  - (b) such use complies fully with the terms of this Agreement, including without any limitation, Exhibit A.
- 7.8 **(Event Photos, Photo Licence)** During the Term and for 2 years after end of the Term, Recipient grants Council, and Council accepts, a license to use any Event Photos as may be provided by Recipient (in Recipient’s discretion) to Council for editorial purposes or as may be sourced (at Council’s cost and subject to Recipient’s approval) from Recipient’s official third-party photo service provider for editorial or other Recipient approved purposes, in each case, provided that:
- (a) such use is solely for purposes of advertising Council’s sponsorship of the Events;
  - (b) such use is subject to Recipient’s prior written approval, which will not be unreasonably withheld. Council shall send all such approval requests to the “Approvals” email address in Exhibit A and any approval will be subject to the terms of Exhibit A including for deemed disapprovals; and
  - (c) such use is subject to Recipient’s third-party photo service provider’s terms and conditions (if such Event Photos were sourced from them) (“**Photo Licence**”).
- 7.9 Council shall not transfer, assign or sub licence the Photo Licence. The Photo Licence expires 2 years after the end of the Term.
- 7.10 To avoid doubt, any Event Photos purchased by Council are not subject to the Photo Licence.

## 8. INSURANCE AND LIABILITIES

- 8.1 The Recipient must, prior to the Commencement Date, take out and maintain insurance for the Term for public liability to the value of \$20,000,000.00 per incidence, with a reputable insurer approved by Council, in respect of the Recipient's activities and potential liabilities to Council and third parties under this Agreement and the Recipient must cause Council's interests to be noted on its relevant insurance policies. The Recipient must provide Council with evidence of these insurances prior to the Commencement Date.
- 8.2 Council will not in any way be liable to the Recipient for loss, claim or damage the Recipient suffers in connection with this Agreement to the extent any such loss, claim or damage is not caused by the intentional, reckless, or negligent conduct of Council.
- 8.3 The Recipient releases, discharges and indemnifies Council and its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title against all losses, claims and damages brought against, made upon or incurred by Council in connection with:
- (a) any breach of this Agreement by Recipient including any failure to comply with Laws by the Recipient or its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title;
  - (b) any negligent act or omission or wilful misconduct of the Recipient or its officers, employees, agents, independent contractors, volunteers, invitees, assigns and successors in title; and
  - (c) any breach of any warranty,
- except to the extent that a loss, claim, or damage is due to any intentional, reckless, or negligent conduct of Council.

## 9. DEFAULT AND TERMINATION

- 9.1 The obligations set out in Clauses 4 (Funding), 5 (Event or Project), 6 (Reporting), 8 (Insurance and Liabilities) and 10 (Assignment) are essential terms of this Agreement. The failure to label a clause as being essential does not in itself preclude that clause from being an essential term.
- 9.2 Where a party ("defaulting party") fails to:
- (a) comply with an essential term of this Agreement; or
  - (b) comply with any other term of this Agreement and fails to remedy that non-compliance within 4 Business Days after receiving notice from the other party (the "non-defaulting party") to do so,
- then the non-defaulting party may immediately terminate this Agreement by giving written notice to the defaulting party.
- 9.3 Where:
- (a) Council considers, acting reasonably, that this Agreement is no longer desirable having regard to adverse publicity relating to or associated with the Recipient;
  - (b) Subject to clause 10, without the prior consent of Council, which consent will not be unreasonably delayed or withheld, the beneficial ownership of the Recipient changes; or
  - (c) the Recipient is or becomes subject to any Insolvency Event during the Term,

then Council may immediately terminate this Agreement by giving written notice to the Recipient.

9.4 Notwithstanding anything to the contrary herein, the Recipient may immediately terminate this Agreement at any time if the Recipient gives written notice to Council that the Recipient has determined, in its reasonable judgment and despite its best endeavours, the following has occurred:

- (a) revocation or cancellation of, or failure to timely obtain, any Approvals necessary to operate such Event or Project;
- (b) an insufficient number of paid entries or sponsorships received for the Event or Project such that the Event or Project is unlikely to be profitable to the Recipient;
- (c) an occurrence of a condition with respect to the venue that could jeopardize the practicability of conducting such Event or Project as planned, or that could create a safety risk for any Event participants or other Event or Project visitors;
- (d) a determination by the Recipient, acting reasonably that such Event or Project needs to be relocated from the venue; or
- (e) Council (i) changing the venue, (ii) requiring the Recipient to change the date of an Event or Project after the date of such Event or Project has been agreed upon by the parties and/or publicly announced, or (iii) refusing to consent to a reasonable request by the Recipient to change the date of an Event or Project.

9.5 Upon termination of this Agreement, Council will not be required to provide any further Funding to the Recipient and Recipient may retain any Funding received by it from Council for the Event or Project up to the date of termination under this Clause 9.

9.6 The parties' rights under this clause are in addition to that at Law.

## **10. ASSIGNMENT**

10.1 Subject to clause 10.2, this Agreement may not be assigned by either party without the other party's prior written consent, which consent may not be unreasonably withheld but may be granted with any conditions that that party may reasonably impose.

10.2 Any change of ownership as a result of a public offering will not be treated as assigning this Agreement.

## **11. FORCE MAJEURE**

11.1 If either party is rendered unable, wholly or in part, by an event of Force Majeure to carry out or observe any of its obligations under this Agreement, that party shall give to the other party prompt written notice providing full details of the event of Force Majeure.

11.2 Subject to Clause 11.1, the obligations of affected parties under this Agreement, to the extent affected by Force Majeure, will be suspended and no claim by either of the parties against the other party will avail by reason of such Force Majeure provided that the affected party must, to the extent practicable, take all reasonable steps to remove the Force Majeure as soon as possible. Such reasonable steps will not require such party to settle any reasons for the Force Majeure on unfavourable terms.

11.3 On completion of the event of Force Majeure the party affected must, as soon as reasonably practicable, recommence the performance of its obligations under this Agreement.

11.4 This clause 11 applies to an obligation to pay money.

## **12. APPLICABLE LAW**

12.1 This Agreement is governed by, and is to be construed in accordance with, the law of the State of Queensland, Australia.

12.2 The parties agree that the courts of the State of Queensland will have exclusive jurisdiction to hear disputes arising out of or relating to either this Agreement or the formation of this Agreement.

### **13. NOTICES**

A notice will be deemed to be served on a party if it is addressed to that party at its Address for Service (and if the notice is to be served on the Recipient, marked to the attention of the Chief Legal Officer) and it is delivered by email. A notice given by email is deemed to have been delivered on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered. The parties consent, for the *Electronic Transactions (Queensland) Act 2001* (Qld), to the issue or giving of information or notices under this Agreement by email.

### **14. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties in relation to the subject matter of this Agreement.

### **15. FURTHER ASSURANCES**

Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Agreement.

### **16. LEGAL FEES**

16.1 Each party is responsible for its own legal fees in relation to the negotiation, preparation and execution of this Agreement.

16.2 Unless specified otherwise, the Recipient must comply with its obligations under this Agreement at its own cost.

### **17. DUTY**

Any taxes, duties, customs fees, foreign exchange or other transaction charges in connection with this Agreement are payable by the Recipient.

### **18. DISPUTE RESOLUTION**

18.1 If a dispute arises in connection with this Agreement, then a party may only deal with that dispute in the manner set out in this clause.

18.2 A party to a dispute which arises in connection with this Agreement may give to the other party or parties to the dispute a notice specifying the dispute and requiring its resolution under this clause.

18.3 Within fourteen (14) days after a notice is given under Clause 18.2 of this clause (or such longer period as is agreed in writing by the parties to the dispute), each party to the dispute must use its best efforts to resolve the dispute in good faith.

18.4 If the dispute is not resolved within the period under clause 18.3, any party may take legal proceedings to resolve the dispute.

18.5 The parties must continue to perform their obligations under this Agreement notwithstanding the existence of a dispute.

18.6 The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

## 19. RELATIONSHIP OF PARTIES

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

## 20. GOODS AND SERVICES TAX

20.1 The amounts payable by Council under this Agreement are exclusive of GST unless otherwise provided. If GST is to be assessed on the provision of goods, services or any other Supply under this Agreement, then the Supplier must provide the Recipient with a Tax Invoice.

## 21. DISCLOSURE OF INFORMATION

21.1 Subject to clause 21.2, other than as provided in this Agreement (or as required by law, court order or to its professional advisors), neither party may disclose the terms of this Agreement or any information disclosed by one party to another under this Agreement, to any third party without the other party's prior written consent.

21.2 Council may:

- (a) disclose information regarding this Agreement to a Minister, their advisors or Parliament, or as required under the *Right to Information Act 2009* (Qld); and
- (b) may publish information about this Agreement on the Local Government's contract directory, where required or recommended by the Local Government Act, Regulation or procurement policy.

21.3 This clause survives the termination of this Agreement.

## 22. PRIVACY

22.1 If the Recipient collects or has access to Personal Information in order to perform this Agreement, when performing this Agreement, the Recipient must:

- (a) if Council is an 'agency' for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to Council, as if the Recipient were Council; or
- (b) otherwise – comply with the Australian Privacy Principles in the Privacy Act.

22.2 The Recipient must:

- (a) not transfer any Personal Information collected or accessed in connection with this Agreement, outside of Australia, except in accordance with applicable laws; and
- (b) take any commercial reasonable steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with this Agreement that are reasonably notified by Council.

**23. INTELLECTUAL PROPERTY RIGHTS**

- 23.1 **(Existing Intellectual Property Rights)** Each party retains all its Intellectual Property Rights which existed at the Commencement Date, or which are developed independently of this Agreement. Unless expressly stated otherwise, nothing in this Agreement is intended to give Intellectual Property Rights from one party to another.
- 23.2 **(New Intellectual Property Rights)** New Intellectual Property Rights created or developed in performing the Agreement will be owned by the party creating those rights.
- 23.3 **(Warranty)** Each party warrants to the other that, to the best of its knowledge, and subject to any express exclusions in this Agreement, the performance of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party.
- 23.4 **(Infringement)** If a party suspects or becomes aware that the performance of this Agreement infringes any third party's Intellectual Property Rights, then the party must immediately notify the other party of the actual or potential infringement.
- 23.5 **(Photographs)** The Recipient acknowledges that Council may produce its own photographs and footage of the Event or Project and that copyright in those photographs or video is legally and beneficially owned by Council. Such photographs and footage may only be used subject to the conditions set forth in Clause 7.8(a) and (b).

## **Schedule One Partnership Benefits**

### **1. Recognition**

Recipient will provide to Council:

- a. During the Term, the non-exclusive right for Council to designate itself an “Event Partner” of the Event or Project in reasonable forms of advertising and marketing. All such advertising and marketing by Council is subject to pre-approval by Recipient.
- b. Prominent recognition as “Event Partner” of the Event or Project.

### **2. Branding**

Recipient will provide to Council, in addition to its obligations under clause 7.1 and subject to clause 7.2:

- a. Inclusion of the Council Logo, with a link to Council's website, on the sponsorship page (or in the sponsorship section) of each Event or Project-specific website.
- b. Inclusion of the Council Logo, with a link to Council's website, on the sponsorship page (or in the sponsorship section) of the official Event or Project -specific mobile-application (if any) for each Event or Project.
- c. Inclusion of the Council Logo on the sponsorships page (or in the sponsorships section) of the digital ride guide for each Event or Project.
- d. Inclusion of the Council Logo in a prominent location on the finish arch at each Event or Project.
- e. Opportunity to display up to twenty metres (20 m) of barrier mesh and four (4) flags at each Event or Project to be collected and displayed by Event or Project organiser.

### **3. Onsite Activations**

Recipient will provide to Council:

- a. Verbal recognition by way of commentator announcements during each Event. The exact nature, frequency, and duration of such verbal mentions shall be determined by Recipient but the Council's name must be said no less than 4 times each day of the 4 days of the Event.
- b. The opportunity to conduct promotional activities and have promotional staff and assets in and around Port Douglas during each Event or Project, subject to any venue-specific space and safety restrictions and limitations, to hand out materials to spectators and athletes.

### **4. Direct Marketing**

Recipient will provide to Council:

- a. The opportunity for Recipient and Council to collaborate in developing tourism activations, including creating unique “money can't buy” prizes to utilise through marketing in the lead up to the Event or Project, memorable familiarisations for media and key influencers surrounding the Event or Project and iconic digital videos to distribute throughout and after the Event or Project.



- b. The opportunity to place an advertisement or content piece in one (1) e-newsletter annually to be distributed by Recipient to those individuals who have opted-in to receive such communications.
- c. The opportunity to collaborate on promotion / progress of Wangetti Trail and highlight any progress or promotion through social media or print advertising as agreed upon by the parties.
- d. (1) one (1) – two (2) minute promotional video developed and produced by the Recipient that includes promotion of Douglas Shire Council regions, such as Port Douglas, Mossman, Daintree and Cape Tribulation, and iconic attractions such as the World Heritage areas Great Barrier Reef, Wangetti Trail and the Daintree, for both parties to distribute. Recipient must give Council the opportunity to collaborate in the development of this video, provided that Recipient will make all final determinations regarding such video.
- e. Council-related content for a full-page colour advertisement in the digital ride guide for each Event or Project.
- f. The right to provide one (1) Council-related promotional material or gift for placement, by Recipient, in the competitor bags for each Event or Project. Any provided material or gift must comply with Recipient's "Zero Waste" initiative (provided the details of that initiative are provided to Council).

**5. Entries and Hospitality:**

- a. Four (4) invitations to the VIP functions held by Recipient (if any) at each Event or Project for use by Council's employees, representatives and invitees. Recipient reserves the right to deny the use by any specific individual(s) of any such invitations.
- b. Subject to availability and Recipient's prior written approval, four (4) complimentary race entries for each Triple-R event, for use by Council, its employees and representatives. Each entry is for only the specific race and the specific year, and cannot be used for, or deferred for, entry in any other race or the designated race in a later year. Use of the entries is subject to all of the Recipient's generally applicable requirements for race entries, including without limitation (i) the requirement that any recipient of any entry agrees to and signs the Recipient's liability release and waiver form that is required of all age-group athletes and (ii) Recipient's anti-doping rules and policies.

**Schedule Two**  
**Key Performance Indicators (KPIs).**

Table 1 – Projected Participant Numbers

Region	2022	2023	2024
Local	419	439	461
Interstate	233	244	256
Intrastate	214	224	236
International	65	68	72
TOTAL	930	976	1025

- a. Recipient will demonstrate an increased growth of the Event or Project throughout the Term. Table 1 indicates the projected participant growth during the Term.
- b. Evidence that the Recipient has been able to attract top athletes to the Event or Project.
- c. Recipient to demonstrate the engagement of local suppliers and personnel.
- d. Identify Event or Project media value.

## **EXHIBIT A Trademark Standards & Usage Guidelines**

### **Pre-Approval Requirement**

1. The Event Marks must be used consistently and not altered. Modifications, variations and incorrect use of the Event Marks dilute the mark and create consumer confusion, and therefore are not permitted.
2. Without exception, all proposed uses of the Event Marks must be submitted to the Recipient for review PRIOR TO USAGE. All approval requests for use of any logo on any printed materials, catalogs, brochures, website content, or anything that contains an Event Mark or Event Photo, must be submitted, along with a high resolution PDF image of the proposed use, to Rudi.Weber@ironman.com.
3. Please allow at least ten (10) Business Days for all approval requests to be answered. Any proposed use or item submitted that is not approved by the Recipient in writing within fifteen (15) Business Days shall be deemed disapproved.
4. The Recipient must act reasonably in considering any request and, in any case, in accordance with the terms of this Agreement.
5. Subject to paragraph 3 above, all proposed uses of the Event Marks shall be subject to the prior written approval of Recipient.
6. Nothing can be embedded in, added to, or superimposed on the Event Mark.
7. The Event Mark must always be used intact and as in the example provided (including the colors used).
8. When referring to the Event or Project, always use the full and proper name of the Event or Project.

### **Trademark Ownership & Required Notice**

Notice must be given to the public that the Recipient's parent company, World Triathlon Corporation claims ownership of such Event Marks. Therefore, the following legal notice must appear clearly and legibly, in no smaller than 6-point size typeface, on all of your printed materials, websites, and all other items on which any such Event Mark is used:

**Registered trademarks of World Triathlon Corporation.  
Used herein by permission.**

# Executed As An Agreement

SIGNED for and on behalf of DOUGLAS SHIRE )  
COUNCIL by its duly authorised representative, )

in the presence of: )

**Witness** )

\_\_\_\_\_  
(Please Print Full Name)

\_\_\_\_\_  
Michael Kerr

) Mayor

) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Mark Stoermer  
Chief Executive Officer

) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
Witness Signature

) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

**EXECUTED** on behalf of the Recipient by its )  
Authorised Officer )

in the presence of: )

**Witness** )

\_\_\_\_\_  
(Please Print Full Name)

\_\_\_\_\_  
Name:  
Title:

) Signature Dated: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Attachment One  
Recipient's Application**

(See attached.)