

# LICENCE TO OCCUPY PREMISES, RETAIL SPACE, PUHINUI STATION INTERCHANGE, PUHUNUI ROAD, PUHINUI

Between

Auckland Transport (Licensor)

And

[Licensee name] (Licensee)

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## LICENCE TO OCCUPY PREMISES RETAIL SPACE, PUHINUI STATION INTERCHNAGE, PUHINUI ROAD, PUHINUI

*Date:*

### PARTIES

**Auckland Transport** (*Licensor*)

**[Licensee]** (*Licensee*)

**[Guarantor]** (*Guarantor*)

### BACKGROUND

- A. Auckland Transport manages and controls the property known as Puhinui Station Interchange, Puhinui Road, Puhinui (**Property**).
- B. The Premises is located on the Property.
- C. The Licensor has authority and has agreed to grant a non-exclusive licence to the Licensee to use the Premises on the terms and conditions set out in this licence.

### GRANT OF LICENCE

The Licensor grants to the Licensee, and the Licensee takes from the Licensor, a non-exclusive licence to occupy the Premises, and to have access to the Premises in common with the Licensor, on the terms and conditions set out in this Licence (including the background recital and schedules to this Licence).

The Guarantor covenants with the Licensor as set out in the Sixth Schedule.

EXECUTION

Signed for [Licensee] as Licensee

by its sole director:

\_\_\_\_\_

[Name]

In the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

Signed by [Name] as the Guarantor

\_\_\_\_\_

[Name]

In the presence of:

\_\_\_\_\_

Name:

Occupation:

Address:

**Signed** for and on behalf of

**Auckland Transport**

As Licensor under delegated authority by:

\_\_\_\_\_

Emma Cheetham

Property Optimisation Manager

FIRST SCHEDULE – REFERENCE SCHEDULE

PROPERTY	The Puhinui Interchange Station, Puhinui Road, Puhinui, Auckland 2025, situated approximately as indicated in red on the attached plan as the Third Schedule to this Licence
PREMISES	Unit 1 at Puhinui Interchange Station, Puhinui Road, Puhinui, Auckland 2025, comprising an area of approximately 19 square metres and outlined in red on the attached licence plan.
TERM	Means the term of this Licence and includes the Term
COMMENCEMENT DATE	TBC
RENT COMMENCEMENT DATE	On the Commencement Date
TERM	Three (3) years
EXPIRY DATE	TBC
RENEWAL TERM(S)	N/A
FINAL EXPIRY DATE	TBC
EARLY TERMINATION (Clause 3, Second Schedule)	<p>If the Licensor elects to expand, rebuild or alter the Puhinui Station Interchange and in its reasonable opinion the Licensor requires the Premises for any purpose, the Licensor may give written notice to the Licensee requiring the Licensee to surrender the Licence on a date specified in the notice (Date of Surrender) being not less than six (6) months from the date on which notice is given to the Licensee.</p> <p>The Licensee shall give vacant possession of the Premises on the Date of Surrender and sign such documents as may be reasonably required by the Licensor to give effect to the surrender.</p> <p>The Licensee shall not be entitled to any compensation or damages from the Licensor relating directly or indirectly to the surrender.</p>
LICENCE FEE	<p>The higher of either;</p> <p>(a) \$##### plus GST per annum; or</p> <p>(b) ##% gross monthly turnover of Licensee (plus GST)</p>
ANNUAL FIXED PERCENTAGE INCREASE FOR THE LICENCE FEE	3%
PERMITTED USE	TBC
DEFAULT INTEREST RATE	10% per annum

<b>TRADING HOURS</b>	<p>Trading hours:</p> <p>Between 6am and 5pm, Monday to Sunday or at any other times as approved by the Licensor in writing at the Licensor's sole discretion.</p>
<b>LICENSOR'S FIXTURES, FITTINGS AND CHATTELS</b>	<p>The Licensor's kiosk is to be erected inside the Premises as detailed in the Fifth Schedule of this Licence with services connected as provided by the Licensor. These include the electricity and water supplies (also known as utility supplies) provided by the Licensor. For avoidance of doubt, the Licensor will be providing the base build for the Licensor's kiosk. All fit out of the kiosk must form part of the Licensee Fit Out Works.</p>
<b>LICENSEE'S FITTINGS AND CHATTELS</b>	TBC
<b>MINIMUM PUBLIC LIABILITY INSURANCE SUM</b>	\$2,000,000.00 (Two Million Dollars)
<b>OUTGOINGS</b>	<p>The Licensee must pay all charges for metered utilities incurred in respect of the licensed premises throughout the term of the Licence.</p> <p>The Licensee is to also pay an 'Operating Expenses' charge of \$150 plus GST per sqm for the licensed premises, as contribution to the operating costs of the Property in which the Licensee is within common benefit.</p>
<b>CONDITIONS</b>	<p>Notwithstanding any other provision in this Licence, this Licence is conditional on the Licensee:</p> <ul style="list-style-type: none"> <li>i) supplying for the Licensor's approval, the complete Licensee fitout details (including but not limited to plans, elevations, sections, signage, premises layout, building services specifications and connection points, hydraulic, mechanical plans and electrical including lighting scheme, programme of works, contractor details, health and safety and risk assessments and any other detail required by the Licensor); and</li> <li>ii) meeting the design review and installation process milestones for the Licensee Fitout Works set out in the Eighth Schedule.</li> </ul> <p>If the above conditions are not satisfied, the Licensor shall be entitled to cancel this Licence by providing written notice to the Licensee. No party shall make any claim or have any recourse against the other party in respect of this Licence or any other matter howsoever arising if this Licence is cancelled under this clause.</p>
<b>LICENSEE FIT OUT WORKS</b>	<p>Upon obtaining all necessary consents from the Relevant Authority and the Licensor, the Licensee shall commence, carry out and complete the Licensee Fit Out Works with all due speed and in a good and workmanlike manner and to sound and accepted architectural and engineering standards and in accordance with the requirements of the Relevant Authority and obtain a Code Compliance Certificate for the Licensee Fit Out Works (if applicable).</p>

	<p>The Licensee is liable for and indemnifies and agrees to keep the Licensor indemnified against all action, claims, demands, liabilities, losses, damages, costs and expenses of whatever nature that the Licensor may suffer, incur or sustain in connection with or arising out of the damage or loss in connection with the Licensee Fit Out Works, except to the extent caused by the Licensor or the Licensor’s employees, agents or contractors.</p> <p>The Licensee acknowledges that it is of critical importance that the Licensee Fit Out Works are completed no later than the Commencement Date. If the Licensee has not achieved Practical Completion of the Licensee Fit Out Works by 20 Working Days after the Commencement Date (“Target Completion Date”), the Licensor shall be entitled to complete the Licensee Fit Out Works themselves and be reimbursed by the Licensee for any reasonable costs incurred, unless the Licensee was prevented from completing the Licensee Fit Out Works by the Target Commencement Date because of delays caused by the Licensor that had a material and adverse effect on the completion of the Licensee Fit Out Works by the Target Completion Date.</p>
<p><b>EARLY ACCESS</b></p>	<p>The Licensee must satisfy the following pre-conditions prior to commencing the Licensee Fit Out Works:</p> <ul style="list-style-type: none"> <li>i) Provide to the Licensor a certificate of currency for a public liability insurance policy (that is reasonably acceptable to the Licensor and notes the Licensor’s interests as an interested party) for not less than \$5,000,000.00 with respect of each occurrence against legal liability for loss or destruction of property arising out of or in connection with the carrying out of the Licensee Fit Out Works;</li> <li>ii) Provide to the Licensor a certificate of currency for a contract works policy (in a sum sufficient to cover the full reinstatement cost, including demolition, removal of debris and consultant’s fees) in respect of the Licensee Fit Out Works, including design costs and good and materials on site;</li> <li>iii) Provide to the Licensor a copy of the building consent for the Licensee Fit Out Works (if applicable);</li> <li>iv) Obtain an Authorisation to Work Permit from the Licensor to carry out the Licensee Fit Out Works on the Property.</li> </ul> <p>On and from the Access Date, the Licensor will allow the Licensee and the Licensee’s contractors to have access to the Premises during the Fit Out Period to carry out and complete the Licensee Fit Out Works, subject to the terms of this Licensee and in particular to the Licensee having first complied with the requirements set out under this clause. The Licensee will occupy the Premises during the Fit Out Period as a licensee, and must comply with the Licensor’s reasonable directions.</p> <p>The Licensee must pay all the costs for the provision of any services/utilities to the Premises to enable the Licensee to carry out the Licensee Fit Out Works within 7 days of demand for payment being made by the Licensor (if any).</p>



## SECOND SCHEDULE – LICENCE TERMS

### 1. TERM

The term of this Licence will be for the Term described in the First Schedule unless terminated earlier in accordance with this Licence or at law.

### 2. RENEWAL

Preconditions: If:

- 2.1. Written Notice: at least three (3) months before the Expiry Date, the Licensee gives the Licensor written notice of the Licensee's wish to renew this Licence; and
- 2.2. Compliance by Licensee: the Licensee has complied with all of the Licensee's obligations under this Licence;  
Then the Licensor will renew this Licence at the Licensor's cost for the Renewal Term.
- 2.3. Terms of Renewed Licence. The renewed licence will be on the same terms as this Licence but will exclude this present term for renewal unless further Renewal Term(s) are specified in the first schedule. The Term must never expire later than the Final Expiry Date.

### 3. EARLY TERMINATION

- 3.1. If the Licensor elects to expand, rebuild or alter the Property and in its reasonable opinion the Licensor requires the Premises for any purpose, the Licensor may give written notice to the Licensee requiring the Licensee to surrender the License to Occupy on a date specified in the notice (Date of Surrender) being not less than six (6) months from the date on which notice is given to the Licensee.
- 3.2. The Licensee shall give vacant possession of the Premises on the Date of Surrender and sign such documents as may be reasonably required by the Licensor to give effect to the surrender.
- 3.3. From the expiry of the period specified in the Termination Notice:
  - i) Every interest of the Licensee in the Premises and in this Licence will determine and cease absolutely, but without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach; and
  - ii) Clause 26 will apply.
- 3.4. Neither party will be entitled to any form of compensation, damages or claim of whatever kind for any early termination, on account of any inconvenience or loss suffered, or for any other reason, solely as a consequence of an early termination or surrender under this clause.

### 4. LICENCE FEE AND OTHER MONIES

- 4.1. During the Term, the Licensee will pay to the Licensor, without deduction or set-off:
  - i) The Licence Fee as invoiced by the Licensor each month, monthly in advance commencing on the Commencement Date;
  - ii) All charges for services and utilities (including but not limited to power consumption, water charges and rubbish collection) consumed by the Licensee in or about the Premises; and
  - iii) The operating costs for the Premises (in accordance with First Schedule);
- 4.2. Upon demand, any other money which the Licensee is required to pay under this Licence after receipt of an invoice from the Licensor.

### 5. GROSS SALES FIGURES

- 5.1. **Provide Statement:** The Licensee will:

- i) Within 5 Working Days after the last day of each month during the Term of this Licence, give to the Licensor a statement (in the form required by the Licensor) certified by the Licensee showing calendar monthly sales by weeks or parts of weeks and customer counts and setting out the Licensee's Gross Sales during the preceding month or portion of that month, and
- ii) Within 20 Working Days of the expiration of each Licence Year or Broken Period the Licensee will give a statement (in the form required by the Licensor) certified by a chartered accountant of the Licensee's Gross Sales during such Licence Year or Broken Period.

This clause 5.1 applies whether or not the Licensee is obliged to pay any percentage rent.

- 5.2. Right to Inspect and Audit:** The Licensee will keep and the Licensor will have the right at any time to inspect and audit all of the books of account, statements, documents, records, returns, papers and files of the Licensee relating to Gross Sales and the Licensee, at the request of the Licensor, will make the same available for inspection and audit.
- 5.3. Understatement:** In the event of the Licensor having carried out an audit and the Gross Sales being found to be understated by more than 5%, then the Licensee will pay to the Licensor the cost of any such audit.
- 5.4. Further Information:** If there is a difference between the Licensee's annual Gross Sales figures as returned first, on a monthly basis and secondly, on an annual basis, of more than 3%, then without limiting the Licensor's rights the Licensor will be entitled, without requiring a full audit as provided in clause 5.2, to require that the Licensee produce to the Licensor such information as the Licensor might require in order to establish the reason for the difference in Gross Sales figures.

## **6. LICENCE FEE REVIEW**

- 6.1. Process:** The Licence Fee is subject to review on the Licence Fee Review Dates specified in the First Schedule using the process set out in clauses 6.2 to 6.5 (inclusive).
- 6.2. Licensor's Notice:** The Licensor may in the period of three months before each Rent Review Date or at any time thereafter give written notice to the Licensee ("Licensor's Notice") setting out the Licensor's assessment of the current market licence fee of the Premises on that particular Rent Review Date.
- 6.3. Licensee's Notice:** The Licensee may within 20 Working Days of receiving the Licensor's Notice (time being of the essence) by written notice to the Licensor ("Licensee's Notice") dispute the current market licence fee set out in the Licensor's Notice. The Licensee's Notice must state the Licensee's assessment of the current market licence fee of the Premises on that particular Rent Review Date. If the Licensee does not give a Licensee's Notice, the Licensee will be taken to have accepted the current market licence fee set out in the Licensor's Notice.
- 6.4. Resolution of Disputes:** If the Licensee gives a Licensee's Notice, the Licensor and the Licensee must enter into negotiations to resolve the dispute. If the Licensor and the Licensee do not reach agreement within 10 Working Days after the date of service of the Licensee's Notice, then the following provisions will apply:
  - i) **Appointment of Valuer:** the Licensor and the Licensee must within 10 Working Days after the expiry of the 10 Working Day negotiation period each appoint a registered valuer who is an associate member of The Property Institute of New Zealand Inc.;
  - ii) **Joint Determination:** the valuers appointed under clause 5.4(i). will jointly determine the current market licence fee of the Premises;

- iii) Sole Determination: if either party fails to appoint a valuer under clause 5.4(i), the valuer appointed by the other party will determine the current market licence fee alone;
  - iv) Appointment of Umpire: before determining the rent, the valuers must jointly appoint an umpire and obtain the umpire's written acceptance of appointment;
  - v) Umpire Not Appointed: if within 10 Working Days of the date of their appointment, the valuers:
    - i) fail to appoint an umpire; or
    - ii) are unable to agree on an umpire;then either party may ask the president of The Property Institute of New Zealand Inc. to appoint an umpire and obtain the umpire's written acceptance of appointment;
  - vi) Determination by Valuers: the appointed valuers (or the sole valuer, if clause 5.4(ii) applies) will jointly determine the current market licence fee of the Premises within 20 Working Days of the date of their appointment, in relation to comparable premises on that particular Rent Review Date;
  - vii) Determination by Umpire: if the valuers cannot agree on the current market licence fee of the Premises within 20 Working Days of their appointment or within any extended time agreed by the parties, then the umpire will determine the current market licence fee; and
  - viii) Costs of Determination: all costs of the determination of the current market licence fee of the Premises by the valuers or the umpire must be borne as specified by the valuer or the umpire.
- 6.5. Fee Ratchet:** The Licence Fee payable by the Licensee following a Licence Fee Review Date must never be less than the Licence Fee payable immediately before that Licence Fee Review Date.

## **7. GOODS AND SERVICES TAX**

The Licensee will pay to the Licensor upon demand any Goods and Services Tax chargeable by the Licensor under the Goods and Services Tax Act 1985 in respect of:

- 7.1.** Any goods or services supplied by the Licensor for which payment is to be made by the Licensee, either directly or indirectly, under this Licence (including the payment of the Licence Fee); and
- 7.2.** Any payments paid, payable by the Licensee under this Licence, or paid by the Licensor on behalf of the Licensee.

## **8. OUTGOINGS**

- 8.1.** Licensee to Pay Outgoings: The Licensee must on demand by the Licensor pay the Outgoings relating to the Premises without deduction or set-off. If any Outgoing is not separately assessed on or charged to the Premises, the Licensee must pay a fair and reasonable proportion of that Outgoing. The Licensee must pay the proportion of Outgoings that the licensable area of the Premises bears to the total rentable area of the Property.
- 8.2.** Apportionment: Any Outgoing, which is not assessed or charged for a period falling wholly within the Term, will be apportioned between the Licensor and the Licensee. The Outgoing may be levied on a monthly basis based on the annual operational budget for the Property. Any required adjustment to reflect the actual annual Outgoings spent will be made at the end of the Accounting Period or Broken Period and any further payment required will be payable by the Licensee within 10 working days or a credit will be issued to the Licensee as appropriate.

## **9. ALTERATIONS TO THE PREMISES**

- 9.1.** The Licensee will not alter or interfere with the structure or exterior of the Premises, including the appearance of the exterior of the Premises. The Licensee will only install or alter any fixtures or fittings

in the Premises after it has obtained the Licensor's prior written approval. The Licensor will not withhold or delay its approval unreasonably. The Licensor may require as a condition of approval that:

- i) The work is supervised by a person nominated by the Licensor;
- ii) The work is executed by contractors or tradesmen approved by the Licensor;
- iii) Prior to commencing any work, the Licensee obtains all approvals or permits necessary to enable the proposed work to be lawfully effected and on request produces copies of them to the Licensor;
- iv) Upon completion of the work, the Licensee produces to the Licensor any certificates of compliance issued by the relevant authority; and
- v) The Licensee effects and maintains comprehensive insurance cover (including all contractors' risk) in respect of the works with an approved insurance company.

**9.2.** The Licensee shall:

- i) Maintain the interior of the Premises to a high and tasteful standard to the reasonable satisfaction of the Licensor and in accordance with the plans and specifications submitted to and approved by the Licensor and in accordance with all building consents issued;
- ii) Not to do anything which is or may become a breach of any duty imposed on any person by all relevant legislation, including (but not limited to) the Health and Safety at Work Act 2015, and the Building Act 2004, and all related regulations; and
- iii) Comply with the Licensor's reasonable directions.

**10. INTEREST ON UNPAID MONEY**

If the Licensee defaults in payment of the Licence Fee or other money payable for 5 Working Days then the Licensee will pay, on demand, interest at the Default Interest Rate on the money unpaid from the due date for payment to the date of payment.

**11. INSURANCE**

- 11.1.** The Licensee must keep current a policy of public liability insurance for the value described in the First Schedule, and provide the Licensor upon request with written evidence of this cover.
- 11.2.** The Licensee must not do or permit to be done anything, which will or may make any policy of insurance in respect of the Premises void or voidable.
- 11.3.** The Licensor will at all times during the Term insure and keep the Property insured on an indemnity cover basis or at the option of the Licensor to its full replacement value. The Licensor may determine what level of insurance excess or deductible is to apply to each insurance policy.
- 11.4.** The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Licensor, the excess will represent an amount for which the Licensor has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Licensor makes any claim against its insurance for any destruction or damage because of any act or omission of the Licensee, the Licensee will pay the Licensor the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule.

**12. PERMITTED USE**

- 12.1.** The Licensee must not in any circumstances:  
Use the Premises:

- For any purpose other than the Permitted Use;
- i) In any noisy, noxious, offensive or illegal manner; or
  - ii) For any residential or illegal purpose.
  - iii) Store or use inflammable or dangerous substances upon the Premises; or
  - iv) Do anything which in the opinion of the Licensor may become a nuisance, disturbance or obstruction, or cause damage, whether to the Licensor or to neighbouring owners or occupants.

**12.2.** If the Permitted Use is permissible only with the consent, permit or permission of any authority, or under or pursuant to any statute, regional and district plans, regulation, other enactment or order or Court, the Licensee must obtain:

- i) Such consent, permit, permission or order at the sole cost and expense of the Licensee including, but not limited to, any costs or financial contributions involved in complying with any conditions of such consent, permit, permission or order obtained; and
- ii) The approval of the Licensor to the conditions of that consent, permit, permission or order.

**12.3.** Except as expressed in clause 8, the Licensee may not carry out any alterations or additions to the Premises, construct or erect any Improvements.

**12.4.** The Licensee will regularly inspect the Premises to ensure that the Premises continue to comply with all relevant statutes, regulations or consents and with this Licence, and that no damage or graffiti has occurred.

**12.5.** If the Premises do not comply with all relevant statutes, regulations or consents, or with this Licence, or have been damaged or graffitied, the Licensee will undertake all necessary action to put the Premises into the condition required to make them comply with the relevant statutes, regulations or consents, or with this Licence, and will repair damage or will remove graffiti immediately upon the non-compliance being made known to the Licensee.

**12.6.** All construction and maintenance of the Premises will be undertaken to the satisfaction of the Licensor.

### **13. NO WARRANTY AND LICENSEE'S ACKNOWLEDGEMENT OF RISK**

**13.1.** The Licensor does not warrant that:

- i) The Premises is or will remain suitable or adequate for the Permitted Use or any of the Licensee's purposes; or
- ii) The Permitted use, or any other use, is a permitted activity under the relevant regional or district plans; or
- iii) The Licensee has any exclusive trading rights within the Property.

**13.2.** The Licensee accepts the Premises as being satisfactory in all respects and with full knowledge of, and subject to, any prohibitions or restrictions on the use of the Premises. The Licensee acknowledges that it has entered into this Licence completely in reliance on its own skill and knowledge, and not in reliance on any warranty or representation by or on behalf of the Licensor.

**13.3.** The Licensee agrees to occupy and use the Premises at the Licensee's risk.

### **14. DESTRUCTION AND DAMAGES**

**14.1.** Destruction/Damage: If the Premises are destroyed or damaged due to any cause whatsoever to such an extent as to be rendered unfit for use or if the Property is totally destroyed or if any part or parts of the Property are so destroyed or damaged as to render the Property substantially unfit for use and if repair and reinstatement are in the opinion of the Licensor impracticable or undesirable then at the option of the Licensor

this Licence will terminate as from the date of such destruction or damage but without releasing the Licensee from liability for Licence Fee and other money up to that date or for any previous breach of this Licence.

**14.2.** Earlier Breaches: Termination of this Licence under this clause will not prejudice either party's rights relating to any earlier breach of this Licence.

#### **15. NO OBJECTION TO THE LICENSOR'S FUTURE PLANS FOR THE PREMISES**

The Licensee agrees that it will not lodge any submission or participate in any objection or appeal which opposes any designation, resource consent or notice of requirement, or take any other action which may have the effect of preventing or interfering with the Licensor's future plans in relation to the Premises, or any adjoining premises, and in particular any proposed public work by the Licensor in the locality.

#### **16. THE LICENSOR'S RIGHT TO ENTER AND USE THE PREMISES**

**16.1.** This Licence in no way limits the Licensor's free use of the Premises:

- i) The Licensor, and all other persons authorised by the Licensor, may enter onto any part of the Premises at any time, and for any purpose. In exercising this right of entry, the Licensor will use reasonable endeavours to ensure that no disturbance or inconvenience is caused to the Licensee and the Licensee's property on the Premises; and
- ii) The Licensor may use, occupy and deal with the Premises without reference to the Licensee, including granting rights to other parties, provided the Licensor does not unreasonably restrict the Permitted Use or the Licensee's rights under this Licence.

#### **17. MAINTENANCE OF THE PREMISES**

**17.1.** The Licensee will keep and maintain the Premises, and take all reasonable steps to protect the Premises, including buildings, fixtures or fittings, installations, fences, hedges, trees (including shelter belts), gates and any sealed areas or other property of the Licensor, free from any damage by the Licensee, the Licensee's employees, agents or invitees.

**17.2.** The Licensee will not bring about the cause of any waste of the Premises or any contamination to the Premises, and will not disturb the surface of the Premises, apart from such disturbance as is necessary for the construction and maintenance of the structures referred to in the Permitted Use.

**17.3.** The Licensee will regularly remove all rubbish from the Premises and maintain the Premises in a clean and tidy condition to the satisfaction of the Licensor.

**17.4.** The Licensee will not construct or allow to be constructed any structures on the Premises, except for the Permitted Use.

If the Licensee defaults in any of its obligations to maintain or repair under this Licence, the Licensor may arrange for such repair or maintenance to be undertaken at the cost of the Licensee, but without prejudice to the Licensor's other rights and remedies under this Licence. The Licensee must immediately reimburse the Licensor for such expense.

#### **18. LICENSEE'S ADDITIONAL OBLIGATIONS**

**18.1.** The Licensee will:

- i) Use the Premises in a manner that does not unduly hinder the normal passage of any foot and vehicle traffic on or near the Property;
- ii) Comply with any notices given by the Licensor to carry out repair works or maintenance to the Premises. The Licensee will carry out any works to the Licensor's satisfaction within any reasonable time stipulated in the Licensor's notice;

- iii) Pay all reasonable expenses that the Licensor incurs in supervising or inspecting any maintenance or repair works in respect of the Premises;
- iv) Allow duly authorised agents and employees of utility or service companies to enter, remain on and re-enter the Property and/or the Premises where necessary for the purpose of maintaining, replacing or repairing any utility or service provided to or near the Property and/or the Premises; and
- v) Comply with the Licensee's obligations stated in the Fourth Schedule. The Licensor is entitled to add to or vary those obligations by written notice to the Licensee. The Licensee will comply with the additional or varied obligations from time to time the Licensee receives the notice.

#### **19. LICENSOR'S RIGHT TO INSPECT**

The Licensor by its duly authorised agents is at all times entitled to enter and inspect the condition of the Premises and any work the Licensee does.

#### **20. CONDUCT BUSINESS WITHIN THE PREMISES**

The Licensee will conduct its business entirely within the Premises, The Licensee will keep all its stock and waste stored within the Premises and will not store or place any stock or waste outside the Premises. The Licensee will lock and secure the Premises at the end of each day's trading with all its fixtures, fittings and equipment stored within the Premises.

**21. CLOSING OF THE PREMISES** The Licensee may close the Premises for business for any reason after giving 5 Working Days' notice and the Licensor is not obliged to pay any amount on account of or relating to loss of revenue or profit. The Licensor will waive the Licence Fee and Outgoings charge on a daily basis for any period during which the Licensor requires the Licensee to close the Premises.

#### **22. STATUTORY COMPLIANCE**

The Licensee must at all times comply with all:

- 22.1.** Statutes, ordinances, bylaws, regulations and other lawful requirements which relate to the Premises, or which relate to the Licensee's use of the Premises; and
- 22.2.** Licences, permissions, notices, orders, consents, requisitions, conditions or requirements which may be given or required by any relevant authority.

#### **23. SIGNS AND SOLICITING BUSINESS**

Without the express permission of the Licensor, the Licensee will not erect on, paint, affix to, or otherwise display on the exterior of the Premises, on or near the Property any signs or notices. By way of example only, the Licensee will not place sandwich boards outside the Premises, and will not itself or through an agent approach pedestrians or vehicles to solicit business. The Licensee will only display signs within the Premises that relate to the product, pricing and business' trading name. The Licensee will ensure those signs comply with the Licensor's requirements as to size, style, font and type.

#### **24. NOISE**

The Licensee will not use loud speakers, loud hailers or any other sound amplifying equipment that can be heard outside the Premises in a manner that the Licensor considers excessive or unnecessary.

#### **25. NO NUISANCE**



The Licensee will not do, permit, or suffer upon the Premises and the Property anything that may be or become a nuisance or a source of damage or annoyance to anyone on or near the Premises and the Property, including members of the public passing by.

## **26. LICENSEE'S OBLIGATIONS ON EXPIRY OR TERMINATION**

- 26.1.** If required to do so by the Licensor the Licensee will, before the expiry or earlier termination of this Licence, remove all of the Licensee's Improvements, fixtures, fittings, chattels, goods and all other property of the Licensee from the Premises, making good any damage caused. The Licensee will restore the Premises to the state and condition it was in before being fit out by the Licensee, as determined by the Licensor acting reasonably.
- 26.2.** Termination of this Licence will be without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach.

## **27. INDEMNITY**

The Licensee:

- 27.1.** Will indemnify and hold harmless the Licensor from and against all actions, claims, demands, losses, damages, fines or penalties, costs and expenses (including legal costs on a solicitor/client basis), arising directly or indirectly from the Licensee's use of the Premises, to the extent that such loss, damage or injury is occasioned or contributed to by any act, omission, neglect, breach or default on the part of the Licensee or Licensee's invitees. This indemnity will extend to any loss, damage or injury from any cause whatsoever to property or persons; and
- 27.2.** Releases to the full extent permitted by law the Licensor from all claims and demands of any kind and from all liability, which, in the absence of any negligence on the Licensor's part, may arise in respect of any accident, damage or injury occurring to any person or property in or about the Premises.

## **28. COSTS**

- 28.1.** Each party will bear its own costs in relation to the preparation and negotiation of this Licence.
- 28.2.** The Licensee must pay to Licensor on demand all reasonable costs (including legal costs), charges and other expenses which the Licensor may incur or for which the Licensor may become liable relating to:
- i) the Licensor remedying the Licensee's breach of any term of this licence;
  - ii) the Licensor's exercise or attempted exercise or enforcement of any power, right or remedy conferred on the Licensor by this licence; and
  - iii) the Licensor's reasonable costs in consenting to a sub-licence or franchise arrangement and approving any deeds required in accordance with this Licence.

## **29. DEFAULT**

- 29.1.** The Licensor may terminate this Licence if at any time:
- i) The Licence Fee is in arrear and those arrears have not been remedied within 10 working days after service on the Licensee of a notice pursuant to section 245 of the Property Law Act 2007;
  - ii) The Licensee is in breach of any covenant under this Licence (other than the covenant to pay the Licence Fee) and that breach has not been remedied within the time period specified in a notice pursuant to section 246 of the Property Law Act 2007 served on the Licensee;
  - iii) Any assignment is made of the Licensee's property for the benefit of creditors or if the Licensee compounds with the Licensee's creditors;



- iv) The interests of the Licensee in or under this Licence or in the Premises are attached or taken in execution or under any legal process;
- v) If the Licensee is an individual, the Licensee is declared bankrupt or insolvent according to law; or
- vi) If the Licensee is a company:
  - i) A resolution is passed, or an order made by a Court, for the winding up of the Licensee (except for a reconstruction approved by the Licensor);
  - ii) The Licensee is placed in liquidation, receivership or under official or statutory management; or
  - iii) Any person takes formal steps under the Companies Act 1993 to have the Licensee removed from the companies register.

And upon such cancellation this Licence will cease and determine, but without releasing the Licensee from liability in respect of any antecedent breach of this Licence.

**29.2.** Notwithstanding clause 29.1, the Licensee will have 10 Working Days from the date of receipt of a termination notice issued pursuant to clause 29.1 to remove its Improvements. Any Improvements remaining on the Premises after the 10 Working day period will become the property of the Licensor, without any compensation or payment to the Licensee.

**29.3.** The Licensee will not be entitled, after expiry of the 10 Working Days from the date of receipt of a termination notice issued pursuant to clause 29.1, to enter onto the Premises for any purpose. The Licensee will have no claim against the Licensor in respect of the Premises or any Improvements of the Licensee remaining on the Premises.

### **30. ASSIGNMENT, SUB-LICENCE, ETC**

**30.1** The Licensee shall not assign or otherwise part with possession of the Premises (or any part of it) without first obtaining the written consent of the Licensor, which the Licensor shall not unreasonably withhold or delay if the following conditions are fulfilled:

- (a) The Licensee proves to the reasonable satisfaction of the Licensor that the proposed assignee (and in the case of a company that the shareholders of the proposed assignee are) respectable responsible and has the financial resources to meet the Licensee's commitments under this Licence. The Licensee shall give the Licensor any additional information reasonably required by the Licensor.
- (b) All Licence Fee and other moneys payable have been paid and there is not any subsisting breach of any of the Licensee's obligations under this Licence.
- (c) If required by the Licensor, a deed of covenant in customary form approved or prepared by the Licensor is duly executed and delivered to the Licensor.

**30.2** The Licensee may not enter into a sub-licence or any franchise arrangement in respect of the Licence without the Licensor's prior written approval.

### **31. DISPUTE RESOLUTION**

**31.1.** The parties acknowledge that they wish to avoid or minimise any differences or disputes arising out of and from the terms of this Licence. The parties therefore agree that if any difference or dispute arises between them they will actively, openly and in good faith negotiate that difference or dispute with a view to achieving a quick resolution.

**31.2.** If the parties cannot resolve a dispute or difference within 10 Working Days of any dispute or difference arising then, unless otherwise expressly provided in this Licence, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between

them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as “LEADR” (Lawyers Engaged in Alternative Dispute Resolution).

- 31.3.** If the parties cannot agree on any dispute resolution technique within a further 15 working days of any dispute or difference being referred by both parties to any informal dispute resolution technique under clause 31.2, then the difference or dispute will be determined by arbitration by a sole arbitrator in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

## **32. STATUTORY ROLE**

- 32.1.** Nothing in this Licence will override the Licensor’s statutory and regulatory role as a local authority or other statutory body under the Local Government (Auckland Council) Act 2009 (“Licensor’s Role”).
- 32.2.** Nothing in this Licence is to be taken to imply any approval under the Licensor’s Role, other than an approval expressly recorded in this Licence.
- 32.3.** If there is a conflict between the provisions of this Licence and the Licensor’s Role, then the Licensor’s Role will prevail.
- 32.4.** When any approvals or consents are required under this Licence, the Licensor:
- i) May have regard to the Licensor’s Role; and
  - ii) Will not be acting unreasonably or arbitrarily if it declines its consent or approval, or imposes conditions on any such consent or approval, on the grounds (in its sole and absolute discretion) of the Licensor’s Role.

## **33. HOLDING OVER**

If, other than under a renewal of this Licence or the grant of a further Licence, the Licensor permits the Licensee to remain in occupation of the Premises after the expiry or earlier termination of this Licence, the Licensee’s occupation will be on the same terms as this Licence except that the Licensee’s occupation will be terminable by either party giving one month’s notice.

## **34. WAIVER**

No waiver or failure to act by the Licensor in respect of any breach by the Licensee will operate as a waiver of another breach.

## **35. NOTICES**

All notices including requests, demands and other communications under this Licence, to be given by a party to any other party must be in writing and:

- 35.1.** Signed by the party itself or on its behalf by its solicitor, property manager, or other authorised person; and
- 35.2.** Given or served:
- i) In the manner provided in the Property Law Act 2007 where that Act applies; or
  - ii) In all other cases, by personal delivery, or email or by posting by registered mail or ordinary mail or by facsimile transmission to the recipient’s address for service or as otherwise directed by the relevant party, or (in the case of a notice from the Licensor to the Licensee) by being affixed to the Premises.
- 35.3.** Any notices under clause 35.2.2 will be deemed given, served and received:
- i) Personal delivery: When personally delivered or affixed to the premises;
  - ii) Email: When acknowledged by the addressee by return email or otherwise in writing.

- iii) Fax: On the first working day following the day of facsimile transmission; or
- iv) Post: On the third working day after being posted to the addressee's last known address in New Zealand.

**35.4.** Unless and until changed under clause 35.2.2, the addresses for service of the parties are:

Licensor: Property Optimisation Manager, Property and Planning, Auckland Transport Private Bag  
92250 Auckland 1142

Licensee: [Licensee's address for service]

**35.5.** A party may by notice to the other, change its address for service.

## **36. LICENCE NOT A LEASE**

**36.1.** This Licence is intended as a personal privilege and is not to take effect as a lease, right of first refusal or option to purchase the Premises, nor does it create any legal estate or interest in the Premises.

**36.2.** The Licensee accepts and acknowledges that it has no right to, and will not lodge a caveat against the Premises to protect its rights and interests pursuant to this Licence.

## **37. IMPLIED RELATIONSHIPS**

Nothing contained in this Licence will be deemed or construed or constitute any party or parties' agent or representative, or be deemed to create any trust, commercial partnership or joint venture.

## **38. SEVERABILITY**

If any part of this Licence is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of this Licence.

## **39. PARTIAL INVALIDITY**

The invalidity of any part or provision of this Licence will not affect the enforceability of any other part or provision of this Licence.

## **40. NON-MERGER**

The parties acknowledge and agree that certain covenants set out in this Licence will continue beyond the expiry or sooner determination of this Licence for the benefit of the parties notwithstanding expiry or sooner determination of the Licence.

## **41. GOVERNING LAW**

This Licence will be construed and take effect in accordance with the laws of New Zealand.

## **42. AMENDMENT**

No amendments, variations or modifications to this Licence will be effective unless made in writing and signed by or on behalf of each of the parties.

## **43. ENTIRE AGREEMENT**

The parties agree and acknowledge that this Licence, and any valid amendments or variations to this Licence, constitute the entire agreement between the parties concerning the transaction(s) contemplated by this Licence. This Licence replaces all earlier negotiations, representations, warranties, understandings and

agreements, whether oral or written, between the parties relating to the transaction(s) contemplated by this Licence.

#### **44. INTERPRETATION**

In this Licence:

- 44.1.** References to *Licensor* mean the party named as such on the front page of this Licence, and include the successors, personal representatives and permitted assignees of the Licensee, and where not repugnant to the context, includes the Licensee's officers, employees, agents, contractors and any person authorised to exercise the Licensor's powers;
- 44.2.** References to the Licensee mean the party named as such on the front page of this Licence, and include its successors at law and (where not inconsistent with the context) its officers, employees, contractors, agents and invitees, and any person authorised to exercise the Licensee's rights and powers;
- 44.3.** Accounting Period means the Licensee's 12 month accounting period or such other period as the Licensor may require from time to time;
- 44.4.** Broken Period means either the period from the Commencement Date to the end of the then current Accounting Period or the period from the last occurring first day of an Accounting Period during the Term until the expiry or termination of the Term;
- 44.5.** Improvements means any signs/structures, improvements, chattels, stock, equipment, machinery, fixtures or other items;
- 44.6.** *Working Day* means:
- i) In relation to any time period specified under the Property Law Act 2007, has the meaning given in that Act; or
  - ii) In all other cases, means any day that is not a Saturday, Sunday, day between 24 December and one year to 10 January in the next year (both days inclusive) or statutory holiday in the area where the Premises is located;
- 44.7.** Words importing the singular include the plural and vice versa;
- 44.8.** Words or phrases, which appear in this Licence, mean and include those details supplied after those words or phrases in the First Schedule.

#### **45. DEMOLITION**

- 45.1.** If at any time during the Term the Licensor requires the Premises or any part of the Property for the purposes of demolishing all or part of the Property, or carrying out a redevelopment of any description of or at the Property, the Licensor may by 6 months' notice in writing to the Licensee, terminate this Licence. The Licence shall terminate on the expiry of the notice, but without prejudice to the rights of either party in relation to any prior breach of the Licence.
- 45.2.** The Licence Fee and outgoings shall be payable by the Licensee only until the date of termination specified in the notice.
- 45.3.** The Licensee shall not be entitled to any compensation or damages arising from early termination.

#### **46. FIRE DRILLS AND EVACUATION PROCEDURES**

The Licensor may require the Licensee from time to time to perform fire drills and observe all necessary and proper emergency evacuation procedures. The Licensee and persons under the control of the Licensee shall cooperate with the Licensor in performing such drills and procedures. In requiring such drills

and procedures, the Licensor shall use best endeavours to minimise disturbance to the Licensee. It is acknowledged by the Licensee that such fire drills will, however, be carried out in the normal trading hours of the facility. No compensation for any disruptions or claim for loss or trade shall be made by the Licensee as a result of any fire drills or other safety procedures undertaken by the Licensor.

#### **47. USE OF COMMON AREAS**

The Licensee may use the common areas of the Property in common with the Licensor, members of the public, and all others to whom the Licensor has or may in the future grant such right.

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THIRD SCHEDULE: PLAN SHOWING PREMISES

Plan enclosed

[TBC]

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**PROPERTY PLAN**

[TBC]

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**PREMISES PLAN**

[TBC]

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FOURTH SCHEDULE: LICENSEE'S ADDITIONAL OBLIGATIONS UNDER CLAUSE 17

TBC

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FIFTH SCHEDULE: LICENSOR'S FIXTURES, FITTINGS AND CHATTELS

Kiosk plan attached

## SIXTH SCHEDULE: GUARANTEE

1. Guarantee: In consideration of the Licensor entering into this Licence at the Guarantor's request, the Guarantor:
  - (a) Guarantee: guarantees payment of the rent and other money payable by the Licensee under this Licence and the Licensee's performance of the Licensee's obligations in this Licence not only during the Term of this Licence but also during any period of holding over or renewal or extension of the Term; and
  - (b) Indemnity: indemnifies the Licensor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Licensor as a result of the Licensee's breach of any of the Licensee's obligations in this Licence.
2. Liability Not Affected: The Guarantor's liability under this schedule 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, re licence, abandonment, waiver, variation or renewal of any of the Licensor's rights against the Licensee;
  - (c) Rights Not Enforced: the Licensor's failure to enforce the Licensor's rights against the Licensee;
  - (d) Assignment etc of Licence: any assignment or variation of this Licence;
  - (e) Bankruptcy etc: the bankruptcy, death, or, as the case may be, 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 schedule, wholly or partly re licence the Guarantor from the Guarantor's obligations under this schedule.
4. Proceedings: The Licensor does not have to take proceedings against the Licensee before taking proceedings against the Guarantor.
5. Benefit of Guarantee: The guarantee and indemnity contained in this schedule is for the benefit of and may be enforced by any person for the time being entitled to receive the rent under this Licence.
6. Replacement Licence: If any person validly disclaims this Licence, the Guarantor must, on the Licensor's written request, accept a new Licence of the Premises from the Licensor:
  - (a) Duration of Licence: for a term equal to the residue of the unexpired Term as at the time of the grant of that new Licence; and
  - (b) Terms of Licence: otherwise on the same terms as this Licence.

SEVENTH SCHEDULE: CONDITION REPORT

**EIGHTH SCHEDULE: DESIGN REVIEW AND INSTALLATION MILESTONES**

Design Review and Kiosk Fit Out Milestones	Date Required by:
Initial meeting with the Licensor to discuss fit out concept, licence terms, etc.	TBC
Developed Concept for the Licensee Fit Out	TBC
Final Design of for the Licensee Fit Out Works submitted to the Licensor for review	TBC
Application for AT Authorisation to Work Permit for the Licensee Fit Out Works submitted by the Licensee.	at least 10 working days prior to commencement of any works onsite
Early Access Date to Kiosk to begin Fit Out Works	From [DATE], subject to the pre-conditions being met under the First Schedule (Early Access).