



Expression of **interest**

An exciting opportunity to run a
market in Māngere

1. Introduction

An exciting opportunity to run a market in Māngere

The Māngere-Ōtāhuhu Local Board is seeking an operator to run a market in Māngere.

On 9 July 2025, the local board approved an Expression of Interest (EOI) process to find an operator to run a market in Māngere.

Auckland Council's Property Department is managing the EOI process. We're looking for passionate individuals, businesses, or community groups interested in operating a market in the Māngere Town Centre. The successful applicant will be offered a five-year commercial licence to operate the market on council land.

This document outlines how the EOI process works and how interested parties can apply.

2. EOI timeline

| | |
|------------------------|---|
| ● December 2025 | EOI process commences Application pack is available here akhaveyoursay.aucklandcouncil.govt.nz |
| ● December 2025 | Applications close 19 December 2025 |
| ● January 2026 | Analysis of EOI applicants complete Auckland Council shortlists applicants |
| ● January 2026 | Auckland Council to seek additional information from interested parties if required and interview shortlisted candidates |
| ● January 2026 | Evaluation of EOI applications complete Selection of new market operator confirmed, and negotiations commence |
| ● January 2026 | Negotiations completed The new market licence is in place |

3. Location and hours

Address: 121R Bader Drive, Māngere

The market is held in a car park, at the southern end of the Māngere Town Centre. The car park is managed by Auckland Transport. The licenced area is approximately 3511 square metres – 160 car parking spaces. It is outlined in red on the map (right).

Operating Hours

The market is held every Saturday between 6:00AM and 2:00PM.
Please refer to Appendix D Draft Commercial Licence, for further detail.



4. A vision for a market in Māngere

- Reflect Māori and Pasifika identities, with inclusive spaces for cultural expression such as performances
- Provide access to a variety of affordable products to benefit community wellbeing
- Foster a welcoming community environment
- Support local businesses and contribute to the local economy
- Incorporate sustainable practices, working towards Auckland Council's Zero Waste by 2040 initiative

5. The market operator

- Strong relationships with Māori and Pasifika communities
- Provide an accessible market for all
- A credible operator with strong community connections
- Provide affordable stallholder opportunities
- Must clearly demonstrate how profits will be returned to benefit the local community
- Provide a health and safety plan and a traffic management plan

6. Annual commercial licence fee

The successful applicant will be required to pay an annual commercial licence fee. The amount will be based on market rates determined by a registered valuer. Details of the fee will be provided to applicants who are shortlisted for further discussions.

7. Financial reporting and community benefit

The new market operator is expected to operate with full financial transparency and a strong commitment to delivering tangible benefits to the Māngere community.

Quarterly profit and loss statements must be provided to Auckland Council, along with annual financial reports. These reports must clearly outline how profits have been used to benefit the wider community — for example, through funding for community events or initiatives.

This information will be shared with the Māngere-Ōtāhuhu Local Board to ensure alignment with the board's community outcomes.

An annual review meeting will be held to discuss how profits have been distributed, assess community impact, and agree on any changes or priorities for the year ahead.

Failure to meet these reporting or community distribution requirements will be considered a breach of an essential term of the licence and may result in its termination.

APPENDICES

- A. What to include
- B. Conflict of Interest Form
- C. Terms and Conditions
- D. Draft Commercial License

APPENDIX A

What to Include in Your Application

Please present your 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

- Biography and a statement of competence, including previous experience and skills held
- Examples of previous experience – preferably within New Zealand
- Full CVs for each person named in the application

Section Three: Business Plan

- A business plan detailing proposed market operations
- A detailed proposal outlining how profits to the community will be distributed

EOI Administration

The closing date for EOI submissions is **19 December 2025**.

Auckland Council reserves the right, at its sole discretion, to extend the response closing date.

How to Structure Your Response

Applicants should provide a brief written response that follows the format outlined in the **What to Include in Your Application** section.

How to Submit Your Response

Please email your completed response to:

rosalyn.cowe@aucklandcouncil.govt.nz

Enquiries and Communications

All enquiries or communications regarding this EOI should be sent to:

rosalyn.cowe@aucklandcouncil.govt.nz

Applicants must not make any public statements about this EOI without prior written consent from Auckland Council. Any unauthorised communication regarding this EOI—whether with Auckland Council or any other party—may result in disqualification from the process.

Evaluation Criteria

Auckland Council will establish a panel to evaluate all responses to this EOI. The panel will assess each submission based on how well it addresses the requirements outlined in the **What to Include in Your Application** section and completion of the **Conflict of Interest Declaration**.

Conflict of Interest Declaration

Applicants are required to complete the **Conflict of Interest Declaration** form found in Appendix B.

Terms and Conditions

Applicants must read the Terms and Conditions in Appendix C.

Draft Commercial Licence

For reference, a draft version of the licence is included in Appendix D.

APPENDIX B

Conflict Of Interest Declaration

Definition:

A conflict of interest is a situation in which an applicant could gain (or be seen to gain) an unfair advantage through an association with an individual or organization. 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.

| | 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? <i>(e.g. free travel, free samples for personal use)</i> | [yes] / [no] / [potentially] |
| 3. | Does any person involved in any evaluation or decision-making relating to this EOI process have a financial interest in your organisation? <i>(e.g. the person is an employee of, or a shareholder in, your organisation)</i> | [yes] / [no] / [potentially] |
| 4. | Are you aware of anything that might give the appearance that any person involved in the evaluation stage or decision-making stage of this EOI process is biased towards or against your organisation? <i>(e.g. the person has used your organisation’s corporate box)</i> | [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 applicant identified below, agree to notify the Auckland Council as soon as possible of any conflicts of interest that arise (or could arise) in the future.

| | |
|--|--|
| Name of applicant | |
| Signed by authorised signatory of the applicant | |
| Name and title of authorised signatory | |
| Date | |

APPENDIX C

Terms and conditions

1. Introduction

- 1.1. This EOI has been issued by Auckland Council. These terms and conditions are for the benefit of Auckland Council and the wider council group.
- 1.2. Participation by the Applicant in the Expressions of Interest (“EOI”) process will constitute acceptance of, and agreement to be bound by, these EOI Terms and Conditions.

2. Interpretation

- 2.1 In this Attachment C:
 - a) Contact Person means the EOI information contact person(s) stated in the EOI Administration section.
 - b) EOI Documents means this EOI, and all documents and written information issued in relation to this EOI.
 - c) EOI conditions means these conditions as set out in this Attachment C.
- 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 a contract.
- 3.2 The EOI Documents have been provided to assist Applicants in preparing EOIs. Auckland Council do not represent or warrant the completeness or accuracy of the EOI Documents. Applicants who rely on any information provided in relation to this EOI do so 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 submissions set out in the EOI Administration section.

4. Communications

- 4.1 All enquiries regarding the EOI must be directed by email to the Contact Person. Applicants must not directly or indirectly approach any other representative of Auckland Council, the Māngere-Ōtāhuhu 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 Applicants must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of Auckland Council or Māngere-Ōtāhuhu Local Board in relation to the EOI.

- 5.2 Auckland Council reserves the right to require declarations, or other evidence from an Applicant, or any other person, throughout the EOI process to ensure probity of the EOI process.

6. Applicants must complete and submit the Conflict of Interest Declaration set out in Appendix B.

7. Auckland Council reserves the right to exclude any Applicant from this EOI process if Auckland Council becomes aware that the Applicant has:

- 7.1 any undeclared conflict of interest.
- 7.2 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).
- 7.3 engaged in any practice that gives or is intended to give one or more Applicants an improper advantage over any other Applicant; and/or
- 7.4 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 Applicants 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 Applicant being disqualified from participating further in the EOI or any further related processes. The Applicant 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 Applicants to the appropriate authority and to give that authority all relevant information including an Applicant's response.

9. Submission of EOIs

- 9.1 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) submitted before the closing time. However, the council reserves the right to accept late EOIs.
- 9.2 Each EOI must be delivered in electronic format as specified in the EOI Administration section:
- a) in the form and include the information required by the EOI Documents.
 - b) signed by or on behalf of the Applicant.
- 9.3 Joint EOIs may be submitted. One of the Applicants 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 Applicant of any subsequent negotiations, meetings or discussions, will be borne by the Applicant.
- 9.5 The Applicant 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 Applicant to clarify and/or adjust aspects of its EOI and reserves the right to negotiate with any shortlisted Applicant/s with a view to proceeding to a competitive process or negotiate directly with one or more Applicant/s.
- 10.2 Short-listing of any Applicant does not constitute acceptance by Auckland Council of that Applicant's EOI or imply or create any obligations on Auckland Council to proceed to a competitive process or enter any commitment to purchase any goods and/or services from the Applicant.
- 10.3 Auckland Council reserves the right to:
- a) accepts none or any of the EOIs;
 - b) waives any irregularities or informalities in the EOI process;
 - c) amends the EOI process or any associated documents;
 - d) suspends, withdraw or cancel, in whole or in part, the EOI process or withdraw the contract at any time;
 - e) enters negotiations with one or more of the Applicants (short-listed or not); and/or
 - f) request additional EOIs; and/or
 - g) proceeds to the next procurement process of its choosing or not proceed to a competitive process at all without incurring any liability to any Applicant (short-listed or not).

11. Submission of response

- 11.1 The Applicant 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 Applicant; and
 - d) the foregoing warranties will remain true and correct during the period of any negotiations between the Applicant 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 Applicant, or the end of the procurement process, the Applicant 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 An Applicant 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 Applicant 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.
- 12.3 Applicants must not make any public statement regarding this EOI process without the express prior written consent of the council.

- 12.4 Auckland Council may, if it considers it appropriate, require an Applicant to sign a confidentiality deed before releasing any confidential or commercially sensitive information to the Applicant. The Applicant agrees to sign the confidentiality deed, if requested.
- 12.5 Auckland Council reserves the right to exclude any Applicant from this EOI process if the council becomes aware that the Applicant has breached any of the obligations set out in this clause.
- 12.6 Auckland Council is subject to the Local Government Official Information and Meetings Act 1987. Information provided by Applicants may be required to be disclosed under that act. Applicants 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

Commercial Licence

Part 121R Bader Drive, Māngere, Auckland

DATED:

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

[TBC] (**Licensee**)

[TBC] (**Guarantor**)

Signing:

IMPORTANT: By signing this Licence, the Licensee and Guarantor (if any) acknowledge that:

- they have read and understood the terms of this Licence; and
- they have 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 [TBC] by:

Authorised signatory

Name:

Position:

Authorised signatory

Name:

Position:

Signed by [TBC]:

Signature of Guarantor

KEY TERMS

| | | |
|-----------------------|---|---|
| LICENCE: | <p>The parts forming this Licence are:</p> <ul style="list-style-type: none"> (1) The Signing Page(s) (2) The Key Terms (3) The Agreed Changes (4) The General Terms (5) Schedule 1 – Licensed Area Plan (6) Schedule 2 – Outgoings (7) Schedule 3 – Guarantee (8) Schedule 4 – Licensor's Fixtures and Fittings (9) Schedule 5 – Licensed Area Condition Report (10) Schedule 6 – Rules (11) Schedule 7 – Form of Bank Guarantee (12) Schedule 8 – Environmental Health Operating Conditions | |
| LAND STATUS: | <p>The Land is vested in the Licensor as a reserve under the Reserves Act 1977 and is a classified as local purpose reserve under the Reserves Act 1977. The Licensor enters into this Licence under section 61(2A) of the Reserves Act 1977.</p> | |
| LAND: | <p>The whole of the land at 121R Bader Drive, Māngere, Auckland, with an area of 4.4894 hectares more or less being Lot 2 Deposited Plan 77892vcomprised in Record of Title NA34A/1109.</p> | |
| LICENSED AREA: | <p>That part of the Land comprising approximately 3511 square metres (more or less) 121R Bader Drive, Māngere, Auckland as indicatively shown shaded red on the plan attached to this Licence at Schedule 1.</p> | |
| CARPARKS: | <p>Approximately 160 spaces.</p> | |
| TERM: | <p>The Initial Term together with any Renewal Term(s) (where exercised by the Licensee under this Licence).</p> | |
| | Initial Term: | 5 years |
| | Commencement Date: | TBC |
| | Expiry Date: | TBC |
| RENEWALS: | Renewal(s): (number) | None |
| | Renewal Term(s): (length) | Not applicable |
| | Renewal Date(s): | Not applicable |
| | Final Expiry Date: | TBC |
| LICENCE FEE: | Licence Fee: | \$TBC plus GST per annum subject to adjustment and / or review in accordance with clause 5 |
| | Monthly Licence Fee Instalment: | \$TBC plus GST |
| | Licence Fee Payment Dates: | On the Commencement Date and then the first (1 st) day of each month thereafter |

| | | | |
|-------------------------------------|--|--|-----|
| | CPI Licence Fee Review: | CPI Licence Fee Review Dates: | TBC |
| | | CPI Factor: | TBC |
| | Fixed Licence Fee Review: | Fixed Licence Fee Review Dates: | TBC |
| | | Percentage Increase: | TBC |
| | Market Licence Fee Review: | TBC | |
| LICENSEE’S PROPORTION OF OUTGOINGS: | TBC | | |
| LICENSED USE: | Operation of an open-air market on the Licensed Area during the Trading Hours | | |
| REDECORATION DATES: | Not applicable | | |
| PUBLIC LIABILITY AMOUNT: | \$5,000,000.00 (being the amount which may be paid out arising from any single accident or event) | | |
| NO ACCESS PERIOD: | 9 months | | |
| INTEREST RATE: | 16% | | |
| BANK GUARANTEE AMOUNT: | \$TBC Note to Licensee: if a Bank Guarantee is required and you do not provide this, the Licensor may terminate this Licence in accordance with clause 22.4. | | |
| SECURITY DEPOSIT AMOUNT: | \$TBC Note to Licensee: if a Security Deposit is required and you do not provide this, the Licensor may terminate this Licence in accordance with clause 22.4. | | |
| LICENSOR’S CONTACT DETAILS: | Address: | Level 21 Te Wharau o Tāmaki Auckland House 135 Albert Street Auckland | |
| | Phone: | 027 203 2583 | |
| | Email: | rosalyn.cowe@aucklandcouncil.govt.nz | |
| LICENSEE’S CONTACT DETAILS: | Address: | TBC | |
| | Phone: | TBC | |
| | Email: | TBC | |
| GUARANTOR’S CONTACT DETAILS: | Address: | TBC | |
| | Phone: | TBC | |
| | Email: | TBC | |

AGREED CHANGES

The General Terms of this Licence are changed as follows:

1. New definitions are inserted in clause 1.1 to read as follows:

Environmental Health Operating Conditions means the environment health operating conditions in Schedule 9;

Licensor's Termination Notice means not less than 6 months' notice in writing served by the Licensor to the Licensee to terminate this Licence under clause 13.5;

Site means one marked car park space;

Stall means one, two or three sites;

Stall Operator or **Stall Operators** includes individual persons, partnerships, associations and corporations;

Trading Hours means between the hours of 6.00am and 2.00pm on Saturdays only;

2. Clause 6.7 of the Licence is deleted and replaced with the following clauses:

6.7 The Licensor does not warrant that the Licensed Area is or will remain suitable or adequate for the Licensee's purposes. All warranties as to suitability and adequacy implied by law are expressly negative to the full extent permitted by law.

6.7A The Licensor is not responsible for providing any safety measures to protect any fixtures, fittings or equipment from water damage, fire, explosion, storm, hazard or potential hazard whether coming from inside the Land (including equipment installed in the Land) or from outside.

3. Clauses 6.8, 6.9, 6.10, 6.11 and 6.12 are inserted as new clauses in the Licence as follows:

6.8 The Licensee shall at all times during the term of this Licence ensure that:

6.8.1 The market is set out in an orderly manner with each stall confined to the carpark spaces to ensure that there are sufficient pedestrian alleyways between the stall rows;

6.8.2 Stall Operators setting up in the carpark area occupy no more than one Stall of up to three sites and that if a Stall Operator has a vehicle or trailer at their Stall it is contained within the area allocated to them for their Stall;

6.8.3 Each Stall Operator is allocated one Stall at the Licensed Area for each Saturday;

6.8.4 Each Stall Operator shall provide a rubbish, receptacle sufficient to contain the rubbish generated by its stall;

6.8.5 The rubbish generated by the market is cleared from the Licensed Area and immediate surrounding areas, so that these areas are left in a clean and tidy state after each market day that work to be completed by no later than 3.00pm that day but with all reasonable endeavours being made to complete such work by 4.00pm that day;

6.8.6 No fork lifts, pallet trucks or other mechanical lifting devices are allowed into or to service the Licensed Area;

- 6.8.7 No vehicles including trailers with a combined tare weight of greater than three tonnes shall be allowed into or to service the Licensed Area, provided that any existing Stall Operator with a vehicle with a tare weight not exceeding three point five (3.5) tonnes shall still be allowed into or to service the Licensed Area with such vehicle;
- 6.8.8 Use of the Licensed Area is between the Trading Hours on Saturday or such hours as approved by the Licensor;
- 6.8.9 To conduct the market and use the Licensed Area so as to ensure that the use and enjoyment of the Land, other than the area covered by this Licence, by the Licensor and by other users of the Land will not be prevented, unduly interfered with, or adversely affected;
- 6.8.10 Not to deface or alter the Licensed Area;
- 6.8.11 No alcohol is to be consumed or sold from the Licensed Area;
- 6.8.12 In the event of the Licensor's toilet facilities being removed, the Licensee shall, at the Licensee's sole expense, provide portable toilet facilities during the Trading Hours.
- 6.9 Except in the case of the Licensor's wilful misconduct or negligence, the Licensor is not responsible for or liable to the Licensee for:
 - 6.9.1 any loss or damage caused or sustained in any way to the Licensed Area or any equipment, fixtures, fittings and chattels installed or located in the Licensed Area; and
 - 6.9.2 the theft or loss of any of the Licensee's or its Stall Operator's equipment, fixtures, fittings or chattels, if any.
- 6.10 The Licensee acknowledges that the Licensee and all persons authorised by the Licensee to have access to the Licensed Area and to enter the Land do so at their own risk.
- 6.11 The Licensee shall not allow the Licensed Area to be used for any political campaigning for central or local government or for religious gatherings.
- 6.12 The Licensee must at all times, at its own costs, comply with any rules, bylaws, and the provisions of any Acts, bylaws, regulations or directions (statutory or otherwise) made or issued by any authority including the Licensor which apply to the Licensed Area, access to the Licensed Area, use or the aims promoted by the Licensee and occupation of the Licensed Area, improvements to the Licensed Area and the operation of any equipment installed in the Licensed Area.
 - 6.12.1 In particular the Licensee's attention is drawn to the following:
 - (i) The Licensee will comply with the bylaws and policy of the Licensor from time to time in effect relating to the Licensed Area;
 - (ii) The Licensee is responsible for compliance with all the Environmental Health Operating Conditions as amended from time to time on the Licensed Area; and

- (iii) The Licensors reasonable directions and requirements relating to the control, safe use, security and protection of the Licensed Area and of the Land.
- 4. Clauses 13.5 and 13.6 are deleted and new clauses 13.5, 13.6, 13.7 and 13.8 are inserted as new clauses as follows:
 - 13.5 **Right of termination:** The Licensor may terminate this Licence as to the whole or any part of the Licenced Area at any time by giving a Licensor's Termination Notice. On the expiry of the Licensor's Termination Notice, this Licence will immediately terminate for the whole of the Licenced Area or, subject to clause 13.6, the part specified in the Licensor's Termination Notice, and the Licensee must give up vacant possession of that part or whole of the Licenced Area to the Licensor. The Licensee will sign an appropriate deed of surrender or partial surrender of this Licence prepared by the Licensor's lawyers (if required by the Licensor).
 - 13.6 **Part not suitable:** If the Licensor serves a Licensor's Termination Notice as to part of the Licenced Area and the Licensee considers that the remaining part is not suitable for its use, the Licensee may, within 3 months of receiving the Licensor's Termination Notice, advise the Licensor that the Licensee wishes this Licence to terminate as to the whole of the Licenced Area and, in that case, on expiry of the Licensor's Termination Notice, this Licence will immediately terminate for the whole of the Licenced Area.
 - 13.7 **No compensation or damages:** The Licensee will not be entitled to any compensation or damages from the Licensor arising in any way directly or indirectly in connection with the termination of this Licence under clauses 13.5 or 13.6. However, in respect of a partial surrender of this Licence, the Rent and Outgoings will reduce in proportion to the area of the Licenced Area for which this Licence has been terminated.
 - 13.8 **Without Prejudice:** Any termination under this clause 13 will be without prejudice to the rights of either party against the other.
- 5. A new clause 29 is inserted into the Licence as follows:

29. FINANCIAL REPORTING

29.1 **Provide Information:** the Licensee will provide the Licensor with the following:

- (a) within 3 months of the end of the Licensee's financial year, its financial accounts for each financial year to include a report of the Licensee's activities during that financial year and the distribution of profits to local schools and services; and
- (b) each quarter, its profit and loss report to include details of the distribution of profits to local schools and services,

(together, **Financial Reports**).

29.2 **Annual Review Meeting:** The Licensor and Licensee will meet at such times as the Licensor may determine but in any event at intervals of not less than once annually, on reasonable notice, to discuss the Financial Reports.

29.3 **Essential Term:** Without diminishing the importance of any other clause in this Licence, the Licensee acknowledges and agrees clause 29 is an essential term of the Licence and any breach of that clause will entitle the Licensor to use all rights and remedies available to the Licensor in respect of a breach of an essential term.

- 6. A new clause 30 is inserted into the Licence as follows:

30. SOCIAL RETURNS

- 30.1 **Performers:** Access for performing art groups is to be encouraged and whenever possible, space made available within the market precincts for such presentations. Buskers are also to be encouraged. The Licensee will have discretion as to location and number of performances by any group and may impose a charge on any buskers selling merchandise including music.
- 30.2 **Advertising:** Regular advertising in local papers must be undertaken, at the discretion of the Licensee, to inform the public where the market is located and what is happening at the Māngere open air market. Insertions in the Public Notices or similar sections of the classified portion of a newspaper, advertising for paying Stallholders to attend the market do not constitute appropriate advertising under this clause.
- 30.3 **Quarterly Reports:** A quarterly report must be submitted to the Licensor on the 5th day of the month beginning each quarter. This report will be written on the form provided and will include weekly details from the previous month, regarding:
- (a) the number and type of paying Stall Operators;
 - (b) weather;
 - (c) advertising undertaken, including a copy of any advertisements;
 - (d) details of any other community activity undertaken, such as in connection with Anzac Day, the Santa Parade and similar activities;
 - (e) security issues;
 - (f) any other relevant information.

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;

Bank Guarantee means an irrevocable and unconditional undertaking in the form attached at Schedule 7, which does not contain an expiry date, to pay the Bank Guarantee Amount to the Licensor on demand, to be granted in favour of the Licensor by a Registered Bank (as defined in the Reserve Bank of New Zealand Act 1989);

Building means the building(s) and other improvements on that part of the Land of which the Licensed Area form 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;

Code Compliance Certificate 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;

Compliance Schedule has the same meaning as in the Building Act;

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;

CPI means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replaced, or substituted index;

Determination Date means the date 20 Working Days after the date of appointment of the last of the valuers appointed under clause 5.7(a), or, if one party fails to appoint a valuer under clause 5.7(a), then the date 40 Working Days after the expiry of the Negotiation Period;

Emergency Event means a situation that:

- (d) **Result of Event:** is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, or epidemic; and
- (e) **Safety of Public:** causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
- (f) **No Act or Omission:** is not caused by any act or omission of the Licensor or the Licensee;

Expert means a registered valuer (as that term is defined in the Valuers Act 1948) appointed under clause 5.7(f) or 5.7(g);

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

Inherent Defect is any defect in the Licensed Area or the Building at the time of its construction which is attributable to a failure of design, workmanship, materials, construction or installation of anything in or on the Licensed Area or the Building that the Licensor is responsible for under this Licence, but excludes failures and breakdown attributable to lifespan, wear and tear, or damage;

Insured Risks means loss, damage or destruction resulting from fire, flood, explosion, lightning, storm, earthquake and volcanic activity and any other risks which the Licensor reasonably requires to be insured against (or has covenanted with the Licensee to be insured against);

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

Licensed Area Condition Report means any report and/or photographs attached to or specified in Schedule 5;

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 and includes the Licensee's non-structural internal partitions, alterations, additions, chattels, fixtures and fittings, office equipment, built-in furniture, floor coverings, blinds, curtains, shelving, signs, light fittings, security devices, air conditioning units, fire protection and detection equipment and all equipment and plant the Licensee owns;

Licensee's Market Review Notice is a written notice the Licensee serves under clause 5.6 stating the Licensee's assessment of the current market licence fee of the Licensed Area on that particular Market Licence Fee Review Date;

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 CPI Review Notice is a written notice the Licensor serves under clause 5.1;

Licensor's Fixed Review Notice is a written notice the Licensor serves under clause 5.2;

Licensor's Fixtures and Fittings means any fixtures, fittings, plant and equipment the Licensor owns or supplies in the Licensed Area, including those described in Schedule 4;

Licensor's Market Review Notice is a written notice the Licensor serves under clause 5.5 setting out the Licensor's assessment of the current market licence fee of the Licensed Area on that particular Market Licence Fee Review Date;

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;

Mediation means mediation by an independent mediator accredited by the Arbitrators' and Mediators' Institute of New Zealand Inc.;

Month means a calendar month;

Negotiation Period is the period of 10 Working Days from service of a Licensee's Market Licence Fee Review Notice or such longer period as is agreed between the parties in writing;

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

Outgoings has the definition given to it in Schedule 2;

Redecoration means:

- (a) **Cleaning:** the cleaning of the Licensed Area (including all partitions or additions);
- (b) **Painting:** the treatment, as previously treated, of all surfaces by painting, staining, polishing or otherwise, to a specification and colour scheme the Licensor approves; and
- (c) **Floor Coverings:** the replacement of all floor coverings which in the Licensor's opinion need to be replaced and of a quality, colour and design the Licensor approves of;

Rules means the rules the Licensor sets for the Licensee's use of the Licensed Area and any Common Areas. The current Rules are attached at Schedule 6;

Security Deposit means a cash security deposit for the Security Deposit Amount that the Licensee must pay to the Licensor, and the Licensor must hold, utilise and/or return as set out in clause 22;

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;

Structural Repairs means repairs, maintenance or renovations of a structural nature to the Building including repairs, maintenance or renovations to the foundations, floors, columns, beams, trusses, roof and exterior wall claddings of the Licensed Area but excludes minor repairs and maintenance of these elements;

Unitary Plan means the Auckland Unitary Plan and includes any future district and regional plans applying to the area in which the Licensed Area are 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 Carparks and any Common Areas 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 including reviews of licence fee at the same interval and by the same method as set out in this Licence except that, in the event of any Market Licence Fee Review falling due (including on the first day of holding over), the Licensor may elect to instead increase the Licence Fee by 3%.
- 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. RIGHT OF RENEWAL

3.1 **Renewal:** The Licensor will grant a new licence on the same terms as this Licence, but excluding all exercised Renewal Terms, for the relevant Renewal Term beginning on the relevant Renewal Date if:

- (a) **Key Terms:** the Key Terms of this Licence specify a Renewal Term; and
- (b) **Written Notice:** not less than 3 months and not more than 6 months before any Renewal Date, the Licensee gives the Licensor written notice of the Licensee's wish to renew this Licence (time being of the essence); and
- (c) **No Breach by Licensee:** the Licensee is not in breach of this Licence at the date of the giving of the notice.

3.2 **Agreement:** The parties will sign an agreement recording the terms of any renewal as soon as reasonably possible. The Licensor's lawyers will prepare the agreement.

4. LICENCE FEE, OUTGOINGS AND OTHER PAYMENTS

4.1 **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.

4.2 **Outgoings:** In relation to Outgoings:

- (a) **Licensee to Pay:** the Licensee must pay the Licensor (or as the Licensor otherwise directs), without deduction or set-off, the Outgoings on demand or if the Licensor requires by monthly instalments in advance on each Licence Fee Payment Date of such reasonable amount as the Licensor determines calculated on an annual basis and the first monthly payment (together with Outgoings 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;
- (b) **Fair and Reasonable Proportion:** where any of the Outgoings are not separately assessed or levied for the Licensed Area, then the Licensee is obliged to pay the Licensor (or as the Licensor otherwise directs) the Licensee's Proportion of Outgoings or if no proportion is specified then a fair and reasonable proportion of those Outgoings, as the Licensor determines, depending on the period during which, and the area over which, the Outgoings have been charged;
- (c) **Wash-up:** if the Outgoings are paid in monthly instalments, after 30 June in each year of the Term or any other date in each year as the Licensor may specify, and after the end of the Term, the Licensor will supply to the Licensee reasonable details of the actual Outgoings for the year or period then ended. Any over payment will be refunded to the Licensee and any deficiency must be paid to the Licensor on demand; and
- (d) **Direct from Provider:** if the Licensed Area is separately metered and the Licensor requests, the Licensee must open an account under its name directly with any utilities or services provider and make payment for all utilities and services consumed directly to that provider.

4.3 **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.

4.4 **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.

4.5 **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.

5. LICENCE FEE REVIEW

- 5.1 **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.

- 5.2 **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.

- 5.3 **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.

- 5.4 **Market Licence Fee Review:** On each Market Licence Fee Review Date, the Licence Fee may be reviewed and determined as set out in clauses 5.5 to 5.11.

- 5.5 **Licensor's Market Review Notice:** The Licensor may, no more than 3 months before each Market Licence Fee Review Date, give the Licensor's Market Review Notice to the Licensee.

- 5.6 **Licensee's Market Review Notice:** If the Licensee wants to dispute the current market licence fee set out in the Licensor's Market Review Notice, the Licensee must give the Licensee's Market Review Notice (which, to be valid, must be accompanied by a valuation certificate if the Licensor's Market Review Notice was accompanied by a valuation certificate) to the Licensor within 20 Working Days of receiving the Licensor's Market Review Notice (time being of the essence). If the Licensee does not give a valid Licensee's Market Review Notice within the specified time frame, the Licensee will be deemed to have accepted the current market licence fee set out in the Licensor's Market Review Notice.

- 5.7 **Agreement:** If the Licensee gives a valid Licensee's Market Review Notice, the Licensor and the Licensee must enter into negotiations to agree the current market licence fee. If the Licensor and the Licensee do not reach agreement within the Negotiation Period, then the following terms will apply:

- (a) **Appointment of Valuer:** the Licensor and the Licensee must within 20 Working Days after the expiry of the Negotiation Period each appoint a registered valuer;
- (b) **Joint Determination:** the valuers appointed under clause 5.7(a) will jointly determine the current market licence fee of the Licensed Area;
- (c) **Sole Determination:** if either party fails to appoint a valuer under clause 5.7(a), the valuer the other party appoints will determine the current market licence fee alone;
- (d) **Determination by Valuers:** the appointed valuers (or the sole valuer, if clause 5.7(c) applies) will act as experts and not as arbitrators and make their determination by the Determination Date;
- (e) **Determination by Expert:** if the valuers cannot agree on the current market licence fee of the Licensed Area by the Determination Date, then a sole Expert will determine the current market licence fee;

- (f) **Appointment of Expert:** the valuers must, within 10 Working Days of the Determination Date, jointly appoint a sole Expert and obtain the sole Expert's written acceptance of appointment;
- (g) **Expert Not Appointed:** if within the period referred to in clause 5.7(f), the valuers fail to appoint an Expert or cannot agree on an Expert then either party may ask the President for the time being of The Property Institute of New Zealand Inc. to appoint an Expert and obtain the Expert's written acceptance of appointment;
- (h) **Directions to Valuers or Expert:** without limiting what the valuers or the Expert may have regard to, in determining the current market licence fee, the valuers or the Expert must:
 - (i) have regard to current market licence fees payable at the relevant Licence Fee Review Date for comparable premises of similar quality and location to the Licensed Area;
 - (ii) have regard to the terms of this Licence;
 - (iii) determine the current market licence fee of the Licensed Area at the relevant Licence Fee Review Date as if the Term began on that date;
 - (iv) consider any uses for which the Licensed Area may be lawfully used and disregard any restrictions on use imposed by this Licence;
 - (v) disregard the value of the Licensee's Improvements, that part of the Term which has expired and any restriction on the Licensee's right to assign or transfer this Licence or sublicense the Licensed Area; and
 - (vi) disregard any defect in the Licensed Area resulting from the Licensee's breach of any of the terms of this Licence; and
- (i) **Costs of Determination:** the parties must meet the valuers or Expert's costs of determining the current market licence fee of the Licensed Area as follows:
 - (i) if the current market licence fee as determined is either equal to or greater than the licence fee specified in the Licensor's Market Review Notice, by the Licensee;
 - (ii) if the current market licence fee as determined is either equal to or less than the licence fee specified in the Licensee's Market Review Notice, by the Licensor;
 - (iii) in all other cases, by the Licensor and the Licensee equally,
 unless the valuers or the Expert determine that one of the parties should bear all of the costs, or a proportion of the costs greater than one half, due to that party's impropriety, lack of co-operation or unreasonable conduct, then the parties must pay the costs in the proportions the valuers or the Expert determines.

5.8 **Licence Fee Pending Review:** From the relevant Market Licence Fee Review Date until the date of determination of the current market licence fee, the Licensee must pay the greater of:

- (a) **Average Licence Fee:** the average of the two licence fees proposed in the Licensor's Market Review Notice and the Licensee's Market Review Notice; and
- (b) **Previous Licence Fee:** the licence fee payable by the Licensee immediately before the relevant Market Licence Fee Review Date.

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

5.10 **Excess and Shortfall:** If the new Licence Fee, following its determination:

- (a) **Shortfall:** is more than the licence fee the Licensee paid from the relevant Market Licence Fee Review Date to the date of determination of the new Licence Fee, the Licensee must immediately pay the arrears of licence fee to the Licensor; and
- (b) **Excess:** is less than the licence fee the Licensee paid from the relevant Market Licence Fee Review Date to the date of determination of the new Licence Fee, the Licensor will apply the excess towards the next month's Licence Fee and refund any remaining excess to the Licensee.

5.11 **Licence Fee Ratchet:** The Licence Fee payable by the Licensee following a Market Licence Fee Review Date must never be less than the Licence Fee payable immediately before that Market Licence Fee Review Date.

5.12 **Multiple Reviews:** If a CPI Licence Fee Review Date, a Fixed Licence Fee Review Date and/or a Market 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 5.1;

- (b) **Fixed Review:** the Licence Fee adjusted in accordance with clause 5.2; and
 - (c) **Market Review:** if a market review is undertaken, the Licence Fee reviewed and determined as set out in clauses 5.5 to 5.11.
- 5.13 **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.
- 6. USE OF LICENSED AREA AND SUITABILITY**
- 6.1 **Change of Licensed Use:** The Licensee must not, without the prior written consent of the Licensor, use the Licensed Area or any part of the Licensed Area other than for the Licensed Use. The Licensor will not withhold or delay the Licensor's consent for any proposed change of use if the Licensed Area are reasonably suitable for that use and if that use:
- (a) **Authorities:** complies with all Authorities' requirements;
 - (b) **Competition:** is not in substantial competition with the business of any other occupant of any adjoining premises or any other premises close by owned by the Licensor; and
 - (c) **No Additional Requirements:** does not impose different or additional requirements on the Licensor for the use of the Licensed Area under any Laws.
- 6.2 **Building Act:** If any change of use requires compliance with sections 114 and 115 of the Building Act, the Licensor, as a condition of granting consent, may require the Licensee to comply with those provisions and to pay all compliance costs. In that case, despite clauses 7.3(b) and 8.3, the Licensee must pay:
- (a) **Structural repairs:** the costs of Structural Repairs or other structural works or repairs, or repairs or works to Services within the Licensed Area; and
 - (b) **Additional Outgoings:** any increase or additional Outgoings which result from any change in use, and the Outgoings will be deemed to be amended accordingly.
- 6.3 **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;
 - (ii) **Rules:** in compliance with any Rules; and
 - (iii) **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.
- 6.4 **Rules:** The Licensor may from time to time impose Rules. The Licensee acknowledges that:
- (a) **Licensee must Comply:** it must comply with the Rules; and
 - (b) **Licensor may Vary:** the Licensor has the right to vary the Rules from time to time. However, the Rules must not derogate from the grant under this Licence and if there is an inconsistency between the Rules and the Key Terms or General Terms, the Key Terms and General Terms will prevail.
- 6.5 **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.
- 6.6 **Warrant of Fitness:** If applicable, the Licensee must allow the Licensor to display in the Building, at a place to which users of the Building have ready access, a copy of the current building warrant of fitness showing the location of the Compliance Schedule. The Licensee must retain a copy of the Compliance Schedule, together with any written

reports relating to compliance with the Compliance Schedule over the previous 2-year period. The Licensee must make them available for the Authority's inspection, and any other person or organisation that is entitled to inspect the Building under the Building Act.

- 6.7 **Suitability:** The Licenser makes no warranty or representation that the Licensed Area are or will remain suitable for the Licensed Use, or that the Licensee's use of the Licensed Area complies with any Laws.

7. LICENSEE'S MAINTENANCE OBLIGATIONS

- 7.1 **Maintenance of Licensed Area:** The Licensee must:

- (a) **Keep in Same Repair:** maintain the Licensed Area and the Licensee's Improvements in the same clean order, repair, and condition as they were in at the Commencement Date or the commencement date of a prior licence the Licensee held, whichever is the earlier; and
- (b) **On Termination:** at the expiry of the Term or on the earlier termination of this Licence, in addition to the Licensee's obligations in clause 10.9:
 - (i) **Make Good:** hand back the Licensed Area to the Licenser in the same clean order, repair, and condition as they were in at the Commencement Date or the commencement date of a prior licence the Licensee held, whichever is the earlier; and
 - (ii) **Remove Signs:** remove all Signs the Licensee affixed to or painted on the Licensed Area, Building or the Land and reinstate all affected parts of the Licensed Area, Building or the Land to the Licenser's reasonable requirements by painting those parts in a colour or colours approved by the Licenser.

- 7.2 **Licensed Area Condition Report:** The Licensed Area Condition Report (if completed) is evidence of the condition of the Licensed Area at the Commencement Date or the commencement date of a prior licence the Licensee held, whichever is the earlier.

- 7.3 **Limitations on Licensee's Maintenance Obligations:** The Licensee's obligations under clause 7.1 do not:

- (a) **Fair Wear and Tear:** subject to clause 7.7, extend to deterioration arising from fair wear and tear arising from reasonable use;
- (b) **Structural Repairs:** apply to Structural Repairs; or
- (c) **Inherent Defects:** apply to repairing any Inherent Defect in the Licensed Area.

- 7.4 **Licensee's obligations:** Without limiting the Licensee's obligations under clause 7.1, the Licensee must:

- (a) **Keep Licensed Area Clean:** keep the Licensed Area clean, tidy and free of rubbish;
- (b) **Broken Glass:** repair or replace all broken glass in or bounding the Licensed Area (doors, windows, plate glass and light fittings, and including glass and plate glass within exterior walls) with glass of the same or better weight and quality;
- (c) **Light Bulbs:** replace all light bulbs and tubes that have blown or are otherwise not working in the Licensed Area with items of the same or better quality and specification; and
- (d) **Damage or loss:** make good any damage to the Licensed Area caused by the Licensee's improper, careless or abnormal use, to the Licenser's reasonable requirements.

- 7.5 **Common Areas:** The Licensee must clean and leave the Common Areas in a tidy condition following every use by the Licensee.

- 7.6 **Whole of the Building or Land:** If the Licensed Area are the whole of the Building or the whole of the Land, the Licensee must also, for the Licensed Area:

- (a) **Maintain yard and fences:** keep and maintain any surfaced areas and fences in good order and repair;
- (b) **Care of grounds:** keep any grounds, yards and surfaced areas in a tidy condition and maintain any garden or lawn areas in a tidy and cared for condition;
- (c) **Water and drainage:** keep and maintain the storm and/or waste water drainage system, including downpipes and guttering, clear and unobstructed;
- (d) **Graffiti:** remove any externally visible graffiti from the Building and surrounding fences (if any) within 5 Working Days of such graffiti occurring; and
- (e) **Other works:** carry out any works to the Building (and the Land), which would normally be the Licenser's obligation and for which the Licensee would normally pay Outgoings, that the Licenser may require.

- 7.7 **Redecoration:** The Licensee must carry out Redecoration to the Licenser's reasonable satisfaction within the period of 3 months before each of the Redecoration Dates, and within 3 months before the expiry of the Term.

8. LICENSOR'S MAINTENANCE OBLIGATIONS

- 8.1 **Maintenance:** The Licensor will keep and maintain the Building, all Services, any Common Areas and any Carparks in good order and repair and weatherproof but the Licensor is not liable for any:
- (a) **Licensee's Maintenance:** repairs or maintenance which are the Licensee's responsibility;
 - (b) **Licensee's Breach:** repairs or maintenance which are necessary because of the Licensee's wilful act, breach or negligence; or
 - (c) **Licensee's Loss:** loss suffered by the Licensee unless:
 - (i) **Licensor's Failure:** the loss directly results from the Licensor's failure to carry out repairs or maintenance within a reasonable time after having received a written notice from the Licensee of those repairs or maintenance being required,
 - (ii) **Mitigation:** the Licensee has taken all reasonable steps to mitigate against such loss; and
 - (iii) **No Insurance:** the Licensee is not insured for such loss or has not agreed with the Licensor to be insured for such loss.
- 8.2 **Notification of Defects:** The Licensee must immediately notify the Licensor if the Licensee becomes aware of any damage to or defect in the Building, Services, any Common Areas and any Carparks.
- 8.3 **Costs:** All costs in the Licensor carrying out its maintenance obligations (except for Structural Repairs and repairs due to Inherent Defects in the Building) will form part of the Outgoings.

9. LICENSOR'S RIGHTS OF ENTRY

- 9.1 **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 which are not the Licensee's responsibility under this Licence;
 - (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's insurer except where those works are the Licensee's responsibility; or
 - (e) **Licensee's Breach:** remedy any breach of this Licence by the Licensee.
- 9.2 **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 9.1.

10. ALTERATIONS AND ADDITIONS

- 10.1 **Approvals:** The Licensee must not without the Licensor's prior written consent:
- (a) **Alteration or Additions:** make any alterations or additions to any part of the Licensed Area; or
 - (b) **Building Work:** carry out any Building Work on the Licensed Area.

- 10.2 **Plans and specifications:** For the purposes of obtaining consent under clause 10.1, the Licensee must provide to the Licensor plans and specifications for the proposed works for approval.
- 10.3 **Requirements:** Before commencing any works approved by the Licensor, the Licensee must provide to the Licensor:
- (a) **Bond:** (if required) a bank guarantee (of a sum to be specified by the Licensor) to the Licensor to secure the Licensee's obligations under this clause 10;
 - (b) **Indemnity:** (if required) a written indemnity indemnifying the Licensor from all claims arising from the works to be undertaken by the Licensee;
 - (c) **Regulatory Consents:** evidence that the Licensee has obtained all regulatory consents from the relevant Authorities (including resource consents and building consents) required to enable any Building Work to be carried out at the Licensed Area; and
 - (d) **Insurance:** evidence that the Licensee has in place, in the joint names of the Licensor and the Licensee, contractors all risk insurance for an amount specified by the Licensor having regard to the value of the works during the course of the works and public liability insurance for an amount specified by the Licensor.
- 10.4 **Carrying out:** The Licensee must carry out the works:
- (a) **Timeliness:** in a skilful and efficient manner;
 - (b) **Consents:** in conformity with the building consents and other approvals from the relevant Authorities (if applicable);
 - (c) **Trade Practice:** in accordance with best trade practices; and
 - (d) **Laws:** in compliance with the requirements of all Laws as they affect the Licensed Area.
- 10.5 **On Completion:** On completion of the Building Work, the Licensee must obtain and provide to the Licensor the Code Compliance Certificate and a complete set of as-built drawings accurately showing the Building Work.
- 10.6 **Section 363:** The Licensee must not allow the Licensed Area to be open to members of the public or allow the use of the Licensed Area by members of the public if that would be in breach of section 363 of the Building Act.
- 10.7 **Fees:** The Licensee must pay any professional fees the Licensor incurs in reviewing the Licensee's plans and specifications and assessing the proposed additions and alterations.
- 10.8 **Prohibited Works:** Despite anything in this clause, the Licensee must not:
- (a) **External change:** make any change to the external appearance, structure or fabric of the Building or Licensed Area; or
 - (b) **Exterior walls:** install or attach any extractor units, vents, ducting and the like to the exterior walls of the Building or Licensed Area.
- 10.9 **Reinstatement:** If the Licensor authorises any alterations or additions to the Licensed Area which the Licensee makes before the Commencement Date or during the Term of this Licence, the Licensee must, if the Licensor requires, remove at the Licensee's expense, all those alterations or additions and reinstate the Licensed Area including the repair of any damage to the Licensed Area caused by the removal:
- (a) **Expiry of Term:** before the expiry of the Term; or
 - (b) **Earlier Termination:** if this Licence is terminated before the expiry of the Term, within 5 Working Days of the date of termination.
- 10.10 **Licensor may Reinstate:** If the Licensee does not remove the alterations or additions and reinstate the Licensed Area in accordance with clause 10.9, at the Licensor's option, those alterations or additions will be forfeited and will become the Licensor's property without payment of compensation to the Licensee. The Licensor may carry out that removal and reinstatement, in whole or in part, and the Licensor may recover from the Licensee its costs incurred as a result.
- 10.11 **Payment in Lieu of Licence Fee:** The Licensee must pay to the Licensor on demand, a sum equivalent to the Licence Fee payable immediately before the expiry or termination of the Term, on a pro-rata basis, calculated daily, for each day that any required removal and reinstatement has not been completed (whether by the Licensee or the Licensor) beyond the expiry or termination of the Term.
- 10.12 **Damages:** The Licensee acknowledges that the damages recoverable by the Licensor for a breach of clause 10.9 may include losses the Licensor incurs because of the inability of the Licensor to re-let the Licensed Area before the Licensor removes and reinstates the alterations or additions under clause 10.10.
11. **ASSIGNMENT AND SUBLICENSING**
- 11.1 **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.

11.2 **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.

11.3 **Breach:** Any deemed assignment pursuant to clause 11.2 will be a breach of clause 11.1.

12. **INSURANCE**

12.1 **Licensor to Insure Licensed Area:** The Licensor will insure and keep the Building insured at all times throughout the Term to its full replacement value against the Insured Risks.

12.2 **Section 271 Property Law Act 2007:** For the purposes of section 271 of the Property Law Act 2007, the Licensee acknowledges and agrees that the Licensor has not insured the Licensed Area to the extent of the excess or deductible under the Licensor's insurance policy.

12.3 **Insurance Excess:** 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 must pay the Licensor the insurance excess (for an amount specified in the list of Outgoings in Schedule 2 or notified to the Licensee from time to time) on all claims under the policy.

12.4 **Licensor Policy:** Despite clause 12.1, any insurance that the Licensor does maintain will only be to the extent, with the excess, under the type of policy and on the terms and conditions that the Licensor from time to time considers appropriate in its absolute discretion.

12.5 **Insurance by Licensee:** The Licensee must maintain the following insurance policies during the Term:

- (a) **Glass:** the replacement value of all glass in or bounding the Licensed Area (doors, windows, plate glass and light fittings, and including glass and plate glass within exterior walls);
- (b) **Public Risk:** 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:
 - (i) **Set Amount:** the Public Liability Amount; or
 - (ii) **Increased Amount:** any increased amount which the Licensor reasonably requires; and
- (c) **Improvements and Stock:** the replacement value of the Licensee's Improvements and stock in trade in the Licensed Area.

12.6 **Particulars of Insurance Policies:** The insurance policies the Licensee maintains under clause 12.5 must note the Licensor's interest and be with a reputable New Zealand based insurer.

12.7 **Policy Details:** The Licensee must, if required, produce to the Licensor a certificate of currency for all insurance policies the Licensee maintains under clause 12.5 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 all insurance policies the Licensee maintains under clause 12.5.

13. **DAMAGE OR DESTRUCTION**

13.1 **Destroyed:** If the Licensed Area or the Building is destroyed or so damaged so as to render the Licensed Area or the Building untenable, the Licensor will advise the Licensee within 3 months of the date of the destruction or damage whether the Licensor wishes to reinstate the Licensed Area or the Building.

13.2 **No Reinstatement:** If the Licensor does not confirm it wishes to reinstate the Licensed Area or the Building within the 3 month period at clause 13.1 then this Licence will terminate on the expiry of that period.

13.3 **Damaged:** If the Licensed Area or the Building are damaged but not so as to render them untenable, or, under clause 13.1, the Licensor wishes to reinstate the Licensed Area or the Building and:

- (a) **Valid Insurance:** the insurance policy required under clause 12.1 has not been invalidated or payment refused due to any act, breach or omission of the Licensee or any other occupier of the Building; and
- (b) **Obtain Consents:** the Licensor is able to obtain the necessary permits and consents to repair the damage or reinstate the Licensed Area or the Building (as the case may be),

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.

13.4 **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 and Outgoings will abate.

13.5 **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:** the insurance policy effected under clause 12.1 has been invalidated or payment refused due to any act, breach or omission of the Licensee or any other occupier of the Building; 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).

13.6 **Without Prejudice:** Any termination under this clause 13 will be without prejudice to the rights of either party against the other.

14. NO ACCESS IN EMERGENCY

14.1 **Emergency Event:** If there is an Emergency Event and the Licensee is unable to gain access to the Licensed Area to fully conduct the Licensee's business from the Licensed Area because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the Emergency Event including:

- (a) **Prohibited Access:** a prohibited or restricted access cordon applying to the Licensed Area; or
- (b) **Prohibited Use:** prohibition on the use of the Licensed Area pending the completion of structural engineering or other reports and appropriate certifications required by any Authority that the Licensed Area are fit for use; or
- (c) **Occupation Restriction:** restriction on occupation of the Licensed Area by any Authority,

then a fair proportion of Licence Fee and Outgoings will abate for the period commencing on the date when the Licensee is unable to gain access to the Licensed Area to fully conduct the Licensee's business from the Licensed Area until the inability ends.

14.2 **Termination:** This clause 14.2 applies where clause 14.1 applies and the Licensed Area or Building of which the Licensed Area form part are not destroyed or damaged pursuant to clauses 13.1 or 13.3. Either party may terminate this Licence by giving 10 Working Days written notice to the Licensee if:

- (a) **No Access:** the Licensee is unable to gain access to the Licensed Area for the No Access Period; or
- (b) **Reasonable Certainty:** the party that terminates this Licence can at any time before termination establish with reasonable certainty that the Licensee will be unable to gain access to the Licensed Area for the No Access Period.

14.3 **Without Prejudice:** Any termination will be without prejudice to the rights of either party against the other.

15. BREACH

15.1 **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;
- (e) **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.

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

16. COMPENSATION AND DAMAGES

16.1 **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.

16.2 **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.

16.3 **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.

16.4 **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.

16.5 **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.

16.6 **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.

17. VARIATION, WAIVER AND OMISSION

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

17.2 **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.

17.3 **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.

17.4 **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.

18. LICENSEE INDEMNITY

The Licensee indemnifies the Licensors 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 Licensors' 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.

19. HEALTH AND SAFETY

19.1 **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 Licensors 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 Licensors' reasonable directions in relation to health and safety in connection with the Licensed Area and the Licensee's occupation of the same.

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

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

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

- (a) **Participate:** participate in the Licensors' 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.

19.4 **Incidents and investigations:** The Licensee must immediately notify the Licensors of any:

- (a) **Notifiable Event:** Notifiable Event; or
- (b) **WorkSafe Request:** WorkSafe inspection, investigation or information request, in connection with the Licensed Area.

19.5 **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 Licensors identify to the Licensee.

20. DISPUTE RESOLUTION

20.1 **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.

20.2 **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.

20.3 **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.

20.4 **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 Licensors 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.

- 20.5 **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 20.1 to 20.4 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 20.1 to 20.4 will once again take effect.
- 20.6 **Next Steps:** Where any dispute arising between the parties under this Licence cannot be resolved pursuant to clauses 20.1 to 20.4 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.
- 20.7 **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.
- 20.8 **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.

21. NOTICES

- 21.1 **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.
- 21.2 **Time of Service:** For the means of service specified in clause 21.1(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.
- 21.3 **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.
- 21.4 **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.

22. GUARANTEES

- 22.1 **Guarantee:** The Guarantor (if any) agrees to guarantee the obligations of the Licensee under this Licence on the terms and conditions set out in Schedule 3.
- 22.2 **Bank Guarantee:** If the Key Terms stipulate a Bank Guarantee Amount, then the Licensee must on or before the Commencement Date, in consideration of the Licensor agreeing to grant this Licence, provide the Licensor with a Bank Guarantee for the Bank Guarantee Amount to be utilised to remedy any breach by the Licensee of any of the Licensee's obligations under this Licence. The Licensee must at all times ensure that the Bank Guarantee is kept current and enforceable.
- 22.3 **Security Deposit:** If the Key Terms stipulate a Security Deposit Amount, then the Licensee must on or prior to the Commencement Date, in consideration of the Licensor agreeing to grant this Licence, provide the Licensor with a Security Deposit for the Security Deposit Amount to be utilised to remedy any breach by the Licensee of any of the Licensee's obligations under this Licence. The parties agree and acknowledge that title to the Security Deposit vests in the Licensor.
- 22.4 **Licensor Right to Terminate:** If the Licensee is required to provide a Bank Guarantee under clause 22.2 or a Security Deposit under clause 22.3 and has not done so within 10 Working Days of such Bank Guarantee or Security Deposit being due, the Licensor may terminate this Licence on 10 Working Days' written notice and on expiry of such notice, this Licence will terminate unless before expiry:

- (a) **Security Provided:** the Licensee provides the Licenser with the required Bank Guarantee or Security Deposit; or
 - (b) **Notice:** the Licenser provides written notice to the Licensee that this requirement is waived or extended (in which case, the Licenser may, at a later date, again serve a notice under this clause).
- 22.5 **Breach by Licensee:** If the Licensee breaches any of its obligations under this Licence, the Licenser may, without prior notice to the Licensee:
- (a) **Demand Payment:** demand payment under the Bank Guarantee in or towards making good any loss or damage the Licenser sustains because of that breach; or
 - (b) **Utilise Security Deposit:** take payment out of the Security Deposit in an amount equal to any loss or damage the Licenser sustains because of that breach.
- 22.6 **Notification and Replacement:** If the Licenser demands payment under the Bank Guarantee or takes payment under the Security Deposit:
- (a) **Written Statement:** for unpaid Licence Fee or other moneys payable under this Licence, the Licenser will give the Licensee a written statement of the amounts unpaid; or
 - (b) **Expenditure Incurred:** in order to reimburse the Licenser for expenditure incurred in remedying any other Licensee breach, the Licenser will give the Licensee relevant details of that expenditure,
- and the Licensee must promptly provide:
- (c) **Replacement Bank Guarantee:** a replacement Bank Guarantee for the Bank Guarantee Amount; or
 - (d) **Additional Bank Guarantee:** an additional Bank Guarantee equal to the amount the Licenser demands or applies under clause 22.4; or
 - (e) **Top-up Security Deposit:** pay to the Licenser an amount equal to that payment so that the amount the Licenser holds is the same as the Security Deposit Amount.
- 22.7 **Not a Waiver:** None of the Licenser's actions under clause 22.4 will operate as a waiver of the relevant event specified in clause 15.1.
- 22.8 **Termination of Bank Guarantee:** If any Bank Guarantee is terminated by the relevant bank by payment to the Licenser of the Bank Guarantee Amount, the Licenser will hold such amount as a Security Deposit and the terms of this clause as applicable to a Security Deposit will apply.
- 22.9 **Transfer by Licenser:** If at any time during the Term the Licenser transfers the Licenser's interest in the Land:
- (a) **Replacement Bank Guarantee:** the Licensee must provide to the Licenser a replacement Bank Guarantee in favour of the Licenser's transferee; or
 - (b) **Transfer Security Deposit:** the Licenser must transfer the Security Deposit (less any amount which the Licenser is then entitled to have paid to it) to the Licenser's transferee.
- 22.10 **Return of Bank Guarantee or Security Deposit:** The Licenser will return the Bank Guarantee or the Security Deposit (less any amount which the Licenser is then entitled to have paid to it) to the Licensee after the latest of the following:
- (a) **Expiry:** the final expiry or earlier termination of this Licence (including any holding-over period); and
 - (b) **Compliance with Obligations:** the Licensee complying with all of its obligations under this Licence.
- 22.11 **No prejudice:** It is agreed and declared that the existence of the Bank Guarantee or the Security Deposit does not prejudice the Licenser's ability to proceed against the Licensee for any breach of any covenant, agreement or condition on the part of the Licensee under this Licence and will not entitle the Licensee to withhold any moneys or fail to perform any covenant, agreement or condition under this Licence and the Bank Guarantee or the Security Deposit will not be regarded as an advance payment of Licence Fee.
- 23. CARPARKS**
- 23.1 **Use of Carparks:** The Licensee has the right to use any Carparks, but when any Carpark is not being used by the Licensee, anyone will have the right to pass over any Carpark.
- 23.2 **Repairs:** The Licenser may carry out repairs to the Carparks and the Licensee may not claim any abatement of licence fee or other compensation except under clause 13.4.
- 23.3 **Use:** The Licensee must comply with the Licenser's reasonable requirements relating to the use of and access to any Carparks and, in particular, may only use a Carpark for the parking of one motor vehicle per space.
- 23.4 **General Terms:** The provisions of the General Terms and the Specific Terms will apply to any Carparks as appropriate.

24. UNIT TITLE COVENANTS

- 24.1 **Unit Title:** Clause 24 applies where the Licensed Area is part of a unit title development as that term is defined under the Unit Titles Act 2010.
- 24.2 **Body Corporate:** The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 for the Licensed Area.
- 24.3 **Act and Rules Paramount:** This Licence is subject to the rules of the Body Corporate and the provisions of the Unit Titles Act 2010.
- 24.4 **Insurance:** Unless the rules require the Licensor to insure the Licensed Area, the Licensor's obligations to insure the Licensed Area are satisfied by the Body Corporate maintaining the same insurance covers as are required in accordance with the Unit Titles Act 2010.
- 24.5 **Indemnity:** The Licensee's obligations to indemnify the Licensor under this Licence are extended to include the Body Corporate.
- 24.6 **Licensor's obligations:** The Licensor will observe and perform all of the Licensor's obligations as a member of the Body Corporate and will use the Licensor's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Unit Titles Act 2010.
- 24.7 **Consents:** Where the consent of the Licensor is required for any matter, then the consent of the Body Corporate will also be required if the consent of the Body Corporate to that matter would be necessary under its rules or the Unit Titles Act 2010.

25. 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.

26. 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.

27. NO LEASE

27.1 **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.

27.2 **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.

28. GENERAL

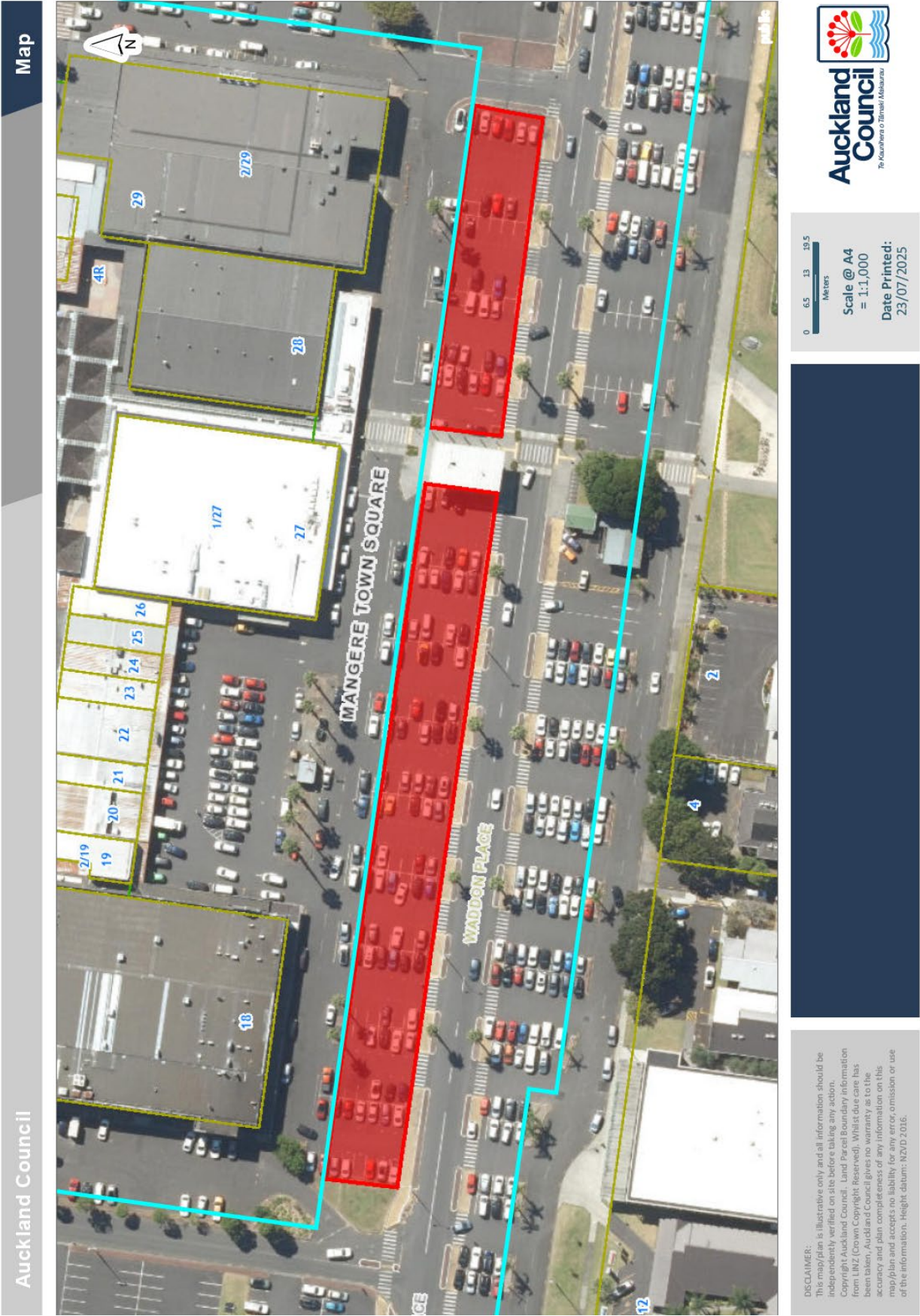
- 28.1 **Fee simple covenants:** The Licensee must, at all times, observe and comply with all of the covenants and encumbrances affecting the Land (without limitation) and the terms, covenants and conditions of any easements registered against the title to the Land.
- 28.2 **No Caveat:** The Licensee must not lodge a caveat against the title to the Land.
- 28.3 **Licence Costs:** Each party will pay its own costs relating to the negotiation and preparation of this Licence.
- 28.4 **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.
- 28.5 **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.
- 28.6 **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.
- 28.7 **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.
- 28.8 **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.
- 28.9 **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

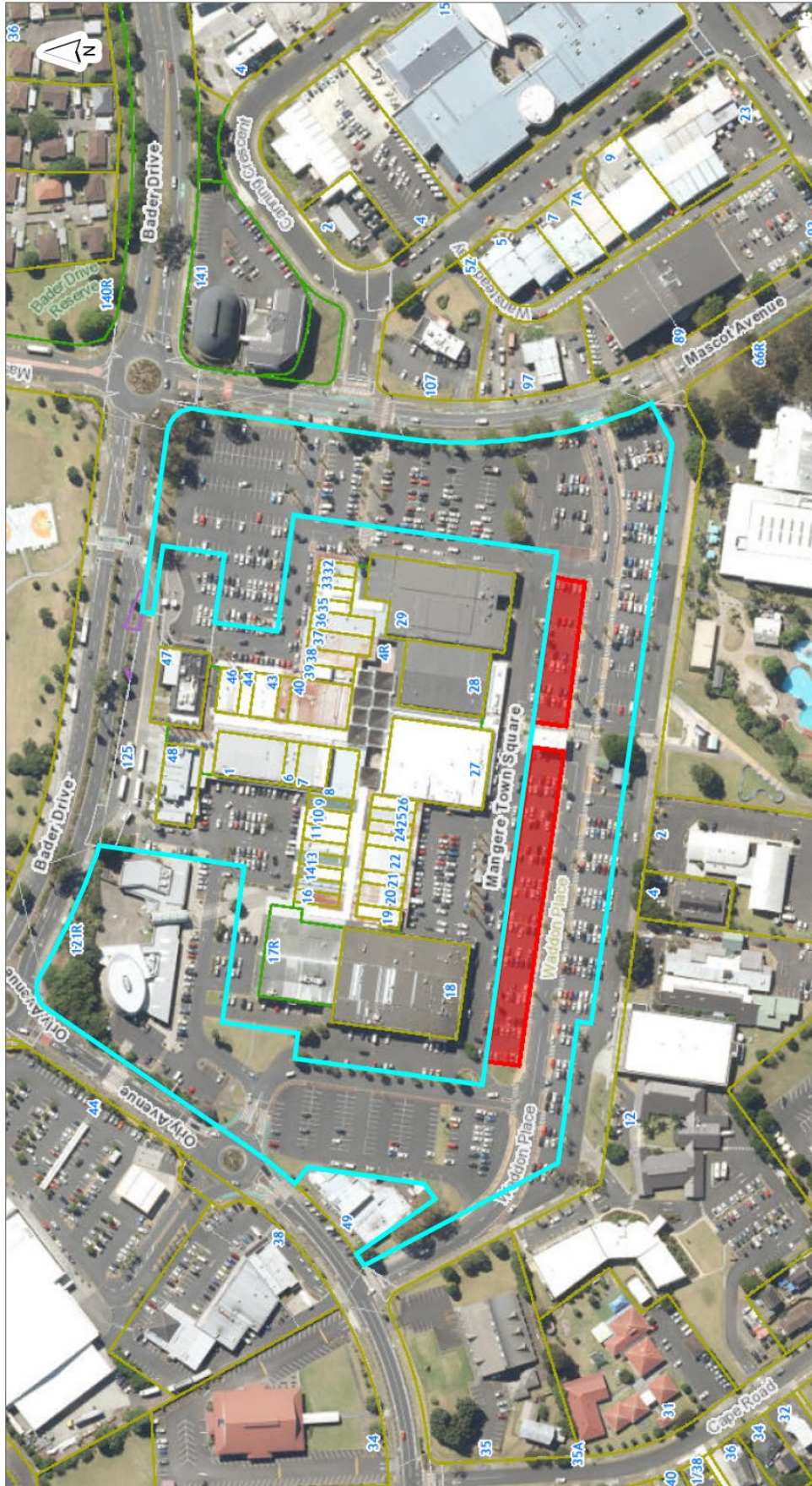
- (c) the electronic signature complied with the requirements of section 228 of the Contract and Commercial Law Act 2017 (if applicable).

28.10 **Other Signing:** Clause 28.9 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





SCHEDULE 2

OUTGOINGS

Not applicable.

SCHEDULE 3

GUARANTEE

IN CONSIDERATION of the Licensors entering into this Licence with the Licensee at the Guarantor's request, the Guarantor covenants with the Licensors as set out in this schedule.

1. **Guarantee:** The Guarantor guarantees to the Licensors that the Guarantor will be jointly and severally liable with the Licensee and any other guarantor(s) to the Licensors for the Licensee's performance of all of the Licensee's obligations under this Licence during the term of this Licence and also during any period of holding over or extension or renewal of the Term.
2. **Indemnity:** The Guarantor indemnifies the Licensors and will at all times keep the Licensors indemnified against all actions, proceedings, calls, claims, demands, losses damages, costs, expenses or liabilities of any kind which the Licensors may suffer or incur because of the Licensee's breach of any of the Licensee's obligations under this Licence. The Guarantor will remain liable to the Licensors under this indemnity even if:
 - (a) **Rights Exercised:** as a consequence of that breach the Licensors has exercised any of the Licensors's rights under this Licence;
 - (b) **Licensee Wound Up:** the Licensee (being a company) is wound up, dissolved, goes into receivership, liquidation or voluntary administration or (being a natural person) is declared bankrupt or insolvent; and
 - (c) **Guarantee Unenforceable:** the guarantee given by the Guarantor is for any reason unenforceable either in whole or in part.
3. **Pay on Demand:** On the Licensee's breach of any of the Licensee's obligations under this Licence, the Guarantor must immediately on the Licensors's demand pay the Licence Fee and make good to the Licensors all losses and expenses the Licensors sustains or incurs because of the Licensee's breach of the Licensee's obligations under this Licence, without the necessity of any earlier demand having been made on the Licensee.
4. **Liability not Affected:** The Guarantor's obligations under this guarantee and indemnity will continue to remain in force until the Licence Fee or other money payable under this Licence has been paid and until all other obligations and indemnities have been performed, observed and satisfied. The Guarantor's liability under this guarantee and indemnity is not affected, and the Guarantor will not be reLicenced from these covenants, by:
 - (a) **Granting of Time:** the granting of time or any other indulgence to the Licensee;
 - (b) **Compounding of Licensors's Rights:** the compounding, compromise, re Licence, abandonment, waiver, variation or extension of any of the Licensors's rights against the Licensee;
 - (c) **Rights Not Enforced:** the Licensors's failure, or decision not to enforce the Licensors's rights against the Licensee;
 - (d) **Insolvency:** the bankruptcy, death, receivership, liquidation, winding-up, dissolution or voluntary administration of the Licensee;
 - (e) **Security:** any action taken by any person to realise any security relevant to this Licence;
 - (f) **Variation, Extension or Renewal of Licence:** any variation of this Licence, including any review or variation of the Licence Fee (whether or not the Guarantor has consented to that variation), any extension or renewal of this Licence, any holding over by the Licensee and the termination or expiry of this Licence; or
 - (g) **Assignment or Sublicensing:** the Licensee assigning or sublicensing the Licensed Area (even where the Licensors consents to that assignment or sublicensing); or
 - (h) **Any Other Thing:** any other thing which under the law on sureties would or might, if not for this provision, wholly or partly reLicence the Guarantor from the Guarantor's obligations under this guarantee and indemnity.
5. **Guarantor is a Principal Debtor:** As between the Licensee and the Guarantor, the Guarantor may be merely a surety, but as between the Guarantor and the Licensors, the Guarantor is a principal debtor.
6. **Waiver of Rights:** The Guarantor waives any of the Guarantor's rights as surety or indemnifier (legal, equitable, statutory or otherwise) which are at any time inconsistent with any of the terms of this guarantee and indemnity.
7. **Covenants not Conditional:** The covenants made or given by the Guarantor are not conditional or contingent in any way or dependent on the validity or enforceability of the covenants and agreements of any other person and are and remain binding even if any other person has not duly executed this Licence or this guarantee and indemnity.
8. **Benefit of Guarantee:** This guarantee and indemnity is for the benefit of and may be enforced by any person entitled to receive the Licence Fee under this Licence.
9. **Replacement Licence:** If any person validly disclaims this Licence, the Guarantor must, on the Licensors's written request, accept a new licence of the Licensed Area from the Licensors for a term equal to the residue of the unexpired Term as at the time of the grant of that new licence and otherwise on the same terms as this Licence.
10. **Joint and Several Liability:** If there is more than one Guarantor, their liability under this guarantee will be both joint and several.

SCHEDULE 4

LICENSOR'S FIXTURES AND FITTINGS

Not applicable.

SCHEDULE 5

LICENSED AREA CONDITION REPORT

SCHEDULE 6

RULES

Not applicable

FORM OF BANK GUARANTEE

42673620 544

SCHEDULE 8

ENVIRONMENTAL HEALTH OPERATING CONDITIONS

- 1) All food stall operations (with the exception of fruit & vegetable stalls) must hold the appropriate health licence.
- 2) Dogs and other animals are prohibited on the market site.
- 3) The sale of second hand shoes is prohibited
- 4) Any signage erected requires the prior written approval of Council.
- 5) It is the responsibility of the Licensee to ensure that stalls within the market are required to conform to all relevant Council bylaws and regulations.
- 6) No fish or meat (or products containing meat or fish) are to be sold on the site, unless with the prior written approval of Council.