

# LICENCE TO OCCUPY RESERVE LAND

(For purpose of operating a business)

THIS IS A DOCUMENT TO RECORD THE TERMS OF A LICENCE TO OCCUPY RESERVE LAND ADMINISTERED BY NEW PLYMOUTH DISTRICT COUNCIL AS LICENSOR TO THE LICENSEE NAMED BELOW.

THIS IS A LEGAL DOCUMENT. PLEASE READ IT CAREFULLY. YOU MAY WISH TO SEEK INDEPENDENT LEGAL ADVICE.

The documents forming this Licence are:

**Schedule 1:** Licence Details and Special Terms

**Schedule 2:** NPDC General Terms and Conditions of Licence

**Schedule 3:** Plan(s)

**Any attachments or other documents** described in or inserted as a plan or other document are incorporated into this Licence.

## SCHEDULE 1: LICENCE DETAILS

<b>LICENSOR</b>	<b>NEW PLYMOUTH DISTRICT COUNCIL</b> , a body corporate constituted under the Local Government Act 2002 with registered address Civic Centre, 84 Lizardet Street, Private Bag 2025, New Plymouth 4340 (including its employees, agents and successors).	
<b>LICENSEE</b>	<p><b>*delete those not applicable*</b></p> <p><b>NAME OF COMPANY LIMITED</b>, a registered company with company number (add company number), having its registered office at add address from companies register.</p> <p>OR:</p> <p><b>NAME OF INCORPORATED SOCIETY</b>, an incorporated society registered under the Incorporated Societies Act 1908 or 2022 (as applicable) with registered number (add number) at its registered office at add address from register.</p> <p>OR:</p> <p><b>NAME OF CHARITABLE TRUST</b>, a charitable trust registered under the Charities Act 2005 with registered number add registered number, having its office at add address from register</p> <p>OR:</p> <p>Sole Trader: <b>INSERT FULL LEGAL NAME</b> (NZBN XXX if known)</p>	
<b>CONTACT DETAILS FOR NOTICES</b>	<b>LICENSOR</b> <b>Position:</b> Property Management Lead <b>Email:</b> leaseenquiries@npdc.govt.nz	<b>LICENSEE</b> <b>Name:</b> Insert <b>Position:</b> Insert <b>Email:</b> Insert <b>Phone:</b> Insert
<b>COMMENCEMENT AND EXPIRY DATES</b>	<b>Commencement Date:</b> Add date	<b>Expiry Date:</b> Add date
<b>TERM</b>	<b>X</b> Years from the Commencement Date	
<b>LAND</b>	<b>The Land</b> , which includes the <b>Licensed Area</b> , is situated at <b>Insert Location Name</b> *e.g. Huatoki Plaza)* and is legally described as Lot xx, Deposited Plan xx comprised in record of title add number (Taranaki Registry) having an area of xx hectares more or less.	



<b>LICENSED AREA</b>	That part of the Land having an area of approximately <b>add area xx</b> m <sup>2</sup> outlined in <b>red</b> (for identification purposes only) on the plan attached as Schedule 3.	
<b>LICENCE FEE AND PAYMENT FREQUENCY</b>	<p><b>*Delete as applicable*</b></p> <p>Fee: \$<b>insert</b> per annum plus GST</p> <p><b>OR</b></p> <p>% Gross Sales: <b>Add percent</b> (%) of the actual annual Gross Sales (plus GST) but no less than the Minimum Licence Fee set out in the Licensor's Fees and Charges.</p>	<p><b>Payment Frequency:</b> <b>Select Frequency</b></p>
<b>PERMITTED USE</b>	<p>The Licensee is entitled to use the Licensed Area for the purposes of operating a business on the following terms:</p> <p><b>Vehicle /Trading Stand</b> The following is permitted on the Licensed Area:</p> <p><b>**Delete as applicable**</b></p> <p>Food/Beverage Caravan (Towed) Food/Beverage Vehicle (Self-Driven) Container (Static) Stall</p> <p><b>Facilities</b> The Licensor is permitted to place the following facilities on the Licensed Area during the trading hours:</p> <p><b>Table:</b> <b>Insert Number</b>                      <b>Chairs:</b> <b>Insert Number</b></p> <p><b>Other:</b> <b>Describe (e.g. planters, flags, beanbags)</b></p> <p><b>Business</b> The following business activities and operations are permitted:</p> <p><b>Insert e.g. coffee and beverage sales, foot massage, food truck</b></p>	
<b>HOURS/DAYS OF USE</b>	<p><b>Trading Hours</b> <b>**Insert as required or state Not Applicable**</b></p> <p><b>Monday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Tuesday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Wednesday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Thursday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Friday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Saturday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p> <p><b>Sunday</b>      <b>HH:HH [am][pm] to HH:HH [am][pm]</b> <b>or</b> Not Applicable</p>	
<b>LICENSOR IMPROVEMENTS</b>	<p>The Licensor has made the following Improvements to the Licensed Area:</p> <p><b>**Delete as applicable or state N/A if none**</b></p> <p>Not Applicable Building Drains Water Supply Fencing Excavation/Earthworks Other - <b>Describe</b></p>	
<b>LICENSEE IMPROVEMENTS</b>	<p>The Licensee is permitted to make the following improvements to the Licensed Area:</p> <p><b>**Delete as applicable or state N/A if none**</b></p> <p>Not Permitted Building Drains Water Supply Fencing Excavation/Earthworks</p>	



	<b>Other - Describe</b>	
<b>OUTGOINGS</b>	The Licensee shall be liable for the following outgoings relating to the Licensed Area: <b>**Delete as applicable or state N/A if none**</b> <b>Not Applicable</b> <b>Local and regional authority rates</b> <b>Electricity Charges</b> <b>Water Rates (where metered supply)</b> <b>Applicable food and/or alcohol licensing fees</b> <b>Other - Describe</b>	
<b>INSURANCES</b>	<b>Insurance Type</b> Public Liability	<b>Minimum Limit Required</b> \$2,000,000
<b>SPECIAL TERMS</b>	Special Terms apply to this Licence: Yes <input type="checkbox"/> See Below OR Not Applicable <input type="checkbox"/> The following special terms are incorporated into this Licence:  Special Term 1: <b>**Refer to Legal for advice or assistance on use of special terms** Delete if not applicable.</b>	



## **SIGNATORIES**

### **LICENSOR**

**SIGNED** for and on behalf of **NEW PLYMOUTH DISTRICT COUNCIL** under delegated authority by **NAME, POSITION**

Dated:

\_\_\_\_\_  
Signature

### **LICENSEE**

**SIGNED** for and on behalf of **INSERT PARTY NAME** by its authorised signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Position

Dated:

## SCHEDULE 2: GENERAL TERMS AND CONDITIONS OF LICENCE

### DEFINITIONS

1. **Definitions:** The following definitions apply to this Licence

<b>Applicable Policy</b>	the <a href="#">General Policy for Council Administered Reserves 2006</a> as such policy may be updated, amended, supplemented or superseded from time to time.
<b>Authority</b>	any corporation, territorial authority, statutory or non-statutory authority or other body having statutory and regulatory authority or jurisdiction over the Licensed Area or any part of them.
<b>Facilities</b>	all the Licensee's removable facilities, furniture, signage and other property that is not attached to the Land but excludes motor-vehicles.
<b>Gross Sales</b>	the total of all amounts received by the Licensee from the operation of the Business (excluding GST).
<b>GST</b>	goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.
<b>HSWA</b>	the Health and Safety at Work Act 2015 and all regulations and approved codes of practice and standards made under that Act.
<b>Improvements</b>	any structure, property or equipment placed on the Licensed Area by either the Licensee or the Licensor (as applicable) that has the effect of improving its use or amenity.
<b>Invoice</b>	a document notifying a Party of an obligation to make a payment as defined by s2 of the Goods and Services Tax Act 1985.
<b>Laws</b>	means all Acts, regulations, by-laws, rules and requirements of District and Regional Plans (including the Coastal Reserves Management Plan), Reserve Management Plans and any New Plymouth District Council policies (including any policy regarding commercial use and events on Council administered land).
<b>Licence</b>	means this licence together with any Schedules and Plan(s).
<b>Notice</b>	a communication from one Party to the other that meets the requirements of the clause Notices.
<b>Outgoings</b>	the rates, charges, assessments and other outgoings payable during the Term as specified in Schedule 1.
<b>Party</b>	the Licensee or the Licensor, and together they are the Parties.
<b>PLA</b>	Property Law Act 2007.
<b>Reserves Act</b>	Reserves Act 1977.

### GRANT OF LICENCE

- Grant of Licence:** The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive licence to occupy the Licensed Area for the Term for the Permitted Use pursuant to s54(d) of the Reserves Act, and otherwise on the terms set out in this Licence.
- Benefit of Licence:** The Licensor considers that the operation of the Licensee's business will enable the public to obtain the benefit and enjoyment of the reserve or will be for the convenience of people using the reserve.
- Licence on Reserve:** The Land is either vested in or administered by the Licensor pursuant to the Reserves Act (as applicable).

### TERM

- No Automatic Renewal:** For the avoidance of doubt, on termination of this Licence, the Licensor is not obliged to grant the Licensee a further term or a further licence.
- Holding Over:** If the Licensee, with the consent of the Licensor remains in occupation of the Licensed Area after the end of the Term, the Licensee will do so under a monthly licence terminable by either party upon **1 month's** written Notice and will otherwise be on the terms contained in this Licence.



## LIMITATIONS ON USE

7. **Permitted Use:** The Licensee will use the Licensed Area for the Permitted Use for the purpose of operating a business as set out in Schedule 1. Any changes whatsoever to the nature of the Business during the term of this Licence shall be subject to the prior written consent of the Licensors.
8. **No Interest in Land Created:** The grant of this Licence confers a contractual right only and does not create any interest in the Licensed Area and/or the Land or otherwise confer on the Licensee any rights of exclusive possession of the Licensed Area and/or the Land.
9. **Public Access:** The public retains the right to use and access the Land, although the Licensee may exclude the public from the Facilities.

## LICENCE FEE

10. **Fee:** The Licensee must pay to the Licensors, the Licence Fee at the agreed payment frequency stated in Schedule 1, without deduction or set off.
11. **Changes to Fee:** The Licensors may increase the Licence Fee subject to the following:
  - 11.1. the Licence Fee may be increased no more frequently than annually; and
  - 11.2. any increase will be applied only after the first anniversary of the Commencement Date; and
  - 11.3. the Licensors shall give Licensee not less than 1 calendar month's written notice of the increased Licence Fee.

## PAYMENTS AND FINANCIAL RECORDS

12. **GST:** In addition to payment of GST, the Licensee will pay any additional GST the Licensors may be required to pay as a result of the Licensee's failure to pay GST when required.
13. **Disputes Regarding Payments:** If there is any dispute about any amount owing under this Licence, the Licensee will pay the undisputed amount by the due date for payment. Any disputes will be dealt with through the dispute resolution provisions in this Licence.
14. **Outgoings:** The Licensee must pay the Outgoings specified in Schedule 1, provided that if any Outgoings are not separately assessed or charged to the Land the Licensee must pay on demand what the Licensors reasonably determines to be a fair proportion of those charges or assessments.
15. **Financial Records:** The Licensee shall maintain all financial records relating to its Gross Sales for the term of this Licence. The Licensee shall provide to the

Licensors within three months of each anniversary of the Commencement Date a certificate from an accountant verifying the Gross Sales for the preceding year commencing on the anniversary of the Commencement Date. On receipt of the certificate, the final Licence Fee for the corresponding year will be calculated and any outstanding amount shall be paid by the 20<sup>th</sup> of the month after the certificate is issued.

16. **Inspection of Financial Records:** The Licensors may, at any time, inspect the Licensee's financial records as they relate to the operation of the business with **14 calendar days'** Notice.

## LICENSEE OBLIGATIONS

17. **Service Quality:** The Licensee will operate the Business on the Licensed Area in a courteous, responsible and fair manner that incorporates excellent customer service and will at no time behave in such a way as to cause embarrassment to the Licensors or bring the Licensors into disrepute.
18. **Parking:** The Licensee, including its members, employees, contractors and/or invitees, may only take, or park, vehicles on the Licensed Area if permitted and as may be specified in the Special Terms.
19. **Rubbish Bins:** The Licensee must provide rubbish bins for its patrons during trading hours.
20. **Music:** The Licensee must ensure all atmospheric music is kept to an appropriate level.
21. **Facilities:** The following apply regarding the Facilities:
  - 21.1. **Moveable:** the furniture or other items comprising the Facilities shall be moveable; and
  - 21.2. **Secured against wind:** the Facilities shall be secured against being moved by wind or other adverse weather conditions.
22. **At Close of Trading Hours:** The Licensee shall:
  - 22.1. **Maintain cleanliness:** keep the Licensed Area as tidy and clean during trading hours as is practicable given the nature of the business; and
  - 22.2. **Remove Rubbish:** remove rubbish and litter produced by the operation of the business at the end of each trading day; and
  - 22.3. **Facilities:** pack away or store the Facilities; and
  - 22.4. **Vehicles:** remove all vehicles (including those used for towing or hitching the business vehicle(s) from the Licensed Area shall move at walking pace (circa 5km per hour) at all times.
23. **Environmental:** The Licensee shall provide adequate safeguards to prevent the destruction of or damage



to any natural, scenic, historical, cultural, archaeological, geological, biological or other scientific features or indigenous flora and fauna on the Licensed Area.

24. **Good Order:** Keep all Improvements on the Licensed Area in good order, condition and repair.
25. **Safeguards against Fire:** The Licensee will ensure that full and proper precautions are taken to safeguard the Licensed Area against fire caused by the Licensee's activities on the Licensed Area.
26. **Injury to Persons:** The Licenser must immediately notify the Licenser of any circumstances likely to cause damage to the Land or injury to persons.
27. **Health and Safety:** The Licensee must ensure:
  - 27.1. the means of entering and exiting the Licensed Area are without risks to the health and safety of any person; and
  - 27.2. members of the public and users of the Licensed Area are not placed in danger or harm from any Facilities or Improvements located on the Licensed Area; and
  - 27.3. where reasonable, be responsible for the placement of adequate signage to inform of any known risks or hazards.
28. **Licensee as PCBU:** The Licensee acknowledges that as it is a PCBU (person in charge of a business or undertaking) as defined in the HSWA, the Licensee has the greatest ability to influence and control any risks arising out of the Licensee's activities that are, or will be, carried on and the use of the Licensed Area.
29. **Laws:** The Licensee must ensure that its members, invitees, employees and other persons under its control comply with all Laws which relate to the Licensed Area and/or the Permitted Use and with all conditions or requirements which may be given or required by any Authority.
30. **Consents:** The Licensee will, at its cost, be responsible for obtaining and keeping current during the Term any consents necessary for the establishment, maintenance and utilisation of the Licensed Area, any Improvements it is responsible for and the Permitted Use.
31. **Six-monthly Meeting:** In order to enable the Licenser to monitor the Licensee's compliance with its obligations under this Licence, the Licensee will, at the Licenser's reasonable request, meet with the Licenser's Authorised Representative six-monthly, or more frequently if necessary.

## LICENSEE PROHIBITIONS

32. **Land Use:** The Licensee shall not use the Land for any purpose other than the Permitted Use.
33. **Property:** Except for the permitted Facilities and listed Improvements, the Licensee shall not store any property on the Land without the written consent of the Licenser.
34. **Nuisance:** The Licensee shall not:
  - 34.1. behave in an offensive or aggressive manner or in such a way as to cause embarrassment to the Licenser; and
  - 34.2. permit upon the Licensed Area anything which may damage the Land, the Improvements or annoy any person or persons using the Land or any adjoining land.
35. **No interference with utilities:** The Licensee must not interfere with, relocate, move or obstruct any utilities or electrical connection points placed in, on or around the Licensed Area.
36. **No extension of Licensed Area:** The Licensee must not extend its occupation or activities beyond the Licensed Area.
37. **No soliciting or canvassing:** On no account may the Licensee permit any soliciting or canvassing of pedestrians or passers-by to effect sales.
38. **No megaphone or loud hailer:** The use of any megaphone or loud hailer is expressly forbidden.

## LICENSOR OBLIGATIONS AND RIGHTS

39. **Ground Maintenance:** The Licenser will maintain the Land, and the area around the Land, in a reasonable condition.
40. **Control and Management:** The control and management of the Land shall remain with the Licenser, and except as expressly recorded in this Licence, nothing shall in any way restrict the powers and discretion of the Licenser in relation to the Land.
41. **Health and Safety:** The Licenser will:
  - 41.1. Comply with applicable provisions of the HSWA and associated regulations and will inform the Licensee of all known hazards and risks associated with the Land that it reasonably knows about; and
  - 41.2. So far as is reasonably practicable consult, co-operate with, and co-ordinate activities with the Licensee where both parties have a duty under the HSWA and associated regulations. If requested by the Licenser, the Licensee will actively engage with the Licenser about matters affecting health and safety.



## IMPROVEMENTS

42. **New Improvements by Licensee:** Before making, constructing or erecting any new or additional Improvements the Licensee must obtain prior written consent from the Licensor to the proposed Improvements and provide the Licensor with written details: (including location) of all such Improvements no later than **1 month** prior to making, constructing or erecting any such Improvements on the Licensed Area.
43. **Earthworks:** Any earthworks, including hardening of the Land, reasonably required for the operation of the business will be performed by the Licensor (or its contractor) at the Licensee's cost, which cost will be agreed between the parties in writing before any work is carried out.
44. **Cost to Erect or Maintain Improvements:** To avoid any doubt, the Licensee must meet the cost of:
  - 44.1. making, constructing and erecting any new Improvements; and
  - 44.2. keeping all Improvements, including those made, constructed or erected by the Licensor, in good order, condition and repair, except where prior written agreement has been obtained from the Licensor.
45. **Licensee Improvements and Facilities on Termination:** On or before the Expiry Date or earlier termination of this Licence, the Licensee must:
  - 45.1. remove, at its cost, all the Licensee Improvements and Facilities (together the **Licensee's Property**) from the Licensed Area; and
  - 45.2. repair and make good any damage to the Licensor's Improvements or to any damage to the Licensed Area caused by the removal of the Licensee's Property; and
  - 45.3. leave the Licensed Area in a clean and tidy condition.
46. **Failure to Remove:** If the Licensee fails to comply with the clause above, the Licensor may:
  - 46.1. remove the Licensee Improvements and repair any damage to the Licensed Area and the Licensee must pay to the Licensor, on demand, all costs incurred by the Licensor in doing so; or
  - 46.2. elect to take ownership of the Licensee's Property, by Notice to the Licensee, in which case the Licensee's Property will become the Licensor's property, without any compensation whatsoever being payable to the Licensee, at

**5pm, 7 calendar days** after the date of service of the Notice on the Licensee.

## PUBLIC ACCESS

47. **Pedestrian Access:** The Licensee acknowledges and accepts that the public shall have pedestrian access to the Licensed Area at all reasonable times. Consideration should be made to minimise public inconvenience and to maximise public safety at all times.
48. **Council Assistance:** If problems arise in connection with Public Access that cannot be amicably resolved, the Licensee shall request the Licensor to assist.

## RISK, INDEMNITY AND LIABILITY

49. **Indemnity:** The Licensee shall, at all times, indemnify the Licensor from and against all actions, claims, suits, costs (including legal costs) and demands arising from the use of the Licensed Area or the Land by the Licensee, its members, employees, servants, Licensors and/or invitees, or from the Licensee's breach of, or failure to comply with, the Licensee's obligations under this Licence.
50. **Damage to the Licensed Area:** Without limiting the clause above, the Licensee will be liable to repair any damage caused to the Licensed Area or any of the Licensor's Improvements as a result of the Licensee's use of the Licensed Area within **7 calendar days** of receiving a Notice from the Licensor. If the Licensor fails to make good the damage or perform repairs, the Licensor may do so at the Licensee's expense.
51. **Licensor not Liable:** The Licensee shall use and occupy the Licensed Area entirely at the Licensee's risk in every respect. The Licensor shall have no liability to the Licensee or to any other person for damages or loss suffered by the Licensee's use and occupation of the Licensed Area, or by the Licensee and/or the public accessing the Licensed Area over the Land.
52. **No Indirect Loss:** Neither Party will be liable to the other for any indirect or consequential loss, or for any loss of revenue, profits, goodwill, business or anticipated business, or anticipated savings, whether or not that loss was, or ought to have been, contemplated by the Party in breach.

## INSURANCE

53. **Insurance:** The Licensee, at the Licensee's expense shall maintain an insurance policy for public liability at the amounts and on the terms set out in Schedule 1.



## TERMINATION AND SUSPENSION

54. **Termination by Licensor: Land Required for Other Use** If in the opinion of the Licensor, the Land or any part of it may be better used for any other purpose, the Licensor can terminate this Licence by providing the Licensee not less than **6 months'** notice of termination. The Licensee shall be entitled to apply for a refund of the unused portion of the Licence Fee on a pro-rated basis.
55. **Right to Re-enter:** The Licensor may, provided it has first observed the requirements of sections 243-264 of the PLA, re-enter the Land and terminate this Licence immediately:
- 55.1. **Arrears:** if the Licence Fee has been in arrears for more than **10 calendar days**; and/or
- 55.2. **Breach:** if the Licensee breaches any of the terms of this Licence and such breach is not remedied within **1 month** of being notified by the Licensor to remedy; and/or
- 55.3. **Insolvency:** if the Licensee becomes bankrupt or insolvent or has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed or becomes subject to any form of external administration or ceases for any reason to continue to operate; and/or
- 55.4. **Disrepute:** the Licensee does something or fails to do something that, in the Licensor's opinion (acting reasonably), results in damage to the Licensor's reputation.
56. **Termination by Licensee:** The Licensee shall be entitled to provide **1 months'** notice to the Licensor to surrender this Licence. There shall be no refund of the unused portion of the Licence Fee.
57. **Temporary Suspension:** The Licensor has the right to temporarily suspend the Licensee's rights under this Licence to undertake works on the Land with the following notice periods:
- 57.1. **Staging an Event:** 1 month; and
- 57.2. **Planned Works:** 10 calendar days; and
- 57.3. **Urgent Works:** 24 hours.
58. **Effect of Termination:** Upon termination of this Licence the Licensee's rights will cease immediately, but the Licensee will still remain liable for any money due under this Licence up to termination and for damages for any breach committed prior to termination.
59. **Survival:** Clauses 10 (Licence Fee), 45 (Licensee Improvements and Facilities on termination or expiry of this Licence) and 49 (Indemnity) shall remain in

force and survive the termination or expiry of this Licence.

## CONFIDENTIAL INFORMATION

60. **Confidential Information:** The Licensor and the Licensee undertake to treat as confidential and not misuse or disclose to any third person or entity any information belonging to the other Party that could reasonably be expected to be proprietary, commercially sensitive or confidential, or that is not yet publicly known, and which comes to their knowledge during the term of, or in connection with, this Licence.
61. **Disclosure of Confidential Information:** Without limiting the effect of the clause above, a Party may disclose confidential information only to those of its officers, employees or professional advisers, in each case as is reasonably required for the implementation of this Licence.
62. **Official Information:** The Licensee acknowledges that the Licensor has statutory obligations relating to the disclosure of information and public accountability, including under the Local Government Official Information and Meetings Act 1987, the Public Records Act 2005 and the Public Audit Act 2001.

## DISPUTES

63. **Dispute Resolution Process:** If any dispute or difference arises between the Parties in relation to this Licence, the Parties shall work together in good faith to try and resolve the dispute within 21 calendar days of notice of the dispute. If the Parties fail to resolve the dispute, either Party may give written Notice to the other specifying its intention to refer such dispute or difference to mediation. If a request to mediate is made, then the Party making the request will invite the chairperson for the time being of the Resolution Institute to appoint a mediator to enable the Parties to mediate and settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings.
64. **Interlocutory Relief:** Nothing in this Licence shall affect either Party's right to seek urgent interlocutory relief.
65. **Costs and Expenses:** Each Party will pay its own costs of mediation or alternative dispute resolution under this Licence.

## NOTICES

66. **Notices:** Subject to the provisions in the PLA, any notice or communication to or by a party to this Licence must be in writing, addressed to the Party and sent to the contact details set out in Schedule 1

(Licence Details). Methods of sending the Notices include delivery by registered post, personal delivery (including to the Council's offices) or email delivery.

## INTERPRETATION

67. In this Licence, unless the context requires otherwise:

- 67.1.a reference to any monetary amount is to New Zealand currency; and
- 67.2.a reference to time is to New Zealand time; and
- 67.3.a reference to "includes" is to "includes without limitation" and references to "included" and "including" shall be construed accordingly; and
- 67.4.a reference to a Party includes that Party's personal representatives, successors and permitted assigns; and
- 67.5.a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporated; and
- 67.6.a reference to a document, statute or regulation includes a reference to that document, statute or regulation as amended or replaced from time to time; and
- 67.7.headings will not be used in the interpretation of this Licence.

## GENERAL

- 68. **Licensor as Regulatory Authority:** The Licensee acknowledges and agrees that the Licensor has a range of statutory and regulatory powers and functions (Regulatory Capacity) which it may exercise and/or must fulfil and nothing in this Licence will be construed as limiting or fettering the Licensor in its Regulatory Capacity or requiring the Licensor to exercise its Regulatory Capacity in a particular way.
- 69. **Application of Applicable Policy:** The provisions of Applicable Policy are implied in this Licence. In the event of any inconsistency between the terms of this Licence and Applicable Policy, the terms of this Licence shall prevail provided that if any provision of this Licence limits the powers available to the

Licensor, the provisions of Applicable Policy shall take precedence.

- 70. **Variations to Licence:** No amendment or variation to this Licence will be binding upon any party unless confirmed in writing and signed by both parties.
- 71. **Waiver:** No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.
- 72. **Suitability:** No warranty or representation express or implied has been or is made by the Licensor that the Licensed Area is suitable or will remain suitable or adequate for the Licensee's purposes.
- 73. **No Assignment, Sub-Licensing or Transfer of Licence:** The Licensee may not assign, sublicense, charge, transfer or otherwise dispose of its interests under this Licence without the prior written consent of the Licensor.
- 74. **Costs:** Each party will bear its own costs in relation to the preparation, negotiation and execution of this Licence. The Licensee shall pay the Licensor's reasonable legal costs of and incidental to the enforcement of the Licensor's rights, remedies and powers under this Licence.
- 75. **Counterparts:** This Licence may be executed in any number of counterparts, all of which together constitute one and the same instrument and either of the parties may execute this Licence by signing any such counterpart.
- 76. **Electronic Acceptance:** The Parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term "legal requirement" has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.
- 77. **Governing Law:** This Licence shall be governed by the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

### SCHEDULE 3: PLAN OF LICENSED AREA

**\*\*delete before use\*\*Insert applicable plan**

DRAFT