



panuku

Expression of interest

TAKAPUNA MARKET

1. Introduction

The Devonport-Takapuna Local Board resolved on 20 June 2023 that Eke Panuku will manage the commercial Expression of Interest (EOI) process to identify a suitable operator for the iconic Takapuna Market. The board also approved that Eke Panuku negotiate and execute a 5-year license with the new operator found through the EOI process. This document establishes the EOI process and allows any interested parties to make an application.

2. Background

The Takapuna Market has been running for over 30 years, most recently in the car park located at 40 Anzac Street, Takapuna. The current operator has provided notice that they wish to end their agreement with Eke Panuku, and the last market will be held on 27 August 2023.

Eke Panuku have been busy constructing Waiwharariki Anzac Square and we are very excited that the new public space is almost finished. We expect the new square to open at the end of August 2023 and with that, the market will shift into this new space in early September, from its current home in the car park at 40 Anzac Street.

Waiwharariki Anzac Square is going to be a great location for the market. There will be lots of a space for stalls, plus outdoor dining, seating, lighting, shade, a water feature, and lots of greenery. It will be a place where the community can come together to shop, meet, sit, relax, and play.

The Devonport-Takapuna Local Board supports the continuation of the Takapuna Market and request that Eke Panuku work with a new market operator to ensure the longevity of the market and that the new public space is activated in a way that reflects the vibrant and flavourful community of Takapuna.

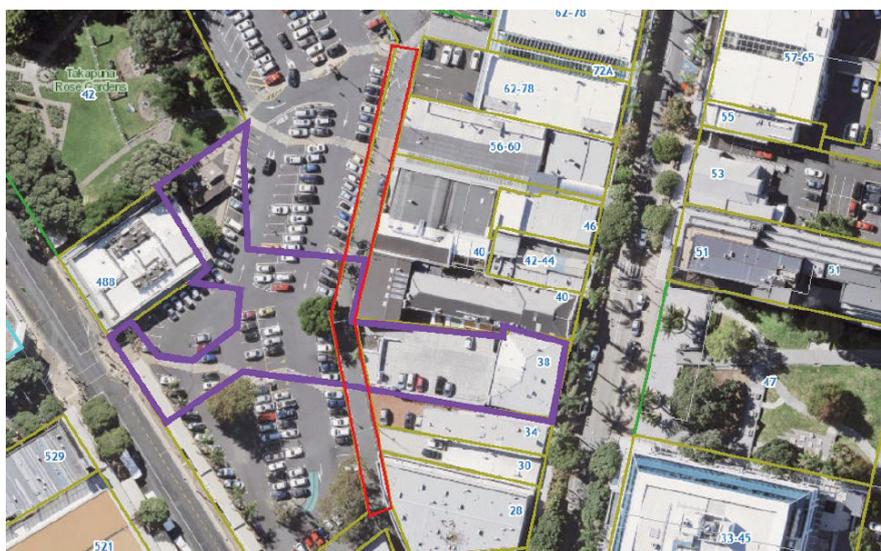
3. Timeline

● Early July 2023	EOI commences, advertising is placed in local newspapers and the New Zealand Herald, application pack is available on the Eke Panuku website
● 28 July 2023	Applications close
● Early August 2023	Analysis of EOI applicants complete and Eke Panuku shortlist applicants
● Mid August 2023	Eke Panuku seek additional information and proceed to interview shortlisted candidates
● Late August 2023	EOI evaluation complete, selection of new market operator complete and negotiations begin
● Early September 2023	Negotiations complete and new market licence in place, the new Takapuna Market will commence

4. Market Footprint

38 Hurstmere Road, Takapuna and part 40 Anzac Street, Takapuna.

The market footprint is outlined in purple and the service lane is outlined in red.



5. How will the new market differ to the old market?

From September 2023 the market will no longer be held on a car park but will be held on the new town square. There is no car access to the area, pack up and pack down of the market will be done using the service lane (highlighted in red on the Market Footprint). The service lane is one way only from Lake Road and from Anzac Street it is two-way but only for some of the service lane. Stallholders will then have to park their cars in available car parking spaces in the area for the duration of the market. Eke Panuku have collated some parking options which include Toka Puia carpark, Killarney Street carpark and surrounding street parking.

6. Takapuna Market Vision

- An urban outdoor market
- Provide access to a variety of fresh products – fruit, vegetables, seafood, bakery goods, herbs, flowers
- Celebrate local flavours
- Include a space for artists and entertainers
- Showcase the vibrant spirit of our community
- Support urban living in Takapuna
- Foster community connections.

7. New Market Operator

- A clear passion to activate the town square at Waiwhaririki Anzac Square
- Willingness to meet Eke Panuku and Devonport-Takapuna Local Board's expectations
- The ability to ensure inclusiveness and belonging to stallholders and customers
- The capability to enhance the current market operations
- Able to demonstrate relevant experience
- A clear and concise business plan.

APPENDICES

- A. Information Sought from Applicants
- B. Conflict of Interest Form
- C. Terms and Conditions
- D. Draft License

APPENDIX A

Information sought from applicants

Applicants are asked to present their submission in the following format:

Section One: The Applicant

- Individual Name(s)/Company Name
- Address for service
- Primary contact person
- Contact details – phone and email.

Section Two: Background and Relevant Experience

- A statement of competence and biography with regard to previous skills and experience
- Examples of previous experience – preferably within New Zealand
- Full CVs for each individual named in the application.

Section Three: Business Plan

- A business plan detailing proposed market operations with particular emphasis on The Devonport-Takapuna Local Board resolution made on 20 June 2023. Applicants should identify whether these requirements can be accommodated within their proposed market operations.

The Devonport-Takapuna Local Board Resolution (CP2023/05714)

The Devonport-Takapuna Local Board:

1. Requests the new market operator operate a weekly market.
2. Requests current market stalls have booking priority within the new market, subsequent to market conditions being met.
3. Request the new operator produces a market that:
 - i. contributes to the identity of Takapuna as a vibrant shopping and recreational destination.
 - ii. makes good use of the whole of Waiwharariki Anzac Square
 - iii. contributes to a positive atmosphere that offers reasons for visitors to linger, connect and enjoy the wider area.
 - iv. encourages live music and performance
 - v. is accessible and inclusive for all members of the community
 - vi. compliments the current commercial offer.

4. Requests the new operator curate market stalls that:
 - i. sell good quality goods and services
 - ii. has a range of market stall categories every week including fruit and vegetables, artisan food products, clothing, crafts, services and art
 - iii. encourages sustainable products and practices
 - iv. aims for zero waste
 - v. gives priority access to local Auckland stall holders.
5. Requests that market operator conditions are not prohibitive in operating a low cost community market.

EOI Administration

The closing date for EOI submissions is 28 July 2023.

Eke Panuku reserves the right at its sole discretion to extend the closing date for responses.

Format of Responses

Applicants are asked to provide a brief document which generally follows the format of Information Sought from Applicants.

Delivery of Responses

Responses can be delivered in electronic or hard copy format.

Electronic responses are to be delivered to:

Ekepanukupropertyenquiries@ekepanuku.co.nz

Hard copy responses should be delivered to:

Ground Floor, 82 Wyndham Street, Auckland 1010

Enquiries & communications

All communications relating to this EOI should be directed to ekepanukupropertyenquiries@ekepanuku.co.nz

Interested parties should not contact any representatives of Eke Panuku directly.

You must not make any public statements regarding this EOI, without the prior written consent of Eke Panuku. Unauthorised communication by you about this EOI or with Eke Panuku or any other person in relation to this EOI may lead to your disqualification from the process.

Evaluation Criteria

Eke Panuku will establish a panel to evaluate the responses to this EOI.

The panel will assess each response on how well it meets the requirements set out in Information Sought from Applicants and completion of the Conflict of Interest Declaration.

Conflicts of Interest Declaration

Applicants shall complete the Conflict of Interest Declaration form.

Terms and Conditions

Applicants shall read the Terms and Conditions form.

Draft Licence

A draft version of the licence is included for reference.

APPENDIX B

Conflict of Interest Declaration

Note: This form must accompany each tender submitted

TENDER FOR:	EOI - New Operator for Takapuna Market
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CONFLICT OF INTEREST

Definition:

A conflict of interest is a situation in which a participant could gain (or be seen to gain) an unfair advantage through an association with an individual or organisation. Associations include financial, personal, professional, family-related or community-related relationships.

- An **actual** conflict of interest is where there already is a conflict.
- A **potential** conflict of interest is where the conflict is about to happen or could happen.
- A **perceived** conflict of interest is where other people might reasonably think there is a conflict.

QUESTIONNAIRE:

Note: each organisation involved in a joint bid must submit a *separate* questionnaire and declaration.

	QUESTION	RESPONSE
		Select one answer for each question. Select “potentially” if others could perceive that a conflict exists
1.	Does any person in your organisation have a close friend or relative who is (or could be) involved in any evaluation or decision-making relating to this procurement process?	[yes] / [no] / [potentially]
2.	Has any person in your organisation recently offered any special discounts, gifts, trips, hospitality, rewards or favours to any person involved in any evaluation or decision-making relating to this procurement process? (e.g. <i>free travel, free samples for personal use</i>)	[yes] / [no] / [potentially]

3.	<p>Does any person involved in any evaluation or decision-making relating to this procurement process have a financial interest in your organisation?</p> <p><i>(e.g. the person is an employee of, or a shareholder in, your organisation)</i></p>	[yes] / [no] / [potentially]
4.	<p>Are you aware of anything that might give the appearance that any person involved in the evaluation stage or decision-making stage of this procurement process is biased towards or against your organisation?</p> <p><i>(e.g. the person has used your organisation's corporate box)</i></p>	[yes] / [no] / [potentially]
5.	Is there anything else that we should know?	[yes] / [no]

If you answered “**yes**” or “**potentially**” to any of the questions above, please set out the details of the situation below.

Declaration: I declare that the information provided in this document is true, complete and accurate to the best of my knowledge and on behalf of the participant identified below, agree to notify the Council Organisation as soon as possible of any conflicts of interest that arise (or could arise) in the future.

Name of participant	
Signed by authorised signatory of the participant	
Name and title of authorised signatory	
Date	

APPENDIX C

Terms and conditions

1. Introduction

- 1.1 The following provisions set out the terms and conditions to be followed by a party (or parties) and its representatives (together the “Respondent”) in connection with a possible development and lease by Auckland Council of the Takapuna Beach Reserve Holiday Park (the “Transaction”).
- 1.2 This EOI has been issued by Panuku Development Auckland on behalf of Auckland Council. References in this EOI and these terms and conditions to Auckland Council include Panuku Development Auckland. These terms and conditions are for benefit for Auckland Council, Panuku Development Auckland and the wider council group.
- 1.3 Participation by the Respondent in the Expressions of Interest (“EOI”) process will constitute acceptance of, and agreement to be bound by, these EOI Conditions.

2. Interpretation

- 2.1 In this Attachment D:
 - a. Contact Person means the EOI information contact person(s) stated in the Information Sought from Respondents section.
 - b. EOI Documents means this EOI and any and all documents and written information issued in relation to this EOI.
 - c. EOI Conditions means these conditions as set out in this Attachment D.
- 2.2 The term “including” does not imply any limitation.
- 2.3 Any rights reserved to Auckland Council may be exercised at the sole discretion of Auckland Council or the Contact Person.

3. Issue of EOI Documents

- 3.1 The issue of the EOI Documents is not an offer to enter into a contract.
- 3.2 The EOI Documents have been provided to assist participants in preparing EOIs. Auckland Council and Panuku Development Auckland Limited do not represent or warrant the completeness or accuracy of the EOI Documents. Participants rely on any information provided in relation to this EOI at their own risk and are responsible for the interpretation of that information. EOI documents remain the property of Auckland Council.
- 3.3 The Contact Person may be contacted with any questions in relation to this EOI. All questions must be received by the last date for questions set out in the Schedule to EOI Conditions.

4. Communications

- 4.1 All enquiries regarding the EOI must be directed by email to the Contact Person. Respondents must not directly or indirectly approach any representative of Auckland Council, Panuku Development Auckland, the Devonport-Takapuna Local Board or any other person, to solicit information concerning any aspect of the EOI.
- 4.2 Auckland Council will not be bound by any statement made by any person in relation to this EOI other than statements made via the Contact Persons email address and by an authorised person of Auckland Council.

5. Ethics

- 5.1 Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of Auckland Council, Panuku Development Auckland, or the Devonport-Takapuna Local Board in relation to the EOI.
- 5.2 Auckland Council reserves the right to require declarations, or other evidence from a Respondent, or any other person, throughout the EOI process to ensure probity of the EOI process.

6. Conflict of Interest declaration

Respondents must complete and submit the Conflict of Interest Declaration set out in Attachment C.

7. Exclusions from EOI process

Auckland Council reserves the right to exclude any Respondent from this EOI process if Auckland Council becomes aware that the participant has:

- a. any undeclared conflict of interest;
- b. made any attempt to influence the outcome of the EOI process by canvassing, lobbying or otherwise seeking the support of any officers, consultants, advisors or elected representatives of Auckland Council or the administrator (whether before or after the issue of this EOI);
- c. engaged in any practice that gives or is intended to give one or more Respondents an improper advantage over any other participant; and/or
- d. engaged in any practice that is illegal or which Auckland Council considers to be unfair or unethical (including collusion and secret commission arrangements).

8. Anti-collusion and bid rigging

- 8.1 Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their responses or other submissions or in any discussions with Auckland Council. Such behaviour will result in the Respondent being disqualified from participating

further in the EOI or any further related processes. The Respondent warrants that its response has not been prepared in collusion with a competitor (except in the case of a consortium response).

8.2 Auckland Council reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondents response.

9. Submission of EOIs

9.1 Hard copy: The Response Box will open and close at the time and place stated in the EOI Administration section. Auckland Council reserves the right to extend the period allowed for the submission of EOIs. Each EOI must be:

- a. packaged, identified and addressed as set out in the EOI Administration section; and
- b. deposited to the correct Response Box before the closing time. However, the Council reserves the right to accept late EOIs. Any late EOI in respect of which the Council chooses not to exercise its discretion will be returned unopened.

9.2 Soft Copy: For electronic tendering, each EOI must be delivered in electronic format as specified in Appendix A:

- a. in the form and include the information required by the EOI Documents.
- b. signed by or on behalf of the participant.

9.3 Joint EOIs may be submitted. One of the participants to the joint EOI must be identified as the contact point for all communications with the Council relating to the EOI.

9.4 The cost of preparing and submitting an EOI, and the cost to the participant of any subsequent negotiations, meetings or discussions, will be borne by the participant.

9.5 The participant warrants that all information that it submits:

- a. is complete and accurate in all material respects; and
- b. does not breach any third party's rights, including intellectual property rights, and the use of the information in relation to this EOI will not breach such rights.

10. Acceptance of EOIs

10.1 Auckland Council may request any Respondent to clarify and/or adjust aspects of its EOI and reserves the right to negotiate with any shortlisted Respondent/s with a view to proceeding to a competitive process or negotiate directly with one or more Respondent /s.

10.2 Short-listing of any participant does not constitute acceptance by Auckland Council of that participant's EOI or imply or create any obligations on Auckland Council to proceed to a competitive process or enter into any commitment to purchase any particular goods and/or services from the participant.

10.3 Auckland Council reserves the right to:

- a. accept none or any of the EOIs;
- b. waive any irregularities or informalities in the EOI process;
- c. amend the EOI process or any associated documents;
- d. suspend, withdraw or cancel, in whole or in part, the EOI process or withdraw the contract at any time;
- e. enter into negotiations with one or more of the participants (short-listed or not); and/or
- f. request additional EOIs; and/or
- g. proceed to the next procurement process of its choosing or not proceed to a competitive process at all without incurring any liability to any participant (short-listed or not).

11. Submission of response

11.1 The Respondent warrants that:

- a. all information it submits is complete and accurate in all material respects and is not misleading whether by omission or otherwise;
- b. none of the information it submits breaches any third party's rights, including intellectual property rights, and the use of the information in relation to this EOI will not breach such rights;
- c. it has not withheld any information potentially relevant to Auckland Council's consideration of its response, including any actual or potential controversies, disputes or claims involving the participant; and
- d. the foregoing warranties will remain true and correct during the period of any negotiations between the Respondent and Auckland Council.

12. Confidentiality of EOI information

12.1 For the duration of the EOI, to the date of the announcement of the Successful Respondent, or the end of the procurement process, the Respondent agrees to keep the EOI strictly confidential and not make any public statement to any third party in relation to any aspect of the EOI or the EOI process without Auckland Council's prior written consent.

12.2 A Respondent may disclose information relating to the EOI to any officer, employee, consultant, contractor, professional advisor, partner, principal or director, but only for the purpose of participating in the EOI. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the EOI.

13. Public statement

Respondents must not make any public statement regarding this EOI process without the express prior written consent of the Council.

14. Confidentiality Deed

Auckland Council may, if it considers it appropriate, require a participant to sign a confidentiality deed before releasing any confidential or commercially sensitive information to the Respondent. The Respondent agrees to sign the confidentiality deed, if requested.

15. Obligations breach

Auckland Council reserves the right to exclude any participant from this EOI process if the Council becomes aware that the participant has breached any of the obligations set out in this clause.

16. LGOIMA

Auckland Council is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA). Information provided by participants may be required to be disclosed under that act. Respondents further acknowledge that Auckland Council's obligations under paragraph 5(a) are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary or constitutional convention and any other obligations imposed by the law.

APPENDIX D



Stall / Cultural Event Licence

[Insert Address of the property]

DATED:

Te Kaunihera o Tāmaki Makaurau (Auckland Council)
(Licensor)

[Insert Licensee Name] (Licensee)

Signing:

IMPORTANT: By signing this Licence, the Licensee acknowledges that:

- it has read and understood the terms of this Licence; and
- it has had the opportunity to seek advice about this Licence before signing it.

Signed for and on behalf of **Auckland Council** under delegated authority by:

Signed for and on behalf of **[Licensee's name]** by:

Authorised signatory

Name: []
Position: []

Authorised signatory

Name: []
Position: []

KEY TERMS

LICENCE:	<p>This Licence is made up of the following parts:</p> <ol style="list-style-type: none"> (1) The Signing Page (2) The Key Terms (3) The Agreed Changes (4) The General Terms (5) Schedule 1 – Licensed Area Plan <p>[MODIFY if any changes to the standard Schedules]</p>	
LAND STATUS:	<p>[SELECT]: [option 1 if fee simple]: The Land is owned by the Licensor in fee simple. The Licensor enters into this Licence under the Local Government Act 2002. [Option 2 if reserve]: The Land is vested in the Licensor as a reserve under the Reserves Act 1977 and is classified as a [INSERT:] [e.g. recreation or local purpose reserve] under the Reserves Act 1977. The Licensor enters into this Licence under section [insert relevant section eg section 54(1)(d) or section 61(2A)] of the Reserves Act 1977.</p>	
LAND:	<p>The whole of the land at [INSERT: insert general address], with an area of [INSERT: area] being Lot(s) [INSERT: lot number(s)] Deposited Plan [INSERT: DP number] comprised in Record of Title [INSERT: RT number].</p>	
LICENSED AREA:	<p>[INSERT if licensing the entire Land and entire Building: The Land and Building at [INSERT: Street address] comprising approximately [INSERT: area] square metres (more or less) as indicatively shown [marked/hatched/coloured] [INSERT: description] on the plan attached to this Licence at Schedule 1. Licensed Area include the Licensor's Fixtures and Fittings but excludes the Licensee's Improvements.] OR</p> <p>[INSERT if licensing part of the Land and entire Building: That part of the Land comprising approximately [INSERT: area] square metres (more or less) at [INSERT: Street address] as indicatively shown [marked/hatched/coloured] [INSERT: description] on the plan attached to this Licence at Schedule 1 and any Building on that part of the Land. Licensed Area include the Licensor's Fixtures and Fittings but excludes the Licensee's Improvements.] OR</p> <p>[INSERT if licensing the entire Building on the Land or part of the Land (only the footprint of the Building): The Building comprising approximately [INSERT: area] square metres (more or less) on [part of] the Land as indicatively shown [marked/hatched/coloured] [INSERT: description] on the plan attached to this Licence at Schedule 1. Licensed Area include the Licensor's Fixtures and Fittings but excludes the Licensee's Improvements.] OR</p> <p>[INSERT if licensing part of the Building on the Land (only the footprint of part of the Building): That part of the Building comprising approximately [INSERT: area] square metres (more or less) on part of the Land as indicatively shown [marked/hatched/coloured] [INSERT: description] on the plan attached to this Licence at Schedule 1. Licensed Area include the Licensor's Fixtures and Fittings but excludes the Licensee's Improvements.]</p>	
TERM:	<p>[INSERT: in words (figures)]. [eg: "5 years"]</p>	
COMMENCEMENT DATE:	<p>[INSERT: date]. [eg: "## Month Year"]</p>	
TERMINATION DATE:	<p>[INSERT: date]. [eg: "## Month Year"]</p>	
LICENCE FEE:	Licence Fee:	<p>[INSERT: insert licence fee in \$figures] plus GST per annum</p>
	Monthly Licence Fee Instalment:	<p>[INSERT: insert monthly licence fee instalment in \$figures] plus GST</p>

	Licence Fee Payment Dates:	[INSERT: insert the day in each month on which the instalment is due]	
	CPI Licence Fee Review:	CPI Licence Fee Review Dates:	[INSERT: insert dates] [including if on a Renewal Date]
		CPI Factor:	[INSERT: Factor as a decimal number] [eg: if the increase is to be CPI plus 2%, then insert '0.02']
	Fixed Licence Fee Review:	Fixed Licence Fee Review Dates:	[INSERT: insert dates] [including if on a Renewal Date]
Percentage Increase:		[INSERT: Percentage and then percentage as a decimal number] [eg: if the increase is to be 4%, then insert 4% and '0.04' for the calculation] [%] (or [] for the purposes of the calculation in clause 5.2)	
INTEREST RATE:	16%		
MINIMUM PUBLIC LIABILITY AMOUNT:	[INSERT: \$figures] (being the amount which may be paid out arising from any single accident or event)		
LICENSED USE:	The operation of a market or cultural event with the operation of Stalls by Stall Holders		
PERMITTED HOURS OF USE:	[INSERT: hours of operation]		

AGREED CHANGES

The General Terms of this Licence are changed as follows:

[**INSERT: agreed changes to the General Terms (if any)**]

[INSERT: additional clauses below if required]

[30. TOILETS

- 30.1 **Placement of Toilets:** The Licensee must place temporary toilet facilities (**Temporary Facilities**) in the area shown [*insert description*] on the Licensed Area Plan provided that the Temporary Facilities are not required to be connected to mains water or sewerage.
- 30.2 **Cleaning and emptying of Temporary Facilities:** The Licensee must ensure that the Temporary Facilities are kept in a clean tidy and sanitary condition at all times and that they are emptied on a regular basis.
- 30.3 **Relocation:** The Licensor may require that the Temporary Facilities are relocated to another area within the Licenced Area or the Land.
- 30.4 **Removal:** The Temporary Facilities must be removed prior to the Termination Date.]

[31. BINS

- 31.1 **Placement of Bins:** The Licensee may place temporary rubbish and recycling facilities (**Bins**) in the area shown [*insert description*] on the Licensed Area Plan.
- 31.2 **Clean and Tidy:** The Licensee ensures that the Bins are kept in a clean, tidy and sanitary condition at all times and that they are emptied on a regular basis.
- 31.3 **Relocation:** The Licensor may require that the Bins are relocated to another area within the Licenced Area or the Land.
- 31.4 **Removal:** The Bins must be removed prior to the Termination Date.]

GENERAL TERMS (version 1.0)

1. DEFINITIONS, REFERENCES AND INTERPRETATION

1.1 Definitions: In this Licence, capitalised words have the meanings given to them in the Key Terms and as follows:

Auckland Council refers to Auckland Council acting in its regulatory capacity not as landowner;

Authority means every governmental, local, territorial and statutory authority having jurisdiction or authority over the Licensed Area or their use and may include a utility supplier;

Building means the building(s) and other improvements on that part of the Land of which the Licensed Area forms part, excluding the Licensee's Improvements but including:

- (a) **Any Part:** any part of the Building and improvements;
- (b) **Fixtures and Fittings:** the Licensor's Fixtures and Fittings in or forming part of the Building; and
- (c) **Alterations:** any extensions, alterations or repairs to the Building;

Building Act means the Building Act 2004;

Building Work has the same meaning as in the Building Act;

Common Area(s) means any parts of the Land and/or Building the Licensor designates from time to time for common use;

Contamination means any change to the physical, chemical, or biological condition of the Licensed Area or the Building by a "contaminant" as that term is defined in the Resource Management Act 1991;

GST means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

Laws means any legislation, regulations, bylaws, ordinances, orders, proclamations, Unitary Plan, Management Plan and rules made by the Licensor;

Licensee includes its successors and permitted assigns and, where the circumstances permit, the Licensee's employees and agents and any person for whose acts or omissions the Licensee is responsible;

Licensee's Improvements means the Licensee's property situated in or on the Licensed Area;

Licensor includes its successors and assigns and, where the circumstances permit, the Licensor's employees and agents and any person for whose acts or omissions the Licensor is responsible;

Licensor's Fixtures and Fittings means any fixtures, fittings, plant and equipment the Licensor owns or supplies in the Licensed Area;

Management Plan means any management plan prepared by Licensor from time to time and provided to the Licensee for the management of the Licensed Area;

Month means a calendar month;

Notifiable Event has the same meaning as in the Health and Safety at Work Act 2015;

Services means all services the Licensor provides which are integral to the use and enjoyment by all users of the Land and Building including fire detection or protection systems, security systems, air-conditioning systems, lifts, water, gas, electrical, plumbing and drainage installations and systems, traffic control systems for carparking areas and any other systems and services in, on or serving the Licensed Area whether or not they are located within the Licensed Area;

Sign means signs, notices, name plates or other advertising devices;

Stall means a specific area with the Licensed Area allocated to a Stall Operator by the Licensee;

Stall Operator means an individual or entity that display or sell items from a Stall;

Unitary Plan means the Auckland Unitary Plan and includes any future district and regional plans applying to the area in which the Licensed Area is located; and

Working Day has the meaning given to it in the Property Law Act 2007.

1.2 References and interpretation: This Licence will be interpreted and applied in accordance with the following principles:

Documents: references to any document are references to that document as modified, novated, supplemented, varied or replaced at any time and in any written form, whether on paper or in an electronic form;

Joint and Several: where two or more persons are bound by a provision in this Licence, that provision binds those persons jointly and each of them severally;

Headings: section, clause and other headings are for ease of reference only and do not affect this Licence's interpretation;

Inclusive Expressions: the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**;

Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Parties: references to any **party** are references to parties to this Licence and include that party's executors, administrators, successors and permitted assigns;

Persons: an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

Plural and Singular: references to the singular include the plural and vice versa;

Schedules: the schedules to this Licence and the provisions and conditions contained in those schedules have the same effect as if set out in the body of this Licence;

Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this Licence's sections, clauses and schedules; and

Statutes and Regulations: references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

- 1.3 **Terms:** The Key Terms include the Agreed Changes and prevail over these General Terms to the extent of any inconsistency. The General Terms do not limit additional rights or obligations in the Key Terms or in any schedules.
- 1.4 **Property Law Act 2007:** The covenants, conditions and powers contained in the Property Law Act 2007 and section 224 and 266(1)(b) of that Act and the Land Transfer Act 2017 are not implied in and are excluded from this Licence where that is allowed.
- 1.5 **Implied terms:** Except as may be provided in a written agreement to licence, this Licence comprises the entire agreement between the parties and any previous representations, warranties, arrangements and statements whether expressed or implied are excluded from this Licence and do not form part of the agreement between the parties.
- 1.6 **Licensor Consent:** If this Licence states that the Licensor's consent is required for anything done or proposed to be done, then the Licensee must obtain the Licensor's consent in writing on each occasion (even if consent has previously been provided for a similar purpose) and, unless otherwise stated, in each case, the Licensor:
- (a) **Not unreasonably withheld:** must not unreasonably withhold consent; and
 - (b) **Reasonable time:** must, within a reasonable time of receiving the Licensee's request, grant that consent or notify the Licensee in writing that the consent is withheld,

but, if there is no provision for consent, the Licensor may grant or withhold consent in its absolute discretion.

2. GRANT

- 2.1 **Licence:** The Licensor licences to the Licensee and the Licensee takes on licence the Licensed Area together with the non-exclusive right to use any Common Areas, during the Permitted Hours of Use, from the Commencement Date for the Term.
- 2.2 **Holding Over:** If the Licensor permits the Licensee to remain in occupation of the Licensed Area after the expiry or earlier termination of the Term, the occupation will be a periodic tenancy only, determinable by 20 Working Days' notice given at any time by either party to the other, with the tenancy terminating on the expiry of the notice, at the licence fee then payable and otherwise on the same terms and conditions (as far as applicable to a periodic tenancy) as are contained in this Licence.
- 2.3 **Licensor as Regulatory Authority:** This Licence does not bind Auckland Council in its capacity as a regulatory authority in any way, and any consent or agreement the Licensor gives under this Licence is not an agreement or consent of Auckland Council in its regulatory capacity and vice versa. When acting in its regulatory capacity, Auckland Council is entitled to consider all applications to it without regard to this Licence. The Licensor will not be liable to the Licensee or any other party if, Auckland Council in its regulatory capacity, declines or imposes conditions on any consent or permission the Licensee or any other party seeks for any purpose associated with this Licence.

3. LICENCE FEE AND OTHER PAYMENTS

- 3.1 **Licence Fee:** The Licensee must pay the Licence Fee to the Licensor without any deduction or set-off by equal consecutive monthly payments of the Monthly Licence Fee Instalment in advance on the Licence Fee Payment Dates by direct bank payment or as the Licensor may direct from time to time. The first monthly payment (together with Licence Fee calculated on a daily basis for any period from the Commencement Date to the first Licence Fee Payment Date) is payable on the first Licence Fee Payment Date.
- 3.2 **Other Money Payable:** Unless otherwise specified, the Licensee must pay the Licensor any other money payable by the Licensee under this Licence on demand without deduction or set off by direct bank payment or as the Licensor may direct from time to time.
- 3.3 **GST:** The Licensee must pay to the Licensor all GST payable on the Licence Fee and other money payable by the Licensee under this Licence. The Licensee must pay GST:
- (a) **Licence Fee:** on the Licence Fee on each occasion when any licence fee falls due for payment; and
 - (b) **Other Money:** on any other money payable by the Licensee on demand.
- 3.4 **Interest:** If the Licensee fails to pay any instalment of the Licence Fee or any other money payable under this Licence for 10 Working Days after:
- (a) **Due Date:** the due date for payment; or

(b) **Demand:** the date of the Licensor's demand, if there is no due date,

then the Licensee must on demand pay interest at the Interest Rate on the money unpaid from the due date or the date of the Licensor's demand (as the case may be) to the date of payment.

4. LICENCE FEE REVIEW

4.1 **CPI Licence Fee Review:** On each CPI Licence Fee Review Date, the Licence Fee will be adjusted in accordance with the movement of the CPI. The Licensor will give the Licensor's CPI Review Notice to the Licensee. The adjustment in the Licence Fee will be calculated in accordance with the following formula:

$$A = B \times ((C/D) + E)$$

Where:

A = new CPI reviewed Licence Fee from the relevant CPI Licence Fee Review Date;

B = Licence Fee payable immediately before the relevant CPI Licence Fee Review Date;

C = CPI for the nearest quarter date preceding the relevant CPI Licence Fee Review Date;

D = CPI for the nearest quarter date preceding the Commencement Date or the most recent CPI Licence Fee Review Date, whichever is the later date; and

E = CPI Factor specified in the Key Terms,

provided that (C/D) will never be less than 1.00.

4.2 **Fixed Licence Fee Review:** On each Fixed Licence Fee Review Date, the Licence Fee will be adjusted in accordance with the following formula:

$$A = B \times (1.00+C)$$

Where:

A = new Licence Fee from the relevant Fixed Licence Fee Review Date;

B = Licence Fee payable for the 12 months immediately before the relevant Fixed Licence Fee Review Date; and

C = Percentage Increase specified in the Key Terms,

and the Licensor will give the Licensor's Fixed Review Notice to the Licensee.

4.3 **Licensor's CPI or Fixed Review Notice Late:** If the Licensor does not serve the Licensor's CPI Review Notice or Licensor's Fixed Review Notice on the Licensee before any CPI Licence Fee Review Date or Fixed Licence Fee Review Date, the Licensor may still review the Licence Fee and the Licensor's CPI Review Notice or Licensor's Fixed Licence Fee Review Notice whenever given will have the same effect as if it were served before that CPI Licence Fee Review Date or Fixed Licence Fee Review Date. The Licence Fee payable from the relevant CPI Licence Fee Review Date or Fixed Licence Fee Review Date will backdate to and be payable from that CPI Licence Fee Review Date or Fixed Licence Fee Review Date.

4.4 **Multiple Reviews:** If a CPI Licence Fee Review Date and a Fixed Licence Fee Review Date fall on the same date, then the Licence Fee payable by the Licensee following that date will be the higher of:

(a) **CPI Review:** the Licence Fee adjusted in accordance with clause 4.1; and

(b) **Fixed Review:** the Licence Fee adjusted in accordance with clause 4.2.

4.5 **Variation Agreement:** The Licensee must, on the Licensor's request, sign an agreement prepared by the Licensor's lawyers recording the adjusted or reviewed Licence Fee.

5. USE OF LICENSED AREA AND SUITABILITY

5.1 **Change of Licensed Use:** The Licensee must not use the Licensed Area or any part of the Licensed Area other than for the Licensed Use.

5.2 **Set-up:** The Licensee must ensure that:

(a) **Orderly Manner:** the Stalls are set out in an orderly manner with each Stall confined to the space allocated;

(b) **Access:** there are sufficient pedestrian (including for disabled access) between the stall rows;

(c) **Food Safety:** ensure that the Stall Holders providing food and/or beverages comply with all food Safety Laws including, if required, the display of a food safety information certificate;

(d) **Rubbish:** each Stall Holder provides a rubbish receptacle sufficient to contain the rubbish generate by its stall and that this is either removed or, if applicable, placed in receptacles provided by the Licensee.

5.3 **Restrictions on Use:** The Licensee must:

(a) **Activities Not Permitted:** not do anything that is, or may be, damaging, annoying, offensive or illegal that may interfere with other tenants or people in the Building or on the Land;

(b) **Contamination:** not contaminate the Licensed Area, and undertake all works to remove any Contamination other than Contamination not caused by the Licensee or which took place before the Commencement Date or any earlier date on which the Licensee first occupied any part of the Licensed Area;

(c) **Insurance:** not do anything which may result in any insurance relating to the Building being refused or cancelled or the premium for that insurance being increased, unless the Licensee has first obtained any necessary extensions of cover from the insurer and has paid any additional premiums the insurer requires;

- (d) **Keeping Areas Clear:** keep the Common Areas and any emergency or other access or egress routes clear;
 - (e) **Signage:** not erect, affix, paint, display or allow on the Licensed Area, Building or the Land any Signs except:
 - (i) **Licensor's Consent:** with the Licensor's prior written consent; and
 - (ii) **Requirements of Authorities:** in compliance with all Authorities' requirements;
 - (f) **Damage:** immediately fix any damage the Licensee causes to the Licensed Area, the Building or the Land; and
 - (g) **Laws:** comply with all Laws relating to the Licensed Area, the Licensee's use of the Licensed Area, and this Licence.
- 5.4 **No Lapse in Use Rights:** If the Licensed Use is or becomes a discretionary or non-complying activity under the Unitary Plan, the Licensee must do all things necessary to ensure that the right to continue the discretionary or non-complying activity does not lapse.
- 5.5 **Suitability:** The Licensor makes no warranty or representation that the Licensed Area is or will remain suitable for the Licensed Use, or that the Licensee's use of the Licensed Area complies with any Laws.
- 5.6 **Licensor not Liable:** The Licensee occupies the Licensed Area at its own risk and the Licensor is not responsible for, or liable to, the Licensee or any Stall Holder for any loss or damage to any of the Licensee's Improvements or any accident, damage or injury occurring to any person or property on or from the Licensed Area.
6. **LICENSEE'S UPKEEP OBLIGATIONS**
- 6.1 **Licensee's obligations:** Without limiting the Licensee's obligations under clause **Error! Reference source not found.**, the Licensee must:
- (a) **Protect:** take all reasonable steps to protect the Licensed Area from any damage resulting from the Licensed Use;
 - (b) **Keep Licensed Area Clean:** keep the Licensed Area clean, tidy and free of rubbish;
 - (c) **Rubbish Removal:** ensure all rubbish generated from the Licensed Area is cleared promptly from the Licensed Area;
 - (d) **Deep clean:** carry out a deep clean of the Licensed Area each time after the Licensee's Improvements are removed from the Licensed Area; and
 - (e) **Damage or loss:** make good any damage to the Licensed Area caused by the Licensee's improper, careless or abnormal use, to the Licensor's reasonable requirements.
- 6.2 **Common Areas:** The Licensee must clean and leave the Common Areas in a tidy condition following every use by the Licensee.
7. **LICENSOR'S RIGHTS OF ENTRY**
- 7.1 **Entry to Licensed Area by Licensor:** The Licensor may enter and remain at the Licensed Area, with all necessary materials and equipment, at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency) for any purpose including to:
- (a) **Inspect Licensed Area:** inspect the condition and state of repair of the Licensed Area;
 - (b) **Re-letting or Sale:** allow prospective tenants or purchasers to have access to inspect and view the Licensed Area;
 - (c) **Carry out Repairs:** carry out repairs or other works;
 - (d) **Compliance with Statutes:** carry out any works to comply with any Laws or notices by any Authority or the requirements or recommendations of the Licensed Area' insurer; or
 - (e) **Licensee's Breach:** remedy any breach of this Licence by the Licensee.
- 7.2 **Minimise Disturbance to Licensee:** The Licensor will take reasonable steps to minimise any disturbance to the Licensee when exercising the entry rights granted under clause 7.1.
8. **ALTERATIONS AND ADDITIONS**
- 8.1 **Prohibition:** The Licensee must not:
- (a) **Alteration or Additions:** make any alterations or additions to any part of the Licensed Area (other than the temporary installation of the Licensee's Improvements); or
 - (b) **Building Work:** carry out any Building Work on the Licensed Area.
- 8.2 **Licensor may Reinstate:** If the Licensee's Improvements remain in the Licensed Area outside of the Permitted Hours of Use, at the Licensor's option, the Licensee's Improvements will be forfeited and will become the Licensor's property without payment of compensation to the Licensee. The Licensor may remove the Licensee's Improvements, in whole or in part, and the Licensor may recover from the Licensee its costs incurred as a result.
9. **ASSIGNMENT AND SUBLICENSING**
- 9.1 **Control of Assignment and Sublicensing:** The Licensee must not assign, mortgage, charge, licence, sublicense or otherwise part with possession of the Licensed Area or any part of the Licensed Area or its interest in this Licence but the licensing of a Stall space to a Stall Holder will not be a breach of this clause.

- 9.2 **Deemed Assignment:** If the Licensee is:
- (a) **Incorporated society, association or trust:** an incorporated society or an association or trust (whether incorporated or not), any amalgamation, or any change in the Licensee's constitution or rules that affects the objects or purposes of the Licensee is deemed an assignment of this Licence; or
 - (b) **Company:** a company, any change in the Licensee's shareholding (including any allotment of increased capital), or any holding company of the Licensee, or any change in the Licensee's directors or anything else which results in the effective control of the Licensee being changed will be deemed to be an assignment of this Licence. The persons acquiring effective control of the Licensee or the Licensee's holding company (as the case requires) under that change will be treated as the assignees. This clause does not apply to a company which is listed on the New Zealand Stock Exchange.
- 9.3 **Breach:** Any deemed assignment pursuant to clause 9.2 will be a breach of clause 9.1.
10. **INSURANCE BY LICENSEE**
- 10.1 **Public risk:** The Licensee must maintain a public risk insurance policy applicable to the Licensed Area and the business carried on in the Licensed Area. This policy must provide cover for:
- (a) **Set Amount:** the Public Liability Amount; or
 - (b) **Increased Amount:** any increased amount which the Licensor reasonably requires.
- 10.2 **Particulars of Insurance Policies:** The insurance policy the Licensee maintains under clause 10.1 must note the Licensor's interest and be with a reputable New Zealand based insurer.
- 10.3 **Policy Details:** The Licensee must, if required, produce to the Licensor a certificate of currency for the insurance policy the Licensee maintains under clause 10.1 on or before the Commencement Date and every 12 months from the Commencement Date. The Licensee acknowledges that the Licensor is entitled to withhold the Licensee's access to the Licensed Area (whether on or before the Commencement Date) until the Licensor has been provided with a certificate of currency for the insurance policy the Licensee maintains under clause 10.1.
11. **DAMAGE OR DESTRUCTION**
- 11.1 **Destroyed:** If the Licensed Area or the Building is destroyed or damaged or inaccessible, the Licensor will advise the Licensee within 3 months of the date of the destruction or damage or event that led to the inaccessibility, whether the Licensor wishes to reinstate the Licensed Area or the Building or restore the access.
- 11.2 **No Reinstatement:** If the Licensor does not confirm it wishes to reinstate the Licensed Area or the Building or restore the access within the 3 month period at clause 11.1 then this Licence will terminate on the expiry of that period.
- 11.3 **Reinstatement:** If the Licensor wishes to reinstate the Licensed Area or the Building, the Licensor will with all reasonable speed, repair the damage or reinstate the Licensed Area or the Building (as the case may be) to a reasonably similar standard as that before the damage:
- Licence Fee Abatement:** From the date of destruction or damage until the damage is repaired or the Licensed Area or the Building reinstated (as the case may be) a fair and reasonable proportion of the Licence Fee will abate.
- 11.4 **Licence Termination:** The Licensor may terminate this Licence with 10 Working Days' notice to the Licensee if, following any damage or destruction:
- (a) **Invalidated Insurance:** any insurance policy held by the Licensor is found to be invalid; or
 - (b) **Necessary Consents:** the Licensor is unable to obtain the necessary permits and consents to repair the damage or reinstate the Licensed Area or the Building (as the case may be).
- 11.5 **Without Prejudice:** Any termination under this clause 11 will be without prejudice to the rights of either party against the other.
12. **BREACH**
- 12.1 **Re-entry under the Property Law Act:** Subject to the Licensor serving a valid notice under sections 245 or 246 of the Property Law Act 2007, the Licensor may cancel this Licence and either re-enter the Licensed Area or apply to court for an order for possession of the Licensed Area, if the Licensee:
- (a) **Licence Fee:** fails for 10 Working Days after the due date to pay any instalment of the Licence Fee;
 - (b) **Other Obligations:** fails to observe or perform any other obligation under this Licence within a reasonable period after receiving notice of the failure from the Licensor;
 - (c) **Licensee a Natural Person:** being a natural person:
 - (i) is declared bankrupt or insolvent according to law; or
 - (ii) assigns his or her estate or enters into any assignment or other compromise or scheme of arrangement with their creditors or any class of its creditors;
 - (d) **Incorporated Body:** being an incorporated body:
 - (i) is or is deemed to be unable to pay its debts under section 287 of the Companies Act 1993;
 - (ii) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation which the Licensor approves in writing);

- (iii) is wound up or dissolved;
- (iv) enters into any assignment or other compromise or scheme of arrangement with its creditors or any class of its creditors;
- (v) has a receiver, manager or receiver and manager appointed relating to any of the Licensee's assets; or
- (vi) has an application made to a court for, or a resolution proposed for, or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed;
- (a) **Unincorporated Body:** being an unincorporated association or trust, is wound up, dissolved or becomes defunct;
- (e) **Execution:** execution is levied against any of the assets of the Licensee and remains unsatisfied; or
- (f) **Suspension of Business:** if the Licensee suspends the Licensee's business operations from the Licensed Area for a period of more than 3 months.

12.2 **Licensor Remedy:** The Licensor may remedy any breach by the Licensee under this Licence at any time without notice.

13. COMPENSATION AND DAMAGES

13.1 **Licensee's Acts or Omissions:** If any act or omission of the Licensee:

- (a) **Repudiation:** is a repudiation of this Licence or of the Licensee's obligations under this Licence; or
- (b) **Breach of Licence:** is a breach of any of the Licensee's covenants under this Licence,

the Licensee must compensate the Licensor for the loss or damage suffered by reason of the repudiation or breach. This includes all costs and expenses the Licensor incurs (including those on a solicitor-client basis) in remedying any Licensee breach. The Licensee must pay these costs and expenses to the Licensor on demand, together with interest at the Interest Rate on the unpaid costs and expenses computed from the time or times of expenditure until the Licensee actually pays the Licensor in full.

13.2 **Damages:** The Licensor may recover damages against the Licensee for repudiation or breach of covenant for the loss the Licensor suffers during the whole of the Term or after the end or earlier termination of the Term.

13.3 **Entitlement:** The Licensor's entitlement to recover damages will not be affected or limited by:

- (a) **Abandonment:** the Licensee abandoning or vacating the Licensed Area;
- (b) **Re-entry or Termination:** the Licensor electing to re-enter the Licensed Area or to terminate this Licence;
- (c) **Acceptance of Repudiation:** the Licensor accepting the Licensee's repudiation; or
- (d) **Surrender:** the parties' conduct constituting a surrender by operation of law.

13.4 **Legal Proceedings:** The Licensor may bring legal proceedings against the Licensee claiming damages for the entire Term including the periods before and after the Licensee has vacated the Licensed Area whether the proceedings are instituted before or after that conduct.

13.5 **Mitigation of Damages:** If the Licensee vacates the Licensed Area, whether with or without the Licensor's consent, the Licensor will take reasonable steps to mitigate the Licensor's damages.

13.6 **Entitlement to Damages:** The Licensor's conduct in pursuance of the duty to mitigate damages will not by itself constitute acceptance of the Licensee's breach or repudiation, or a surrender by operation of law.

14. VARIATION, WAIVER AND OMISSION

14.1 **Variation:** The provisions of this Licence may only be varied by written agreement signed by the parties.

14.2 **Waiver:** The provisions of this Licence may only be waived in writing. Any delay or failure to act or exercise any remedy is not a waiver.

14.3 **Licensor's waiver:** The Licensor's waiver of any breach by the Licensee of any of the Licensee's obligations in this Licence will not operate as a waiver of:

- (a) **Waiver of Breach:** the same breach on any later occasion; or
- (b) **Waiver of Obligations:** any other obligations in this Licence.

14.4 **Licensor's Omission:** No omission or failure by the Licensor to charge the Licensee any money payable under this Licence at the time the charge should have been made will constitute a waiver of the Licensor's rights, and if there is an omission or failure the Licensor may backdate the charge to the time when it should have been made.

15. LICENSEE INDEMNITY

The Licensee indemnifies the Licensor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind which arise:

- (a) **Negligence or Breach:** out of the negligence of the Licensee or the Licensee's breach of the terms of this Licence except to the extent that any of those losses have been caused or contributed to by the Licensor's act of negligence or breach of an express term of this Licence; or
- (b) **Accident, Damage or Injury:** for any accident, damage or injury occurring to any person or property in or about the Licensed Area.

16. HEALTH AND SAFETY

16.1 **Health and safety:** The Licensee must at all times:

- (a) **Comply:** comply with all health and safety legislation, regulations and applicable codes of practice and standards;
- (b) **Practicable Steps:** ensure, so far as is reasonably practicable, that the Licensee's activities do not put at risk the health and safety of all personnel of the Licensee, and any other persons at the Licensed Area, including service providers, the public, and visitors;
- (c) **Information:** keep full records and documentation in relation to its use and occupation of the Licensed Area and immediately provide the Licensor with information about any health and safety matters relating to the Licensed Area and its use and occupation of the same, if requested; and
- (d) **Directions:** comply with all of the Licensor's reasonable directions in relation to health and safety in connection with the Licensed Area and the Licensee's occupation of the same.

16.2 **Co-operation:** The Licensee must, to the extent that its health and safety duties overlap with the Licensor:

- (a) **CCC:** so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities at the Licensed Area with the Licensor; and
- (b) **Implement changes:** ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

16.3 **Principal Site:** If the Licensed Area forms part of the Building containing multiple occupants then the Licensee must:

- (a) **Participate:** participate in the Licensor's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested); and
- (b) **Special needs:** identify and address any special needs requirements.

16.4 **Incidents and investigations:** The Licensee must immediately notify the Licensor of any:

- (a) **Notifiable Event:** Notifiable Event; or
- (b) **WorkSafe Request:** WorkSafe inspection, investigation or information request,

in connection with the Licensed Area.

16.5 **Health and Safety Plans:** The Licensee must undertake a site specific risk assessment and prepare (and update as required) a site specific safety plan for its use and occupation of the Licensed Area. Such plan must address any risks the Licensor identifies to the Licensee.

17. DISPUTE RESOLUTION

17.1 **First steps:** No party to this Licence may commence any court or arbitration proceedings relating to any dispute arising out of this Licence unless that party has complied with the following paragraphs of this clause.

17.2 **Notice:** Any party who claims that a dispute has arisen under or in relation to this Licence must give written notice to the other party specifying the nature of the dispute.

17.3 **Action:** On receipt of such notice by the other party, the parties to this Licence must:

- (a) **Co-operation:** co-operate and use their best endeavours to resolve the dispute expeditiously; and
- (b) **Timeframe:** must, if they do not within 5 Working Days of receipt of the notice (or such longer time as they may agree in writing) resolve the dispute, refer the matter in dispute to Mediation.

17.4 **Mediation:** The Mediation will in all respects be conducted in terms of the Arbitrators' and Mediators' Institute of New Zealand Inc. Standard Mediation Agreement and will be conducted by a mediator and at a fee the parties agree. Failing agreement between the parties the mediator will be selected and the mediator's fee will be determined by the Chair for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. The costs of the mediator's fees will be shared equally by the Licensor and the Licensee with each party paying their own costs. The mediation process will not (unless otherwise agreed between the parties) extend beyond a period of 10 Working Days following the appointment of the mediator.

17.5 **Urgent Relief:** A party who seeks urgent interlocutory relief may, by written notice to the other party to the dispute, elect not to comply with the provisions of clauses 17.1 to 17.4 but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent on the disposal of the application the provisions of clauses 17.1 to 17.4 will once again take effect.

17.6 **Next Steps:** Where any dispute arising between the parties under this Licence cannot be resolved pursuant to clauses 17.1 to 17.4 within the periods referred to in those clauses, the parties may take such steps as they consider appropriate to resolve the dispute. However, a party may only refer a matter to arbitration with the agreement of the other party.

17.7 **Arbitrator:** If both parties agree to arbitration, then 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 president for the time being of the New Zealand Law Society at the request of either party.

17.8 **Arbitration Act:** The Arbitration Act 1996 will govern the arbitration and the arbitral award will be final and binding on the parties. However, either party is entitled to appeal to the High Court on any error of law arising out of the award.

18. NOTICES

- 18.1 **Service of Notices:** Any notice or document required or authorised to be given or served under this Licence must be given or served:
- (a) **Sections 245 or 246 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; 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:** For 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:** in the case of personal delivery, when the addressee receives it;
 - (b) **Post:** in the case of posting by mail, 5 Working Days after being posted to the addressee's last known address in New Zealand; or
 - (c) **Email:** in the case of email, when the addressee acknowledges verbally or by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgement.
- 18.3 **Signature of Notices:** The parties must give or serve any notice or document under this Licence in writing, signed by or on behalf of the party giving or serving the notice.
- 18.4 **Address for Notices:** Notices and communications will be addressed to the parties at the addresses set out in the Key Terms or as otherwise advised by one party to the other to be that party's current address.

19. CORPORATE SOCIAL RESPONSIBILITY

The Licensee will endeavour to:

- (a) **Maori/Pasifika outcomes:** support and enable Māori and Pasifika people, and the businesses they own, where possible;
- (b) **Quality Employment for Target Communities:** create job opportunities for those who are experiencing barriers to the labour market;
- (c) **Local Supplier Utilisation:** support the participation of local suppliers and personnel within the local board area in which the Licensed Area is located;
- (d) **Zero Waste by 2040:** support the Licensor in its zero-waste vision by implementing zero waste objectives in conducting the Licensee's business;
- (e) **Reducing Carbon Emissions:** support the Licensor in its commitment to reducing greenhouse gas emissions by implementing reduced carbon emission objectives in doing the Licensee's job;
- (f) **Diversity and inclusion:** celebrate diversity, and treat individuals, customers, contractors and staff with respect and courtesy, and strive to be inclusive and provide an environment where everyone can be their best selves; and
- (g) **Whanaungatanga/connection and belonging:** as members of the community, work to make Tāmaki Makaurau a city everyone can be proud of. The Licensee recognises that caring for people includes caring for our community and members of the public. The Licensee will exercise manaakitanga/kindness, care and respect to others.

20. SUSTAINABILITY AND EFFICIENCY

The Licensee will:

- (a) **Minimisation of energy and water consumption and waste:** use the Licensed Area in an energy efficient manner and minimise the environmental impact of the use and occupation of the Licensed Area, including minimising waste generated from the Licensed Area, and water and energy consumption at the Licensed Area;
- (b) **Co-operation:** wherever practicable and reasonable, co-operate with the Licensor to:
 - (i) reduce energy consumption, water consumption and waste; and
 - (ii) increase and improve recycling of rubbish;having regard to the extent of any works or operational change required to do so and the cost of such works or operational change;
- (c) **Actions:** use reasonable endeavours not to do anything that decreases or adversely affects the energy efficiency and environmental performance of the Building or the Licensed Area;
- (d) **Monitor Energy Consumption:** use reasonable endeavours to regularly monitor the energy consumption of the Licensed Area and to share such information with the Licensor;
- (e) **Collection of Information:** co-operate with the Licensor and allow reasonable access to the Licensed Area to enable the gathering of information relating to the energy efficiency and environmental performance of the Licensed Area;
- (f) **Works:** when fitting out or carrying out works to the Licensed Area, use reasonable endeavours to:
 - (i) not interfere with or affect any performance rating of the Licensed Area or the Building (if any);
 - (ii) minimise the environmental impact of the works;
 - (iii) minimise energy consumption and waste in carrying out the works; and

- (iv) consider (acting reasonably) the recommendations and suggestions of the Licensor for minimising the environmental impact of the works, taking into account the economic or practical feasibility of those recommendations or suggestions; and
- (g) **Contractors:** ensure that any contractors it engages to carry out any works comply with this clause.

21. NO LEASE

21.1 **Licence Not Lease:** The Licensee acknowledges that:

- (a) **Rights Personal:** the Licensee's rights under this licence are personal rights only; and
- (b) **No Lease Created:** the grant of this Licence does not create a lease or an interest in land relating to the Licensed Area or otherwise provide the Licensee with any rights of exclusive possession of the Licensed Area.

21.2 **Change of Licensed Area:** At any time during the Term, the Licensor may:

- (a) **Without Determining Licence:** without determining this Licence; and
- (b) **One Month's Notice:** on first giving the Licensee one month's written notice;

require the Licensee to transfer the Licensee's occupation from the Licensed Area to any other part of the Land which the Licensor reasonably considers suitable for the Licensee's use. The Licensor will use all reasonable endeavours to ensure that this part of the Land is the same size and prominence as the Licensed Area. This Licence will then apply to that new location as if it were the Licensed Area. The Licensor will use all reasonable endeavours to relocate the Licensed Area with as little interference to the Licensee's business as possible. However, the Licensee will not be entitled to compensation for any loss, costs or expenses (including economic loss and loss of business or business opportunity) arising from the Licensor exercising the Licensor's powers under this clause.

22. GENERAL

22.1 **Fee simple covenants:** The Licensee must, at all times, observe and comply with all of the covenants and encumbrances affecting the Land (without limitation) and the terms, covenants and conditions of any easements registered against the title to the Land.

22.2 **Registration or Caveat:** The Licensee must not lodge a caveat against the title to the Land.

22.3 **Licence Costs:** Each party will pay its own costs relating to the negotiation and preparation of this Licence.

22.4 **Licensor's Costs:** The Licensee must pay the Licensor's costs and expenses (including those on a solicitor-client basis) for any licence fee review, renewal or variation of this Licence or consent request under this Licence or those the Licensor incurs in exercising or enforcing any rights and remedies due to the Licensee's breach.

22.5 **Severability:** If any provision of this Licence is or becomes unlawful or unenforceable it will be treated as severable from the other provisions of this Licence which will remain in full force and effect.

22.6 **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.

22.7 **Governing Law and Jurisdiction:** This Licence is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts for all matters relating to this Licence.

22.8 **Counterparts:** This Licence may be executed by scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.

22.9 **Electronic Signing:** Each party irrevocably consents to the signing of this Licence by electronic signature(s) in accordance with the Contract and Commercial Law Act 2017 and agrees to be bound if this Licence is signed by electronic signature(s). If either party signs this Licence by electronic signature, they must, if requested, provide separate written confirmation to the other party that:

- (a) the electronic signature was legitimately applied with the relevant authority;
- (b) the signatory has full knowledge of the contents of this Licence and intends to be bound by it; and
- (c) the electronic signature complied with the requirements of section 228 of the Contract and Commercial Law Act 2017 (if applicable).

22.10 **Other Signing:** Clause 22.9 does not detract from the Contract and Commercial Law Act 2017 nor does it limit the ability of any party signing this Licence by any other means so permitted at law.

SCHEDULE 1

LICENSED AREA PLAN