

OCCUPATION LICENCE (RESERVE)

Site ####: #Name of Park#, #Suburb#

LICENCE AGREEMENT dated the _____ day of _____ #year#

BETWEEN WELLINGTON CITY COUNCIL ("Council")

AND #name of licensee# ("Licensee")

AND #name of guarantor# ("Guarantor")

[THIS CAN BE DELETED IF THERE IS NO GUARANTOR]

BACKGROUND

- A. The Council is the owner of the Reserve.
- B. The Council has agreed to licence the Licensed Area, being part of the Reserve, under section #### of the Reserves Act 1977.
- C. The Licensee acknowledges that in granting a licence over the Licensed Area, the Council is not creating any lease, tenancy or interest in favour of the Licensee in the Reserve or the Licensed Area or conferring on the Licensee any rights of exclusive possession.

GRANT OF LICENCE

The Council grants the Licence Rights to the Licensee for the Term beginning on the Commencement Date and ending on the Termination Date, at the Licence Fee and subject to the terms of this Licence. The Licensee accepts those rights.

Signed on behalf of
WELLINGTON CITY COUNCIL

Authorised Signatory - Print Name and Position Held

Signature

Authorised Signatory - Print Name and Position Held

Signature

[WHERE LICENSEE IS A COMPANY]

SIGNED by
#NAME OF COMPANY# LIMITED
as Licensee by:

Name of director

Signature

Name of director

Signature

[WHERE LICENSEE IS A CHARITY OR INCORPORATED SOCIETY]

SIGNED by
#NAME OF CHARITY/INCORPORATED SOCIETY#
as Licensee by:

Name of Authorised Signatory

Signature

Name of Authorised Signatory

Signature

[WHERE LICENSEE IS AN INDIVIDUAL]

SIGNED by
#NAME OF INDIVIDUAL#
as Licensee in the presence of:

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

[SIGNING PROVISION FOR GUARANTOR]

SIGNED by

#NAME OF INDIVIDUAL#

as Guarantor in the presence of:

Witness:

Signature of witness

Full name of witness

Occupation of witness

Address of witness

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REFERENCE SCHEDULE

LICENSED AREA:	That area of land located at <i>#address#</i> , comprising <i>#description#</i> , and measuring approximately <i>#m²</i> , as shown highlighted / coloured / outlined in <i>#colour#</i> on the plan attached to this Licence as Schedule One.
RESERVE:	The Reserve known as, <i>#reserve#</i> , being legally described as <i>#legal description (including CFR reference (if any))#</i> .
TERM:	Number (<i>#</i>) years
COMMENCEMENT DATE:	<i>#commencement date#</i>
EXPIRY DATE:	<i>#expiry date#</i>
RENEWAL TERMS (IF ANY):	Nil
FINAL EXPIRY DATE:	<i>#final expiry date#</i>
LICENCE FEE:	<i>\$#licence fee (in figures)#</i> per annum, plus GST (subject to review)
LICENCE FEE REVIEW DATES (IF ANY):	Every three (3) years from the Commencement Date
INTEREST ON OVERDUE LICENCE FEE:	14 % per annum
REQUIRED USE:	<i>#required use#</i> and any other use approved by the Council acting in its sole discretion provided such use is related to <i>#required use#</i> or [recreational/ scenic / historic / local] purposes and is permitted under the Act and any applicable Management Plan.
MINIMUM PUBLIC RISK INSURANCE COVER:	\$5,000,000.00
REPORTING REQUIREMENTS:	The Licensee will report to the Council annually on the following: (i) ADD items such as progress reports (ii) Confirmation of public liability insurance cover; (iii) Health and safety information;
COUNCIL'S CONTACT DETAILS:	Open Space & Recreation Planning Manager Parks Sport & Recreation Wellington City Council PO Box 2199, 101 Wakefield Street Wellington 6140
LICENSEE'S CONTACT DETAILS:	<i>#Licensee's contact name#</i> <i>#Licensee's contact details#</i>
GUARANTOR'S CONTACT DETAILS:	<i>#Guarantor's contact name#</i> <i>#Guarantor's contact details#</i>

SPECIAL PROVISIONS

If there is any conflict between the General Provisions and these Special Provisions, these Special Provisions will take precedence (subject to consistency with the Reserves Act 1977).

#include 1 and 2 if the licensee has any structures/equipment on the Licensed Area#

1. The *#structure/equipment#* situated on the Licensed Area is fully owned and operated by the Licensee. The Licensee is fully responsible for all maintenance and up-keep related to the *#structure/equipment#*.
2. On the expiry of this Licence the Licensee must remove, at the Licensee's cost in all respects, the *#structure/equipment#* from the Licensed Area and make good the Licensed Area to the satisfaction of Council within one (1) month of the expiry date.
3. Include rights of others such as other infrastructure e.g. pipes

[DRAFTING NOTE – YOU MAY WISH TO ADD PROVISIONS ABOUT CONSEQUENCES OF FAILURE TO COMPLY (EG. COUNCIL CAN SELL EQUIPMENT IF IT IS ABANDONED; COUNCIL CAN DO THE MAKE GOOD WORK AND RECOVER THE COSTS)]

GENERAL PROVISIONS

1 TERM

1.1 Initial Term: The Term of this Licence will commence on the Commencement Date and will continue in full force until 5.00pm on the Expiry Date or earlier surrender or cancellation in accordance with the terms of this Licence.

1.2 Renewal Term: If:

- (a) the Reference Schedule provides for a Renewal Term; and
- (b) the Licensee is not in breach of any of its obligations under this Licence; and
- (c) the Licensee has given to the Council written notice that it wishes to renew the Licence not less than three (3) months before the end of the Term; and
- (d) in the opinion of the Council there is sufficient need for the Required Use in terms of the Management Plan, the Licensee has been using the Licensed Area sufficiently for the Required Use, and in the public interest the Licensed Area or any part of it would not be better used for any other purpose; and
- (e) the Council approves the renewal of the Licence;

then the Council will at the Licensee's cost grant the Licensee a licence of the Licensed Area for the Renewal Term as set out in the Reference Schedule. The new licence will be on the same terms as this Licence except that its term plus any further rights of renewal will not extend beyond the Final Expiry Date.

1.3 Documentation: If so requested by the Council the Licensee will execute a Deed of Renewal or new licence under clause 1.2 in the form prepared by the Council's solicitor.

1.4 Licensee's Right to Cancel: The Licensee may cancel this Licence on giving three (3) months written notice to the Council, but this will not release the Licensee from any of its outstanding obligations under the Licence up to the time of the cancellation.

1.5 Holding Over: If the Licensee with the consent of the Council continues to occupy the Licensed Area beyond the Term of the Licence, the Licensee will do so under a periodic licence determinable by twenty (20) Working Days notice in writing given at any time by either party to the other and otherwise on the terms contained in this Licence, including payment of the Licence Fee at the rate payable at the expiry of the Term.

2 LICENCE FEE AND OUTGOINGS

2.1 Payment of Licence Fee:

- (a) The Licensee must pay to the Council the Licence Fee by equal annual instalments in advance, the first of these instalments being due on the Commencement Date.
- (b) The Licensee must not reduce any payment of Licence Fee by making any deduction from it or set off against it.

2.2 Licence Fee Policy: The Council has the sole right to decide the policy from time to time as to the reasonable licence fee levels applying to reserves, and those levels may vary, for example, according to the type of land and what the land is used for.

2.3 Licence Fee Review: The Council may decide that the Licence Fee in this Licence is to be set or reviewed to the current market Licence Fee or to a certain proportion of the current market Licence Fee, in accordance with Council policy. In applying that policy the Council will treat the Licensee consistently with other comparable licensees and land, if any. The new annual Licence Fee will be decided in the following way:

- (a) Not earlier than three (3) months before a Licence Fee Review Date or at any time up to the next Licence Fee Review Date the Council can give written notice to the Licensee specifying the proposed new annual Licence Fee as at that Licence Fee Review Date.
- (b) If, by written notice to the Council within twenty (20) Working Days after receiving the Council's notice, the Licensee disputes the proposed new annual Licence Fee then the new annual Licence Fee will be decided in accordance with clause 2.4 but the new Licence Fee will not be less than the annual Licence Fee payable during the period of twelve (12) months immediately before the relevant Licence Fee Review Date.
- (c) If the Licensee fails to give that notice (time being of the essence) the Licensee will be deemed to have accepted the annual Licence Fee specified in the Council's notice.
- (d) The annual Licence Fee so decided or accepted will be the annual Licence Fee from the Licence Fee Review Date or the date of the Council's notice if the notice is given later than three (3) months after the Licence Fee Review Date.
- (e) Until the new annual Licence Fee has been decided, the Licensee will pay the Licence Fee specified in the Council's notice. Once the new annual Licence Fee has been decided an appropriate adjustment will be made.
- (f) Either party may request the Licence Fee review to be recorded in a Deed, but the cost of this will be paid by the Licensee.

2.4 Deciding Licence Fee Failing Agreement: Immediately after the Council receives the Licensee's notice under clause 2.3(b) the parties will try to agree on the new annual Licence Fee, but if agreement is not reached within ten (10) Working Days then the new annual Licence Fee may be decided either:

- (a) by one party giving written notice to the other requiring the new annual Licence Fee to be decided by arbitration, with any such arbitration being governed by the Arbitration Act 1996 and the arbitral award being final and binding upon the parties; or
- (b) if the parties so agree, by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party will appoint a valuer and give written notice of the appointment to the other party within ten (10) Working Days of the parties agreeing to decide the current market Licence Fee in this way;
 - (ii) if the party receiving a notice does not appoint a valuer within the ten (10) Working Day period then the valuer appointed by the other party

will decide the new annual Licence Fee and that decision will be binding on both parties;

- (iii) as soon as the valuers are appointed they must appoint an umpire who must also be a registered valuer;
 - (iv) the valuers will then decide the new annual Licence Fee of the premises and if they fail to agree then the Licence Fee will be decided by the umpire;
 - (v) each party will be given the opportunity to make written or verbal representations to the valuers or the umpire subject to any reasonable time and other limits as the valuers or the umpire prescribe and they will have regard to those representations but not be bound by them.
- (c) When the new annual Licence Fee has been decided the arbitrators or the valuers will give written notice of the decision to the parties. The notice will provide as to how the costs of the decision will be borne, which will be binding on the parties.

2.5 Outgoings:

- (a) The Licensee must punctually pay the Outgoings whether addressed to the Council or the Licensee.
- (b) Where any of the Outgoings are not charged only for the Licensed Area or the Term then the Licensee is only obliged to pay a fair proportion of those outgoings depending on the period during which, and the area over which, the outgoing has been charged.
- (c) The Licensee's liability to pay Outgoings arising during the Term will continue after the end or earlier termination of the Term.
- (d) The Council may from time to time have a rates policy which entitles the Licensee to rates relief. In that case the Licensee may make an application to the Council and a remission may be granted according to that policy.

2.6 GST: The Licensee must pay all GST on the Licence Fee and other payments made by the Licensee under this Licence either to the Council or as the Council directs, as well as any additional GST the Council may be required to pay as a result of the Licensee's failure to pay when required.

2.7 Interest on Licence Fee and Other Moneys Owed: If the Licence Fee or any moneys payable by the Licensee to the Council remain unpaid for five (5) Working Days after the due date, the Licensee will pay interest to the Council on the unpaid Licence Fee or other moneys at the percentage rate fixed in the Reference Schedule calculated from the due date to the date of payment to the Council.

3 LIMITATION ON LICENCE RIGHTS

3.1 Payment and Performance: The Licence Rights are subject to the Licensee:

- (a) Payment: paying all amounts due under this Licence on the due date; and
- (b) Performance: performing all of the Licensee's obligations under this Licence.

4 REQUIRED USE AND REPORTING REQUIREMENTS

- 4.1 Required Use:** Subject to clause 5 of this Licence, the Licensee may only use the Licensed Area for the Required Use, and in accordance with the requirements of **ADD CONSENT IDENTIFIER**, the proposed configuration plan attached to this Licence in the First Schedule, the Agreed Requirements detailed in the Second Schedule of this Licence, and the Permitted Building, Materials and Vehicles detailed in the Third Schedule to this Licence. The Licensee acknowledges that a change in the Required Use is expressly prohibited under this Licence.
- 4.2 Entry:** Entry onto the Land may be made on foot and with or without such vehicles, machinery and equipment as are detailed in the Agreed Requirements detailed in the Second Schedule.
- 4.3 Mitigating Effects:** The Licensee expressly acknowledges that in addition to the Agreed Requirements and the land use consent for the Land (**ADD CONSENT IDENTIFIER**), the Licensee is also separately responsible, under the **resource consent** issued for the Works, for the mitigation of effects caused by the Works.
- 4.4 Reporting Requirements:** The Licensee agrees to share with the Council such information on its activities as may reasonably be requested by the Council from time to time. As a minimum requirement, the Licensee will comply with the Reporting Requirements set out in the Reference Schedule.

5 CONDUCT ON THE LICENSED AREA

- 5.1 Use:** The Licensee must not use or permit the Licensed Area or any part of the Licensed Area to be used for any activity which is or may become dangerous, offensive, noxious, noisy, illegal or immoral or which is or may become a nuisance or annoyance to the Council or to the owner or occupier of any neighbouring property.
- 5.2 Noise:** The Licensee must limit noise levels to a moderate level and in particular must keep the noise level at the boundaries of the Licensed Area to within the requirements of the District Plan and any resource consent issued in respect of any activity on the Licensed Area.
- 5.3 Licensee's Rules:** The Licensee may make rules for the management and control of the Licensed Area and for the conduct of persons using the Licensed Area. Those rules must not be inconsistent with the terms of this Licence or the provisions of the Act or Management Plan and Policy (if any). Before those rules come into effect they must be approved by the Council.
- 5.4 Policy:** The Licensee must at all times comply with the Policy from time to time in effect relating to the hiring, charges and other conditions of use of the Licensed Area.
- 5.5 Health and Safety:** The Licensee will take all practicable steps to provide its employees and visitors with a healthy and safe environment and ensure that its employees and visitors comply with all directions and instructions from the Licensee regarding health and safety. In particular:
- (a) the Licensee must comply at all times with the requirements and provisions of the Health and Safety at Work Act 2015 (HSWA) and any applicable codes of practice and best practice guidelines applicable to the terms of this Licence;

- (b) the Licensee is responsible for developing and implementing an occupational health and safety plan for the use of the Licensed Area for the Required Use and for ensuring that the Licensed Area is compliant with the HSWA;
- (c) the Licensee must maintain an accident register at all times and will record all accidents to the Licensee's employees and contractors, or other visitors to the Licensed Area;
- (d) the Council, or any person authorised by the Council, may require an independent audit of the Licensee's operations from time to time (at the Licensee's cost) to verify that the Licensee has adequate safety management systems in place, and for compliance with those systems and any safety requirements of this Licence. The Licensee will co-operate in providing the Council with any relevant information.

6 BUILDINGS AND PAINTING

6.1 Consent Required: Subject to the provisions of this section, the Licensee must not:

- (a) erect any building or improvement, or
- (b) alter, reinstate or extend any existing building or improvement; or
- (c) advertise on any existing building or improvement; or
- (d) paint the exterior of any building or improvement

on the Licensed Area without first giving plans and specifications of the proposed work (if appropriate) to the Council and obtaining the Council's prior written consent, in addition to any separate approval required from the Council as a regulatory authority.

6.2 Conditions: Without limiting the grounds on which the Council may withhold consent under clause 6.1, the Council may also as a condition of any consent, required that the proposed work:

- (a) is consistent with the Management Plan and Policy; and
- (b) complies with any reasonable standards applicable to the Reserve (whether or not included in the Management Plan or Policy) which the Council may from time to time set as to the design, quality, materials and colour of any buildings and improvements; and
- (c) will not in the opinion of the Council create more than minor adverse environmental effects or overload or endanger the proper working of any services, utilities or amenities.

6.3 Work Carried Out Under Supervision: If the Council gives its approval and consent under clauses 6.1 and 6.2 then the Licensee must arrange for the Building Work to be carried out under the supervision of an architect, project manager, engineer or other suitably qualified person in a proper and workmanlike manner in accordance with the approved plans and specifications and all approvals, permits and consents.

6.4 Licensee Obtain Consents: The Licensee must obtain all consents required under the Building Act 2004 (including any building warrant of fitness) and the

Resource Management Act 1991 and provide the Council (as landowner and administering body of the Reserve) with a copy of those consents.

- 6.5 No Warranty:** In granting consent or approval under this section 6 the Council will not be deemed to have warranted that the plans or specifications are suitable for the Licensee's purposes or that any person involved in the work is suitable or adequately qualified.
- 6.6 Builders Risk Insurance:** During the construction of the Building Work the Licensee must maintain, in the joint names of the Council and the Licensee for their respective interests, builders' risk and public liability insurance for amounts approved by the Council and will provide the Council with a copy of the policies. All Building Work is at the sole risk of the Licensee.
- 6.7 Council's Power to Stop Works:** If during the course of the Building Work the Council reasonably considers the Licensee is failing to adhere to the approved plans or specifications, the project programme, the standards referred to in clause 6.2(a) and 6.2(b), or reasonably considers that the project is not being properly managed, the Council may by notice in writing to the Licensee require that all work on the Licensed Area stop immediately, or require it to take other action as necessary to mitigate the Council's concerns.
- 6.8 Code Compliance Certificate:** On completion of the Building Work the Licensee must provide the Council with a copy of the code compliance certificate under the Building Act 2004 and a complete set of drawings accurately showing buildings and improvements on the Licensed Area as constructed or altered.
- 6.9 Signs:** The Licensee must not erect, paint, display or allow on the Licensed Area any signs, notices or advertising material unless the Licensee first obtains the written consent of the Council in each case. It will be a condition of any consent that any approved signs must comply with the relevant Council bylaws, District Plan, Management Plan and Policy and have necessary regulatory approvals. At the expiry or earlier termination of this Licence, the Licensee must remove any such sign, notice or advertising material and make good any damage caused by its removal.

7 GROUNDS MAINTENANCE

- 7.1 Tidy Condition:** The Licensee must at all times, at its sole cost, maintain the grounds and surrounds of the Licensed Area in a tidy and attractive condition to the satisfaction of the Council, including:
- (a)** keeping the Licensed Area free from rubbish, stones and broken glass and keep rubbish bins and containers in a tidy and sanitary condition;
 - (b)** keeping any planted areas weeded and replacing plants and shrubs which die or are destroyed;
 - (c)** taking effective measures to prevent any noxious weeds and recognised environmental plant pests growing on the Licensed Area and complying with the provisions of the Biosecurity Act 1993; and
 - (d)** removing any externally visible graffiti on the Licensed Area within five (5) Working Days of any defacement occurring.
- 7.2 Plants:** The Licensee may with the prior written consent of the Council plant new plants on the Licensed Area in places approved by the Council.

7.3 Fencing: The Licensee is solely responsible for fencing the Licensed Area to a reasonable standard having regard to the Required Use, and must maintain all fences to a reasonable standard at all times, at its sole cost. The Licensee must not damage or remove any fencing existing at the commencement of this Licence without the prior written consent of the Council.

7.4 Fencing Act: The Council shall have no liability to contribute to fencing for the purposes of the Fencing Act 1978.

8 INSURANCE, RISK, INDEMNITY AND TAXATION

8.1 Licensee's Public Liability Insurance: The Licensee must keep in full force and effect a public liability insurance policy with a reputable insurance company to cover the Council and Licensee for any claims arising on or from the Licensee's use of the Licensed Area. The amount of that cover must be no less than the minimum public risk insurance cover in the Reference Schedule increased from time to time so as to maintain the real value of the insurance cover to the reasonable satisfaction of the Council. The Licensee will, on request, provide the Council with a copy of the public liability insurance policy and evidence that the Licensee has paid the premium for that insurance policy.

8.2 Licensee Indemnifies the Council: The Licensee indemnifies the Council against all costs, claims and demands in respect of injury or damage resulting from act or omission of the Licensee or any member, employee or invitee of the Licensee.

8.3 Limitation of Indemnity: Notwithstanding clause 8.2 the Licensee is liable to indemnify the Council only to the extent that the Council is not fully indemnified under any insurance policy.

8.4 Risk: The Licensee uses the Licensed Area at its risk and releases, to the full extent permitted by law, the Council, its employees and agents from all liabilities, claims and demands of any kind which may arise in respect of any accident, damage, injury or loss suffered by any person or property in or about the Licensed Area, or in connection with the Licensee's use of the Licensed Area.

8.5 Section 271 Property Law Act 2007: For the purposes of section 271 of the Property Law Act 2007, the Licensee acknowledges and agrees that:

- (a) Reserve not insured: the Council has not insured the Reserve against destruction or damage arising from flood, fire, explosion, lightning, storm, earthquake or volcanic activity; and
- (b) Licensee to make good: the Licensee, subject to the provisions of section 271(2)(a)-(c) of the Property Law Act 2007, will meet the cost of making good any destruction or damage to the Licensed Area and indemnifies the Council against the cost of doing so should the Licensee default in that obligation.

8.6 Taxation: Each party is solely responsible and liable for the taxation position it takes in respect of any amount it has paid or received or that it is required to pay or to receive pursuant to this Licence, and no party makes any representation or warranty or is otherwise liable to any other party as to the appropriate taxation position in respect of any amount paid or received or payable or receivable pursuant to this Licence.

9 NO ASSIGNMENT

9.1 Assignment etc: The Licence Rights are personal to the Licensee. The Licensee must not:

- (a) Assign: assign or agree to assign this Licence or any of the Licence Rights;
- (b) Sub-license: sub-license or agree to sub-license any of the Licence Rights; or
- (c) Security Interest: grant or agree to grant any security interest (as defined in the Personal Property Securities Act 1999) in or over this Licence or the Licence Rights.

9.2 Change in Beneficial Ownership: To avoid doubt, if the Licensee is a company, the Licensee acknowledges and agrees that any change in the legal or beneficial ownership of any of the shares in the Licensee company is deemed to be an assignment and is not permitted.

10 SUITABILITY OF LICENSED AREA

10.1 No Warranty by Council: The Council does not warrant that the Licensed Area is or will remain suitable or adequate for the Licensee's purposes. All warranties as to suitability and adequacy implied by law are expressly negative to the full extent permitted by law.

10.2 Safety Measures: The Council is not responsible for providing any safety measures to protect any equipment from water damage, fire, explosion, storm, hazard or potential hazard.

11 DESTRUCTION

11.1 If the Licensed Area is destroyed or so damaged that the Licensed Area cannot be used for the Required Use, then either party may terminate this Licence by one (1) month's written notice to the other party. Any termination of this Licence under this clause will not affect the parties' respective rights, obligations and liabilities which subsist or have accrued on the date of termination under this clause.

12 COUNCIL'S RIGHT TO CANCEL

12.1 Council's Right to Cancel: If at any time after making any enquiries as the Council thinks fit and giving the Licensee an opportunity of explaining the usage of the Licensed Area, the Council is of the opinion (acting reasonably and in good faith) that the Licensed Area is not being used or sufficiently used for the Required Use, then the Council may cancel this Licence by not less than six (6) months written notice, and the Licensed Area together with all improvements owned by the Council (if any) will revert to the Council without compensation being payable to the Licensee.

12.2 Land Required for Other Use: If in the opinion of the Council, in the public interest the Licensed Area or any part of it could be better used for any other purpose, the Council may cancel this Licence by not less than six (6) months written notice.

12.3 Notice Period: If the Council wishes to exercise its right to cancel the Licence under clause 12.2, it must first give the Licensee three (3) months written notice of its intention to invoke clause 12.2 (**Notice Period**). During the Notice Period, the

Council will discuss with the Licensee the Council's reason for exercising its right to cancel the Licence under clause 12.2.

12.4 Grounds for Cancellation: The Council (in addition to the Council's right to apply to the Court for an order for possession) may cancel this Licence by re-entering the Licensed Area at the time or any time after:

- (a) the Licensee fails to pay any instalment of the Licence Fee for ten (10) Working Days after the due date to pay and the Licensee has failed to remedy that breach within ten (10) Working Days after service on the Licensee of a notice in accordance with section 245 of the Property Law Act 2007; or
- (b) the Licensee fails to observe or perform any obligation under this Licence (other than the covenant to pay the Licence Fee) and the Licensee has failed to remedy that breach within the period specified in a notice served on the Licensee in accordance with section 246 of the Property Law Act 2007; or
- (c) the Licensee:
 - (i) becomes insolvent;
 - (ii) goes into bankruptcy or liquidation or is about to go into bankruptcy or liquidation;
 - (iii) is wound up, dissolved or becomes defunct;
 - (iv) where it is a company, implements a change in the legal or beneficial ownership of its shares; or
- (d) the Council determines it necessary to cancel the Licence in accordance with clause 12.1 or 12.2.

12.5 Council's Option to Remedy Licensee's Default: The Council may, without being under any obligation to do so, remedy at the Licensee's cost any default by the Licensee under this Licence.

13 DISPUTE RESOLUTION

13.1 Negotiation or Mediation: Except for those provisions where the Council has a discretion contained in clauses 1.2, 2.3, 12.1 and 12.2, if any dispute arises between the Council and the Licensee concerning this Licence, the parties will try in good faith to settle the matter by negotiation, and if that is unsuccessful by mediation.

13.2 Minister: If the dispute cannot be settled by negotiation or mediation, then the dispute will be decided upon by the Minister or the Minister's delegate, if the Minister is required under the Act to decide the matter, and in any other case the dispute will be referred to arbitration.

13.3 Referral to Arbitrator: The dispute will be referred to a sole arbitrator if the parties agree upon one, and if not then the dispute will be referred to an arbitrator appointed by the then President or Vice President of the New Zealand Law Society.

13.4 Award Final: The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.

14 COUNCIL AS LAND OWNER, NOT REGULATORY AUTHORITY

- 14.1 Council as Land Owner:** The Council has signed this Licence in its non-regulatory capacity as land owner and administering body. This Licence does not bind the Council in its capacity as a regulatory authority in any way, and any consent or agreement the Council gives under this Licence is not an agreement or consent in its regulatory capacity and vice versa. When acting in its regulatory capacity, the Council is entitled to consider all applications to it without regard to this Licence. The Council will not be liable to the Licensee or any other party if, in its regulatory capacity, the Council declines or imposes conditions on any consent or permission that the Licensee or any other party seeks for any purpose associated with this Licence.

15 NO LEASE

- 15.1 Licence not Lease:** This Licence does not create any lease, tenancy or interest in favour of the Licensee in the Reserve or the Licensed Area or confer on the Licensee any rights of exclusive possession.

16 IMPLIED PROVISIONS

- 16.1 Reserves Act 1977:** The covenants and provisions required to be included in this Licence by the Act will apply to the extent that they are not expressly included in the terms of this Licence.
- 16.2 Not Registrable:** This Licence is not registrable. The Licensee may not register a caveat against the Computer Freehold Register (if any) to the Reserve.

17 COMPLIANCE

- 17.1 Licensee Must Comply:** The Licensee must comply with all Acts, Regulations, By-laws, District and Regional Plan Rules and the Management Plan and Policy (if any) as they affect the Licensed Area.

18 NOTICES

- 18.1 Service of Notices:** Any notice or document required or authorised to be given or served under this Licence may be given or served:
- (a) Section 245 or 246 of the Property Law Act: in the case of a notice under sections 245 or 246 of the Property Law Act 2007, in the manner prescribed by section 353 of that Act 2007; and
 - (b) Other Cases: in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007;
 - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
 - (ii) by personal delivery, or by posting by registered mail or ordinary mail, or by email.
- 18.2 Time of Service:** In respect of the means of service specified in clause 18.1(b)(ii) any notice or other document will be treated as given or served and received by the other party:

- (a) Personal Delivery: when received by the addressee;
- (b) Post: three (3) Working Days after being posted to the addressee's last known address in New Zealand; or
- (c) Email: when acknowledged by the addressee by return email or otherwise in writing.

18.3 Signature of Notices: Any notice or document to be given or served under this licence must be in writing and may be signed by:

- (a) Party: the party giving or serving the notice;
- (b) Attorney: any attorney for the party serving or giving the notice; or
- (c) Authorised Person: the solicitor or any director, officer, employee or other agent who has authority to give or serve the notice.

19 COSTS

19.1 Licensee to pay Council's Costs: The Licensee must pay all legal costs, Council Officer costs, and expenses for the preparation and completion of this Licence or any variation of it and all costs incurred by the Council of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers under this Licence.

19.2 Costs: The Licensee must pay all of the Council's reasonable costs incurred in considering any request by the Licensee for the Council's consent to any matter contemplated by the Licence.

20 COUNCIL'S CONSENT

20.1 Consent required on each occasion: The Council's consent under this Licence is required for each occasion even if the Council has given a consent for the same or a similar purpose on an earlier occasion.

20.2 Consent not to be unreasonably withheld: If this Licence states that the Council's consent is required for anything done or proposed to be done, then unless otherwise stated in each case, the Council:

- (a) must not unreasonably withhold consent; and
- (b) must within a reasonable time of the Council's consent being requested:
 - (i) grant that consent; or
 - (ii) notify the Licensee in writing that the consent is withheld.

21 GUARANTEE [DRAFTING NOTE : WHERE A GUARANTOR IS INCLUDED]

21.1 Guarantee: In consideration of the Council entering into this Licence at the Guarantor's request, the Guarantor:

- (a) Guarantee: guarantees payment to the Council of the Licence Fee and the Licensee's performance of the Licensee's covenants and obligations in this Licence not only during the Term and any Renewal Term, but also during any period of holding over of the Term; and

- (b) **Indemnity:** indemnifies the Council against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind which the Council may suffer or incur as a result of the Licensee's breach of any of the Licensee's covenant and obligations in this Licence.

21.2 Guarantor is a Principal Debtor: As between the Licensee and the Guarantor, the Guarantor may be merely a surety, but as between the Guarantor and the Council, the Guarantor is a principal debtor (jointly and severally with the Licensee).

21.3 Liability Not Affected: The Guarantor's liability under this section 23 is not affected by:

- (a) **Granting of Time:** the granting of time or any other indulgence to the Licensee;
- (b) **Compounding etc of Rights:** the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the Council's rights against the Licensee;
- (c) **Rights Not Enforced:** the Council's failure to enforce the Council's rights against the Licensee;
- (d) **Variation of Licence:** any variation of this Licence (including any Licence Fee Review);
- (e) **Receivership:** by the receivership, liquidation, winding up, dissolution or voluntary administration of the Licensee; or
- (f) **Any Other Thing:** any other thing which under the law on sureties would or might if not for this clause, wholly or partly release the Guarantor from the Guarantor's obligation under clause 21.1.

21.4 Proceedings: The Council does not have to take proceedings against the Licensee before taking proceedings against the Guarantor.

21.5 Benefit of Guarantee: The guarantee and indemnity contained in clause 21.1 is for the benefit of and may be enforced by any person for the time being entitled to receive the Licence Fee under this Licence.

22 GENERAL

22.1 Partial Invalidity: If any provision of this Licence is or becomes invalid or unenforceable, that provision will be deemed deleted from this Licence. The invalidity or unenforceability of that provision will not affect the other provisions of this Licence, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

22.2 Remedies: The rights, powers and remedies provided in this Licence are cumulative and are in addition to any right, powers or remedies provided by law.

22.3 Entire Agreement: This Licence records the entire understanding and agreement of the parties relating to the matters dealt with in this Licence. This Licence supersedes all previous understandings or agreements (whether written, oral or both) relating to such matters. The Licensee acknowledges that it has either taken, or has been given the opportunity to take, independent legal advice about the nature, effects and obligations of this Licence, before signing it.

- 22.4 Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this Licence.
- 22.5 Waiver:** Any waiver by a party of any of its rights or remedies under this Licence will be effective only if it is recorded in writing and signed by that party. If the waiver relates to a breach of any provision of this Licence, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of this Licence at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this Licence.
- 22.6 Counterparts:** This Licence may be signed in counterparts. All executed counterparts will together constitute one document.
- 22.7 Copies:** Any copy of this Licence that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this agreement) may be relied on by any party as though it were an original copy of this Licence. This Licence may be entered into on the basis of an exchange of facsimile, PDF or other document reproduction format.
- 22.8 Amendment:** No amendment to this Licence will be effective unless it is in writing and signed by each party.

23 INTERPRETATION

23.1 In this agreement unless the context indicates otherwise:

23.2 Definitions:

- (a) "Act" means the Reserves Act 1977;
- (b) "Building Work" means work for or in connection with the construction, alteration, demolition or removal of structures on the Licensed Area and includes earthworks preparatory to or associated with that construction, alteration, demolition or removal and any work of a structural or retaining nature, and services associated with that work;
- (c) "Council" means Wellington City Council in its capacity as landowner and administering body under the Act;
- (d) "GST" means the goods and services tax imposed by the Goods and Services Tax Act 1985 and includes any tax levied in substitution of such tax;
- (e) "Guarantor" means the Guarantor set out on page 1;
- (f) "Licensed Area" means the licensed area defined in the Reference Schedule;
- (g) "Licence" means this licence agreement;
- (h) "Licence Rights" means:
 - (i) the non-exclusive right to carry on the Required Use from the Licensed Area; and
 - (ii) the non-exclusive right to have access to the Licensed Area through those parts of the Reserve that are necessary to give access to the Licensed Area in order to carry out the Required Use; [(b) can be deleted if not applicable]

- (i) "Licensee" means the original Licensee set out on page 1;
- (j) "Management Plan" means any Management Plan prepared under section 41 of the Act for the Reserve;
- (k) "Minister" means the Minister of Conservation;
- (l) "Outgoings" includes:
 - (i) all general and special rates, water rates, sewerage, rubbish collection and other charges for the Licensed Area;
 - (ii) all charges for electricity, gas, telephone, and any other service or utility charges for the Licensed Area;
 - (iii) cleaning, maintenance and repair charges for the Licensed Area;
 - (iv) any other costs, expenses or charges related to the Licensed Area or Required Use that are not the specific responsibility of the Council under this Licence;
- (m) "Policy" means any Leases Policy for Community and Recreation Groups and includes any social or recreational strategy prepared by the Council and in place from time to time;
- (n) "Reserve" means the reserve named in the Reference Schedule; and
- (o) "Working Day" has the meaning given to it in the Property Law Act 2007.

- 23.3 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 23.4 Parties:** references to parties are references to parties to this agreement;
- 23.5 Persons:** references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality, and words importing one gender will include the other genders;
- 23.6 Plural and Singular:** words importing the singular number will include the plural and vice versa;
- 23.7 Statutes and Regulations:** references to any statutory provision will include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

PLAN OF LICENSED AREA

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