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**LICENCE TO OCCUPY**  
**(for the purpose of operating a business)**

**BETWEEN**

**NEW PLYMOUTH DISTRICT COUNCIL**

**AND**

**[Insert Name of Licensee]**



Te Kaunihera-ā-Rohe o Ngāmotu

**NEW PLYMOUTH DISTRICT COUNCIL**

[newplymouthnz.com](http://newplymouthnz.com)

**This Licence to Occupy made this                      day of                      201.....**

## **PARTIES**

1.        **NEW PLYMOUTH DISTRICT COUNCIL** a body corporate constituted under the Local Government Act 2002 (the "Council")
2.        **[Insert Name of Licensee]** (the "Licensee")

## **BACKGROUND**

- A.        The Council owns the Land and is empowered to grant a licence to the Licensee to occupy it for the purposes of operating the Business described in the First Schedule ("the Business") pursuant to the Local Government Act 2002. The Land is a "park" as defined in section 138 of the Local Government Act 2002, being acquired or used principally for community, recreational, environmental, cultural or spiritual purposes but not land held as a reserve, or part of a reserve, under the Reserves Act 1977.
- B.        The Council confirms that in granting this licence it has complied with section 138(1) of that Act.
- C.        The Council agrees to grant, and the Licensee agrees to take, by way of licence to occupy, the Land on the terms set out in this Licence.

## **GENERAL PROVISIONS**

### **1.        INTERPRETATION**

In this Licence, unless the context indicates otherwise:

#### **1.1        Definitions:**

"Authorised Representative" means the Council's Manager Parks or his nominee;

"Default Interest Rate" means the rate of default interest specified in the First Schedule;

"Excluded Costs" means the excluded costs set out in the First Schedule;

"Facilities" means all the Licensee's removable facilities, furniture, signage and other property that is not attached to the Land, but excludes motor-vehicles;

"Gross Sales" means the total of all amounts received by the Licensee from the operation of the Business (excluding GST);

"GST" means Goods and Services Tax imposed pursuant to the Goods and Services Tax Act 1985;

"Included Costs" means the costs included in the Licence Fee set out in the First Schedule;

"Insurances" means the insurances described in the First Schedule;

“Land” means the land described in the First Schedule;

“Legislative Requirements” means all Acts, Regulations, Bylaws, rules and requirements of District and Regional Plans (including the Coastal Reserves Management Plan), Reserve Management Plans and Council Policies (including any policy regarding commercial use and events on Council administered land), all as amended from time to time, and includes everything in substitution for them;

“Licence” means this licence for the use of the Land, as amended from time to time, including these General Provisions, the schedules, including the Special Terms, and any other attachments to this licence;

“Licence Fee” means the licence fee payable as set out in the First Schedule;

“Minimum Licence Fee” means the minimum licence fee payable for the Preliminary Period, as set out in the First Schedule;

“Preliminary Period” means the first six months of the term of this Licence;

“Park” means the land as defined in section 138 of the Local Government Act 2002 and as described in the First Schedule;

“Special Terms” means particular terms applying to this Licence as set out in the First Schedule.

- 1.2 **Clauses and Schedules:** A reference to a clause or a schedule is to a clause or schedule of this Licence and a reference in a schedule to a clause is a reference to a clause in that schedule.
- 1.3 **Headings:** Headings appear as a matter of convenience and do not affect the construction of this Licence.
- 1.4 **Parties:** A reference to a party to this Licence includes that party's personal representatives/successors and permitted assigns.
- 1.5 **Related Terms:** Where a word or expression is defined in this Licence, other grammatical forms of that word or expression have corresponding meanings.
- 1.6 **Singular, Plural and Gender:** The singular includes the plural and vice versa, and words importing one gender include the other genders.
- 1.7 **Part:** a part or any includes the whole or all, and the converse.
2. **TERM**
  - 2.1 **Term:** The term of this Licence will commence on the Commencement Date and end at 11.59 pm on the Expiry Date set out in the First Schedule, unless terminated sooner in accordance with this Licence or by agreement between the parties.
  - 2.2 **No Automatic Right of Renewal:** For the avoidance of doubt, on the termination of this Licence, the Council is not obliged to grant the Licensee a further licence.
  - 2.3 **Holding Over:** If the Council permits the Licensee to remain in occupation of the Land after the term of this Licence has expired, that continued occupation will be a monthly licence terminable by either party on one month's notice in writing and will otherwise be on the terms of this Licence.
3. **LICENCE**

- 3.1 **Grant of Licence:** The Council grants to the Licensee [an exclusive/ a non-exclusive] licence to occupy the Land for the purpose of operating the Business in the area(s) depicted on the plan of the Land in the Third Schedule on the terms of this Licence.
- 3.2 **Permitted Use:** The Licensee will use the Land only for the purpose of operating the Business. 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 Council.
- 3.3 **Limitations on Use:** The Licensee acknowledges that:
- a) the grant of this Licence does not create a lease or an interest in the Land or otherwise confer on the Licensee any rights of exclusive possession of the Land, except as set out in the Licence;
  - b) the control and management of the land shall remain with the Council and that except to the extent of the express provisions of this Licence nothing shall in any way restrict the powers and discretion of the Council in relation to the Land.
  - c) unless expressly provided otherwise in this Licence, the public retain the right to use and access the Land, whether or not such use is related to the Business, although the Licensee may exclude the public from the Facilities.

#### 4. **CONSIDERATION**

- 4.1 **Minimum Licence Fee/Licence Fee:** The Licensee shall pay the Minimum Licence Fee (plus GST) for the Preliminary Period, and the Licence Fee (plus GST) for the remainder of the term of the Licence.
- 4.2 **Review of Licence Fee:** The parties will review the Licence Fee payable within 30 days after the anniversary of the end of the Preliminary Period, and annually thereafter. At each annual review, the Licence Fee shall be set at a rate agreed between the parties; however the annual Licence Fee shall at no time be less than twice the amount of the Minimum Licence Fee. The reviewed Licence Fee will apply for a 12 month period on and from the anniversary of the end of the Preliminary Period to which the review relates.
- 4.3 **Occupation Costs:** The Minimum Licence Fee/Licence Fee includes the Included Costs. Any other costs, including the Excluded Costs, arising from the Licensee's occupation of the Land shall be payable by the Licensee.

#### 5. **FINANCIAL ARRANGEMENTS:**

- 5.1 **Direct debit:** the Licensee shall complete the attached direct debit form on signing this Licence.
- 5.2 **Minimum Licence Fee:** The Licensee shall pay the Council the Minimum Licence Fee in six monthly instalments by way of direct debit.
- 5.3 **Licence Fee:** Unless otherwise agreed in writing between the parties, the Licensee shall pay the monthly instalments of the Licence Fee by direct debit.
- 5.4 **Invoicing:** Each month, or for such other period as may be agreed between the parties, the Council shall supply the Licensee with a valid tax invoice.
- 5.5 **Excluded costs:** The Licensee shall pay the Excluded Costs on or before the 20<sup>th</sup> day of each month following receipt of a valid tax invoice.

- 5.6 **No right of set-off:** The Licensee shall make all payments to the Council under this clause 5 without any deduction or set-off whatsoever.
- 5.7 **Disputed Amounts:** If there is any dispute about the amount owing, the Licensee will pay the undisputed amount. Any disputes will be dealt with through the dispute resolution provisions in clause 11.8.
- 5.8 **Interest on Late Payments:** If the Licensee fails to pay the Council as specified in this clause 5, the Council may, without prejudice to its other rights, require the Licensee to pay default interest on the unpaid amount, from the due date until the date of payment, at the Default Interest Rate.
- 5.9 **Financial Records:** The Licensee shall maintain all financial records relating to its Gross Sales and shall provide to the Council, within three months of each anniversary of the Commencement Date a certificate from an accountant certifying Gross Sales for the previous year during the term of this Licence, with each year beginning at the anniversary of the Commencement Date. Following the provision of this certificate, the final Licence Fee payable for the year the certificate relates to shall be calculated and any amount owing shall be paid by the 20<sup>th</sup> day of the month after the certificate is issued.
- 5.10 **Inspection of Financial Records:** On 14 days' notice, the Council may, at any time, inspect the Licensee's financial records, sales information and accounting records, as they relate to the operation of the Business on the Land.

## 6. LICENSEE'S OBLIGATIONS

- 6.1 **Health and Safety:** The Licensee will comply with the requirements of the Health and Safety in Employment Act 1992 and any particular health and safety requirements specified in the Special Terms, and will notify the Council immediately if it becomes aware of any hazards on, or in the vicinity of, the Land.
- 6.2 **Other Legislative Requirements:** The Licensee will comply with all other Legislative Requirements (including, without limitation, food safety, health, hygiene, and requirements relating to the status of the Land) and shall obtain, and maintain, all permits and consents necessary for the operation of the Business on the Land.
- 6.3 **Cleanliness and Removal of Rubbish:** The Licensee shall keep the Land tidy and as clean as practicable given the nature of the Business undertaken. In any event, each day, the Licensee will remove all litter produced by the operation of the Business. If the Licensee fails to remove all such litter on a daily basis, the Council may remove it, and, on receipt of a valid tax invoice, the Licensee will pay the Council the reasonable costs of doing so.
- 6.4 **Service Quality:** The Licensee will operate the Business on the Land 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 Council or bring the Council into disrepute.
- 6.5 **Parking:** The Licensee, including its members, employees, servants, contractors and/or invitees, may only take, or park, vehicles on the Land if permitted and as may be specified in the Special Terms.
- 6.6 **Approval for Facilities:** The Licensee may only place Facilities on the Land as are specified in the Second Schedule, or otherwise, with the prior written consent of the Council.

- 6.7 **Protection of Environment:** In operating the Business on the Land, the Licensee will not do anything that in any way alters, disturbs, or causes damage to the Land. In particular, the Licensee will take such steps as are determined by the Council necessary to prevent the destruction of, or damage to, those natural, scenic, historical, cultural, archaeological, geological, biological or other scientific features, or indigenous flora and fauna, on the Land, as are specified in the Second Schedule or as may be notified in writing to the Licensee by the Council during the term of this Licence.
- 6.8 **Insurances:** The Licensee will take out and maintain during the term of the Licence, at its cost, the Insurances. All Insurances must be with insurers acceptable to the Council, acting reasonably. If requested by the Council, the Licensee shall produce the current insurance policies and receipts for payment of premiums. If the Licensee fails to provide such evidence of insurance, the Council may, after notifying the Licensee in writing, arrange to keep in force the required insurance policies at the cost of the Licensee.
- 6.9 **Six-monthly Meeting:** In order to enable the Council to monitor the Licensee's compliance with its obligations under this Licence, the Licensee will, at the Council's reasonable request, meet with the Council's Authorised Representative six-monthly, or more frequently if necessary.
- 6.10 **Council Requests:** The Licensee will comply with all reasonable requests of the Council's Authorised Representative.

## 7. COUNCIL'S OBLIGATIONS

- 7.1 **Utilities:** For the term of this Licence, the Council will keep existing electricity and water services that are reasonably required by the Licensee in good order, and will enable the Licensee to use such services [as Included Costs, as set out in the First Schedule] **OR** [at the Licensee's cost, as set out in the First Schedule, Excluded Costs]
- 7.2 **Ground Maintenance:** The Council will maintain the Land, and the area around the Land, in a reasonable condition.
- 7.3 **Council's Health and Safety Obligations:** The Council will, if it employs anyone to carry out work on the Land, or in any way "controls a place of work" (as defined in the Health and Safety in Employment Act 1992) on the Land, comply in all respects with all applicable sections of the Health and Safety in Employment Act 1992 and the regulations made under that Act.
- 7.4 **Interference with the Licensee's Use of the Land:** Subject to the rights of temporary suspension provided in clause 10.2 the Council will ensure, where reasonably practicable, that any works undertaken on the Land do not interfere with the Licensee's use of the land under this Licence.

## 8. IMPROVEMENTS

- 8.1 **Improvements:** The parties acknowledge that, as at the Commencement Date, the Council Improvements and the Licensee Improvements are as listed in the Second Schedule.
- 8.2 **Licensee Improvements:** The Licensee will not make any improvements to the Land without the prior written consent of the Council.

- 8.3 **Earthworks:** Any earthworks, including hardening of the Land, reasonably required for the operation of the Business will be performed by the Council (or its contractor) at the Licensee's cost, which cost will be agreed between the parties in writing before any work is carried out.
- 8.4 **Licensee's Property on Termination:** On termination:
- a) the Licensee must remove all of the Licensee's Improvements and other property (together the "Licensee's Property") from the Land no later than the Expiry Date, or earlier termination of this Licence.
  - b) if the Licensee, its members, employees or contractors and/or invitees, cause damage to the Land in removing the Licensee's improvements, the Council shall make good the damage so caused and the Licensee must pay, on demand, all costs incurred by the Council in making good the damage to the Land.
  - c) if the Licensee fails to comply with clause 8.4a), the Council may remove the Licensee's Property and repair any damage caused by that removal. In that case the Licensee must pay to the Council, on demand, all costs incurred by the Council in doing so.
  - d) if the Licensee fails to pay the costs demanded under clause 8.4b) or 8.4c) then the Council may sell those items of the Licensee's Property removed by the Council in any manner the Council sees fit to defray the Council's costs of removal and apply the balance (if any) towards meeting the Council's claims against the Licensee.
  - e) if the Licensee fails to comply with clause 8.4a) then the Council may choose not to remove the Licensee's Property and instead:
    - i. require the Licensee by written notice to remove the Licensee's Property within 7 days of the date of service of that notice and require the Licensee to pay the Council on demand the costs of the repair of any damage caused by that removal; or
    - ii. elect to take ownership of the Licensee's Property and the Council will not have to pay compensation for the Licensee's Property to the Licensee.
  - f) if the Licensee fails to comply with a notice under clause 8.4e)i., then the Licensee's Property will (at the Council's election) become the Council's property on the expiry of 14 days from the date of service of the notice on the Licensee, without any compensation whatsoever being payable to the Licensee.

## 9. INDEMNITY AND LIABILITY

- 9.1 **Indemnity:** The Licensee shall at all times indemnify the Council from and against all actions, claims, suits, costs (including legal costs) and demands arising from the use of the Land by the Licensee, its members, employees, servants, contractors and/or invitees, or from the Licensee's breach of, or failure to comply with, the Licensee's obligations under this Licence.
- 9.2 **Damage to the Land/Council Property:** The Licensee shall be liable in respect of any damage caused to the Land or the Park in the vicinity of the Land, by the Licensee, or the Licensee's members, employees, servants, contractors and/or invitees. The Council shall make good any such damage caused and Licensee shall

pay the Council, on demand, for all costs and expenses incurred by the Council in making good any such damage to the Land (including reinstatement of the Park in the vicinity of the Land) and any Council property resulting from the acts or omissions of the Licensee or the Licensee's members, employees, servants, contractors and/or invitees. This clause is in addition to, not in substitution for, clause 9.1.

- 9.3 **Council not Liable:** Except in the case of the Council's wilful misconduct or negligence, the Council shall have no liability to the Licensee or any other person for any theft, damage, liabilities or loss of any kind, including any loss of business or earnings, suffered or incurred in connection with the Licensee's use of the Land.

## 10. TERMINATION

- 10.1 **By Notice:** The Council or the Licensee may terminate this licence or, in the case of the Council, require the surrender of all or part of the Land at any time, subject to one month's prior written notice being given to the other party. Any surrender of all or part of the land by the Licensee shall be on such conditions as the Council deems appropriate.

- 10.2 **Where All or Part of Land Required:** If any part of the Land is required by the Council permanently or temporarily for:

- a) the protection of native flora and fauna;
- b) the prevention of amelioration of areas of soil erosion;
- c) re-vegetation of selected sites with native vegetation;
- d) undertaking any works on the Land;
- e) the staging of an event;
- f) the enforcement of any Legislative Requirement; or
- g) any other reason as may be determined by the Council;

then this Licence may, in the Council's sole discretion, be terminated or temporarily suspended as to all or part of the Land at any time subject to one month notice being given **except that** in the case of:

- (i) planned works, the notice period shall be reduced to 10 working days;
- (ii) urgent works, the notice period shall be reduced to 24 hours;
- (iii) emergency works, prior notice shall be given only if it is reasonably practicable to do so

- 10.3 **Adjustment of Licence Fee:** If this Licence is determined as to part of the Land, the Council shall adjust the Licence Fee payable in proportion to the part removed. If this Licence is temporarily suspended, the Council shall, acting reasonably, adjust the Licence Fee payable, taking into account:

- a) the area of the Land affected and period of time; and
- b) the interruption, if any, to the Licensee's business;

during which the use of the part of the Land is so suspended.



- 10.4 **Right to re-enter:** The Council may, provided it has first observed the requirements of section 243-264 of the Property Law Act 2007, re-enter and terminate this Licence if:
- a) the Licence Fee has been in arrears for 10 working days; or
  - b) the Licensee fails to observe any other term of this Licence; or
  - c) execution is levied against any of the Licensee's assets, the Licensee is declared bankrupt or insolvent according to law or assigns the Licensee's estate or enters into a composition or scheme of arrangement with or for the benefit of all or a class of the Licensee's creditors, the Licensee enters into the no asset procedure scheme under the Insolvency Act 2006, or the Licensee goes into liquidation, is wound up or dissolved, is declared to be subject to statutory management, appoints an administrator, or a receiver or manager is appointed of any of the assets of the Licensee, or the Licensee assigns or attempts to assign or sublicense all or any of its rights under this Licence.
- 10.5 **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.
- 10.6 **Survival:** Clauses 2.3, 5, 8.4 and 9 will survive the termination of this Licence.
11. **GENERAL**
- 11.1 **Relationship:** Nothing in this Licence shall be construed as creating an employer/employee relationship, a partnership, a fiduciary relationship or a joint venture relationship between the Council and the Licensee.
- 11.2 **Council as Land Administering Body:** The Licensee acknowledges that this Licence is entered into by the Council in its capacity as owner of the Park under the Local Government Act 2002 and not as a regulatory authority. The two roles of the Council are different, and any consent or approval given by the Council in its capacity as licensor under this Licence will not be deemed to waive the requirement for, or imply that the Council has granted, consent or approval in its capacity as a regulatory authority.
- 11.3 **Amendment:** No amendment to this Licence will be effective unless it is in writing and signed by both parties.
- 11.4 **No warranty:** No warranty or representation express or implied has been or is made by the Council that the Land is suitable or will remain suitable or adequate for the Licensee's purposes.
- 11.5 **Waiver:** No waiver of any breach of this Licence may be deemed to be a waiver of any other or subsequent breach. Failure of either party to enforce any clause of this Licence at any time may not be interpreted as a waiver of that clause.
- 11.6 **Assignment:** The Licensee may not assign, sublet, charge, grant any lien or otherwise dispose of the Land, or this Licence without the prior written consent of the Council.
- 11.7 **Variation:** Any variation to this Licence must be agreed in writing and signed by both parties.

- 11.8 **Dispute Resolution:** If a dispute arises between the Council and the Licensee concerning this Licence:
  - a) the disputing party will notify the other party of that dispute and the Licensee and the Council’s Manager Parks Programmes shall work together in good faith to try to resolve the dispute within 21 days of the date of the notice;
  - b) if the parties are unable to resolve the dispute within 21 days, the parties may agree to use alternative dispute resolution processes, such as mediation, before resorting to Court action, other than where a party seeks injunctive relief.
- 11.9 **Costs:** The Licensee shall pay all legal costs in relation to the preparation, enforcement, or attempted enforcement of this Licence.
- 11.10 **Notices:** Any notice required or authorised to be delivered under this Licence may be delivered in any manner mentioned in Part 7 of the Property Law Act 2007 to the addresses specified in the First Schedule.

**SIGNED BY THE PARTIES:**

**SIGNED** on behalf of the **NEW PLYMOUTH DISTRICT COUNCIL** by:  
 [Insert Name and Position] Under delegated authority \_\_\_\_\_

**SIGNED** by [Insert Name of Licensee] as/for and behalf of the Licensee<sup>1</sup>:  
 \_\_\_\_\_  
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<sup>1</sup> If the Licensee is a body corporate (e.g. incorporated society, company) the licence must be signed by a person acting under the express or implied authority of the body corporate:

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## FIRST SCHEDULE

<b>LAND:</b>	
<b>[RESERVE/PARK]:</b>	Park for the purposes of section 138 of the Local Government Act 2002
<b>COMMENCEMENT DATE:</b>	
<b>EXPIRY DATE:</b>	
<b>BUSINESS:</b>	
<b>LICENCE FEE:</b>	
<b>MINIMUM LICENCE FEE:</b>	
<b>INCLUDED COSTS:</b>	
<b>EXCLUDED COSTS:</b>	
<b>DEFAULT INTEREST RATE:</b>	Westpac New Zealand Limited's floating interest rate for businesses plus 5% calculated daily and compounded monthly.
<b>INSURANCES:</b>	Public Liability Insurance in the joint names of the Council and the Licensee for their respective rights and interests for an amount not less than \$500,000.00.
<b>COUNCIL'S CONTACT DETAILS/ADDRESS FOR NOTICES:</b>	Private Bag 2025 New Plymouth 4342
<b>LICENSEE'S CONTACT DETAILS/ADDRESS FOR NOTICES:</b>	
<b>SPECIAL TERMS:</b>	

**SECOND SCHEDULE**

Council Improvements:

Licensee Improvements:

Licensee Facilities:

Flora, fauna, environmental features to be protected by Licensee

[Parks to advise how this will be achieved]

Plan of Land