

Licence to Occupy

(date)

Kaipara District Council

(Council)

[Organisation]

(Organisation)

Licence to Occupy Land

[Property Address]

[Permitted Use]



Kaipara te Orangahui

KAIPARA
DISTRICT

Two Oceans Two Harbours

Licence To Occupy Land

AGREEMENT dated the day of 20[]

PARTIES

- 1 **Kaipara District Council** ("Council")
- 2 **[Full Name of Organisation]** ("Organisation")

INTRODUCTION

- A The Council is the registered proprietor of the Land described in Schedule 1 and holds such Land for the benefit of the Kaipara community, which may allow for community organisations to use the Land for community purposes.
 - B The Organisation and the Council are parties to a Development Agreement which provides for the Organisation to undertake and complete a development on the Land in accordance with the terms and conditions of the Development Agreement.
 - C The Organisation has completed the Development and achieved Practical Completion (as both terms are defined in the Development Agreement) and pursuant to the Development Agreement the Council and the Organisation now enter into this Agreement to establish and provide for the Organisation to use and occupy the Land on the terms and conditions set out in this Agreement.
- 1 Agreement

Grant of Licence

- 1.1 The Council grants and the Organisation accepts:
 - (a) a licence to use and occupy the Improvements on the Land; and
 - (b) a licence to use the balance of the Land, excluding that part of the Land on which the Improvements are situated, in common with other organisations and persons to whom the Council may grant similar rights.

Terms and Conditions

- 1.2 The Council and the Organisation agree that they are bound by and will observe and perform their respective obligations under this Agreement as set out in the Schedules to this Agreement.

Signed by)
Kaipara District Council)
in the presence of:) _____

The Common Seal of)
[Organisation])
was affixed in the)
presence of:) _____

DRAFT

Schedule 1

Particulars Schedule

Organisation	[Set out full name of Organisation]
Organisation Contact Details	<ul style="list-style-type: none"> • email • postal • telephone
Council Contact Details	<ul style="list-style-type: none"> • (email)@kaipara.govt.nz • Kaipara District Council Private Bag 1001 Dargaville 0340 • 09 439 3123 extension (#)
Land	[Set out the property address including area, legal description and plan/sketch of the area to be the subject of the Licence]
Improvements	[Describe the Improvements erected by the Organisation on the Land and delineate on the plan/sketch of the Land]
Status of Organisation	Charitable Trust/Incorporated Society (delete as appropriate) Registered Charitable Entity – (yes/no)
Community Benefits	[Set out the benefits of the Development for the Kaipara Community]
Annual Licence Fee	<p>Either [\$1 per annum plus GST subject to conversion to a substantive Annual Licence Fee subject to reassessment OR [substantive annual amount] subject to reassessment]</p> <p>[Annual Licence Fee payable annually / 6 monthly / monthly in advance]</p>
Reassessment Intervals	[Five yearly and as at the commencement of any extension of the Term]
Outgoings payable	Includes payment of Rates [Yes/No]
Term	[Five years]
Commencement Date	[Insert date – typically from the date of Practical Completion under the Development Agreement]
Extension Terms	[Two terms of five years each]
Further Extensions for Substantial Improvements	<p>[Substantial improvements erected – yes/no]</p> <p>[three terms of five years each]</p>
Total Possible Term	[Insert total possible number of years for Term]
Permitted Use	[Set out permitted use]
Public Risk Insurance Amount	[\$2m]
Insurance Value	[Replacement Value]

Conditions/Special Terms	[Set out any conditions or special terms not otherwise dealt with in the standard format of the Licence]
Financial Year of Organisation	[Insert]
Performance Measures	<ul style="list-style-type: none">• the Community Benefits are continuing to be provided• not for profit status of the Organisation is retained• registration of the Organisation as a charitable entity is retained• the constituting document of the Organisation permits membership or ability to participate to all members of the public who can legitimately take part in the activities of the Organisation, and no-one shall be excluded from membership provided they pay the necessary fees and observe the usual and proper rules of the Organisation• the degree and frequency of the undertaking of the Permitted Use• the degree and frequency of use, including shared use, of the Improvements and the Land by other community organisations and members of the public

Schedule 2

Terms and Conditions

1 Definitions and Interpretation

Definitions

- 1.1 In this Agreement, including the Introduction and all Schedules to this Agreement, unless the context otherwise requires:

"Administration Fee" is the fee which the Council may require the Organisation to pay as a component of the Annual Licence Fee for the Council's administration costs of and incidental to the implementation and administration of this Agreement, which, without limitation, may include provision for staff time and regular, periodic, and as required expenditure on repairs to and maintenance and enhancement of the Land (excluding the Improvements).

"Annual Licence Fee" is the annual licence fee, plus GST payable by the Organisation to the Council, the initial amount of which is set out in Schedule 1, and subject to conversion and reassessment as provided for in Schedule 1, and as more particularly provided for in clause 3.

"Authority" means any local body, government or other authority having jurisdiction or authority over or in respect of the Land or the use or occupation of the Land.

"Commencement Date" means the commencement date of this Agreement as set out in Schedule 1.

"Community Benefits" means the community benefits for the Kaipara community as set out and described in Schedule 1 to be achieved by the Organisation by entering into this Agreement and undertaking the Permitted Use.

"Council" means the Kaipara District Council its successors and assigns and includes any Government body, local authority or other organisation that takes over the responsibility of Kaipara District Council in respect of the Land.

"Development Agreement" means the prior Agreement between the Council and the Organisation for the development of the Improvements on the Land.

"Extension Term/s" means extension/s of the Term as set out in Schedule 1 and as provided for in clause 2.

"Further Extension/s" means further extensions of the Term following the initial Term and the Extension Term/s, as set out in Schedule 1 and provided for in clause 2.

"Improvements" means the buildings structures and all other improvements placed erected or constructed by the Organisation on the Land and includes all services which serve the Improvements.

"Land" means the land set out and described in Schedule 1.

"Outgoings" means the outgoings in respect of the Improvements and the Land which, as set out in Schedule 1, shall be payable by the Organisation, and as provided for in clause 4.

"Organisation" means the Organisation named and described in Schedule 1 but does not include the Organisation's successors or assigns.

"Permitted Use" is the permitted use of the Improvements and the Land as set out and described in Schedule 1.

"Performance Measures" are as provided for in clause 9 and as more particularly set out in Schedule 1.

"Rates" means the Council and Regional Council rates payable in respect of the Land or a proportion of such rates, as determined by the Council.

"Term" means the term of this Agreement and all extensions of the Term as set out and provided for in Schedule 1.

"Total Possible Term" is the total possible term of this Agreement including all extensions of this Agreement, if granted.

"Smokefree" means to refrain from the smoking of tobacco products, vaping (the use of electronic cigarettes) and the use of heated tobacco products (HTPs).

Interpretation

1.2 In this Agreement:

- (a) references to clauses and schedules are reference to clauses and to schedules to this Agreement unless stated otherwise. Each such schedule forms part of this Agreement;
- (b) where the context permits the singular includes the plural and vice versa;
- (c) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;
- (d) where the context permits references to a "person" include an individual, firm, company, corporation or unincorporated body or persons, any public authority, territorial or regional council, any government, or any governmental agency;
- (e) references to a "party" means a party to this Agreement and any reference to a party, to the extent applicable, includes the successors, executors, and administrators (as the case may be) of that party;
- (f) defined words and expressions bear the defined meaning throughout this Agreement including the Introduction.
- (g) where any condition or special term set out in Schedule 1 is in conflict with or is inconsistent with any other term of this Agreement the condition or special term shall prevail.

2 Term of Licence and Extensions

2.1 The term of the licence granted by this Agreement shall be for the Term set out in Schedule 1 and shall commence on the Commencement Date as set out in Schedule 1.

2.2 If the Organisation, during the Term, has, to the satisfaction of the Council:

- (a) paid the Annual Licence Fee;

- (b) has complied with the Organisation's obligations under this Agreement;
- (c) has and continues to meet the Performance Measures;
- (d) for the purposes of a Further Extension has complied with the conditions set out in clause 5.3;
- (e) has given written notice to the Council at least three months but not more than nine months (time to be of the essence) before the expiry of the Term of the Organisation's desire to accept an extension of the Term;

and if the Council is satisfied that the Improvements and the Land are being sufficiently used for the Permitted Use and there is a continuing community need for the Permitted Use, shall grant, and the Organisation agrees to accept, by way of extension of this Agreement, the relevant Extension Term as provided for in Schedule 1.

- 2.3 If this Agreement provides in Schedule 1 for a Further Extension of the Term on account of substantial improvements having been erected on the Land ("Further Extension") such extension shall be requested by the Organisation and granted by the Council in accordance with clause 2.2.
- 2.4 All extensions of the Term may be recorded in writing in such manner as the Council requires.
- 2.5 The total duration of the Term shall be limited to the Total Possible Term as set out in Schedule 1.

3 Annual Licence Fee

- 3.1 The Organisation shall pay the Council the Annual Licence Fee during each year of the Term on the date and the frequency set out in Schedule 1.
- 3.2 The initial Annual Licence Fee shall be the amount, plus GST, set out in Schedule 1.
- 3.3 Where the initial Annual Licence Fee is a peppercorn rent (for example \$1 per annum plus GST) the Council may at its discretion by notice in writing to the Organisation ("conversion notice") convert the amount of the Annual Licence Fee to a substantive Annual Licence Fee ("substantive Annual Licence Fee") which shall comprise:
 - (a) the Administration Fee as assessed by the Council; plus
 - (b) if the Council requires, a licence fee calculated at 5% per annum on the capital value of that part of the Land (excluding the Improvements) on which the Improvements are situated plus allowance for shared access, parking, and curtilage, as assessed by a registered valuer appointed by the Council.
- 3.4 In the case of a conversion notice given by the Council under clause 3.3 the substantive Annual Licence Fee shall take effect from the date stipulated in the conversion notice given by the Council and may, at the discretion of the Council, be reassessed by the Council at the intervals and at the dates provided for in Schedule 1, calculated from the date of conversion. In any case where a substantive Annual Licence Fee applies from the Commencement Date the substantive Annual Licence Fee may at the discretion of the Council be reassessed at the intervals and at the dates set out in Schedule 1.

- 3.5 In any assessment of the Annual Licence Fee, which is a substantive Annual Licence Fee, the decision of the Council on the annual amount of the substantive Annual Licence Fee, plus GST, (which shall be communicated to the Organisation by the Council in writing) shall be final and binding on the Organisation.

4 Outgoings

- 4.1 The Organisation will, from the Commencement Date, duly and punctually pay for all consumables in respect of its undertaking of the Permitted Use and use and occupation of the Improvements and the Land which without limitation shall include charges for telephone, gas, electricity, water, sanitation and sewage, cleaning, garden and ground maintenance, licences, consents and permits and land tax (if any).
- 4.2 The Organisation shall pay all Outgoings direct or otherwise as the Council directs and in respect of the Land, excluding the Improvements, shall pay a proportion of such Outgoings as are apportioned by the Council, which may include Outgoings which are shared with other organisations or persons.
- 4.3 The Organisation shall pay Rates to the Council unless remitted by operation of any policy implemented by the Council in relation to the remission of Rates.
- 4.4 All Outgoings payable by the Organisation shall be paid by the Organisation as and when each Outgoing falls due for payment and in the case of any outgoing which is payable to the Council upon request made by the Council.

5 Repair Maintenance and Replacement

- 5.1 The Organisation shall at all times during the Term in a proper and workmanlike manner and to the reasonable requirements of the Council:
- (a) keep and maintain the Improvements (both external and internal and including all plant, fixtures and fittings, floor coverings and surfaces) in good serviceable and substantial repair and condition, repairing and replacing as necessary, and will at the end or earlier determination of the Term yield and deliver up the Improvements to the Council in such good serviceable and substantial repair and condition;
 - (b) redecorate, by painting or staining as applicable, those parts of the exterior and interior of buildings and structures comprising the Improvements when they reasonably require repainting and redecoration, to a standard approved by the Council such approval not to be unreasonably withheld;
 - (c) make good (by repairing or replacing as necessary) any damage to the Improvements at any time during the Term;
 - (d) keep and maintain, repairing and replacing as necessary, the storm and wastewater systems on the Land which serve the Improvements;
 - (e) ensure that all toilets, sinks, drains wastes, fittings and pipes on the Land are not blocked and are used for their designed purposes only and are regularly inspected, cleaned, and maintained and repaired and replaced as necessary;

- 5.2 The Organisation shall at all times during the Term in a proper and workmanlike manner, and in such proportions as required by the Council where there is shared use of the Land by other organisations or persons:
- (a) keep all open areas of the Land, whether utilised as open space, paths or tracks, bush or planted areas or carparking in a clean and tidy condition repairing and replacing (including replanting) as necessary; and
 - (b) regularly cause all rubbish and garbage to be removed from the Land and keep all rubbish bins and containers in a tidy condition. The Organisation will also, at the Organisation's own expense, cause to be removed all trade waste, boxes and other goods or rubbish not removable in the ordinary course by any Authority.
- 5.3 If this Agreement provides in Schedule 1 for Further Extension/s, the Organisation shall as a condition for any such Further Extension to be granted by the Council:
- (a) have replaced or renewed all or some items of the Improvements on the Land during the initial Term or Extension Term/s provided for in this Agreement so that in the opinion of the Council their useful life extends into the Further Extension;
 - (b) prepare and provide to the Council a development plan for the Further Extension to include the replacement of those items of the Improvements which the Council has notified to the Organisation in writing require replacement and any new or additional items of Improvements which the Organisation wishes to construct on the Land; and
 - (c) obtain the approval of the Council to the development plan, such approval not to be unreasonably withheld.

6 Insurances

- 6.1 The Organisation shall keep the Improvements together with all fixtures, fittings, plant, equipment and chattels on the Land insured against loss, damage or destruction by fire, earthquake, flood, lightning, storm, aircraft, electric fusion, machinery breakdown, malicious damage, inevitable accident and other usual risks for the value specified in Schedule 1 or such other value as is approved by the Council.
- 6.2 In the event the Improvements or any part of the Improvements at any time during the Term being partially destroyed or damaged by fire or other insurable extraneous peril then and so often as the same shall happen all moneys received in respect of such insurance shall be expended by the Organisation with all reasonable speed in repairing the damage sustained.
- 6.3 In the event of the Improvements being totally destroyed or damaged by any cause as to render the Improvements unusable or in the reasonable opinion of the Council to require demolition or reconstruction, the Organisation shall, if the Council consents to rebuilding or reinstating and so requires, rebuild or reinstate the Improvements provided that the Organisation shall not be required to expend more than the available proceeds of insurance towards such rebuilding and reinstatement. If the Council should not permit rebuilding or reinstating the Term shall immediately cease and determine and the Organisation will at its own cost demolish and clear the debris and have the Land cleared to the satisfaction of the Council.

- 6.4 The Organisation shall during the Term at its own cost take out and keep in full force and effect at all times a public liability insurance policy for a sum of not less than the sum set out in Schedule 1 for any single event or such greater sum required by the Council from time to time and shall within 30 days of the execution of this Agreement or request for additional cover produce to the Council a copy of the policy or certificate of currency.

7 Nature of Licence/Public Use

- 7.1 The licence to use and occupy the Improvements and the licence to use the balance of the Land in common which is granted by this Agreement is subject to a right of use of the Land by the public but subject to the following provisions of this clause.
- 7.2 It shall be lawful for any person to enter and for any reasonable period of time to remain as a spectator upon the Land at all times and any person so entering or remaining on the Land shall not so long as he/she conducts and behaves himself/herself in an orderly and seemly manner and refrains from hindering and obstructing the activities of the Organisation be deemed to be a trespasser provided however that this authority shall not be deemed to authorise any person to enter or be within or upon any buildings or structures situated on the Land without the previous consent of the Organisation or person duly authorised by the Organisation.
- 7.3 The right of public entry on the Land is subject in all respects to the right, and obligation, of the Organisation to control the Improvements as licensee and occupier and the Organisation shall be entitled at all times to require compliance by the public with all legislation and by laws relating to the Improvements and the Land and its use and in particular the provisions of the Health and Safety at Work Act 2015.
- 7.4 The Council shall at any time during the Term be entitled to undertake, or permit other organisations to undertake, another development or developments on the Land (excluding that part of the Land on which the Improvements are situated together with necessary curtilage and access) and the Organisation consents to any such development or developments, provided that the Council will use reasonable endeavours to ensure that as little interruption as possible is caused to the Organisation in its undertaking of the Permitted Use during the undertaking of such developments.

8 Permitted Use

- 8.1 The Organisation shall use and occupy the Improvements and use the Land in common with others for the Permitted Use and shall provide the Community Benefits in accordance with the Performance Measures provided for in clause 9, all as set out and described in Schedule 1.
- 8.2 If at any time the Council is of the opinion that the Improvements and the Land are not being used or are not being sufficiently used for the Permitted Use or are being used for activities other than on a not for profit basis the Council, after making such enquiries as it thinks fit and giving the Organisation the opportunity of explaining the use of the Improvements and the Land, if the Council is satisfied that the Improvements and the Land are not being used or not being sufficiently used for the Permitted Use or are being used for activities other than on a not for profit basis, may terminate this Agreement by notice in writing to the Organisation.

8.3 The Organisation shall not:

- (a) carry on on the Improvements or the Land any noxious, noisome or offensive act, trade, business, occupation or any act, matter or thing which may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of any adjoining land or any other licensee, occupier or user of any other part of the Land;
- (b) bring or permit to be brought on to the Improvements or the Land any item of a flammable, volatile or explosive nature or any contaminant (as defined in section 2 of the Resource Management Act 1991) without first complying with the provisions of all laws then in force relating to the handling and storage of such materials and the requirements of the insurers of the Improvements;
- (c) allow, carry on the Improvements or the Land any use or activity which may cause loss or damage to the Improvements or the Land or any adjoining land, or become an annoyance, nuisance or disturbance to the Council or any other user or occupier of the Land on any adjoining land;
- (d) release into the environment, discharge, deposit, place or dispose of on or near the Land any contaminant referred to in clause 8.3(b) except in accordance with an approval given under environmental health and safety legislation;
- (e) carry on any illegal or immoral activity; or
- (f) carry on any use which is not a permitted use under the District Plan.

9 Community Benefits and Performance Measures

- 9.1 The Organisation and the Council acknowledge and agree that they enter into this Agreement in order to provide through the undertaking of the Permitted Use, for the Term, the Community Benefits as set out and described in Schedule 1 and that the achievement of the Community Benefits are an essential term of this Agreement.
- 9.2 The provision of the Community Benefits shall be measured against the Performance Measures and the Performance Measures applicable to this Agreement are as set out and described in Schedule 1.
- 9.3 The Performance Measures shall be continuing obligations of the Organisation throughout the Term and the Organisation shall report to the Council annually against the Performance Measures within 3 months following the end of the financial year of the Organisation, as set out in Schedule 1, or at any other time reasonably requested by the Council. Such report shall include the provision of the annual financial statements of the Organisation (audited if required by law or the constituting document of the Organisation) and otherwise the report shall be in writing in a format reasonably required by the Council, but as an alternative may be provided, at the discretion of the Council, at a meeting or meetings held between representatives of the Council and the Organisation.
- 9.4 The achievement or non-achievement of the Performance Measures or any one or more of them may be taken into account by the Council in making decisions concerning:
 - (a) whether the Community Benefits continue to be provided;
 - (b) termination of this Agreement by the Council;
 - (c) any extensions of this Agreement as provided by clause 2;

- (d) whether the Annual Licence Fee should be a substantive Annual Licence Fee;
- (e) any funding sought by the Organisation from the Council; or
- (f) any variation to this Agreement sought by the Organisation or by the Council.

9.5 Any failure by the Organisation to report to the Council in terms of clause 9.3 shall be a breach of this Agreement.

10 Legislation, Bylaws and Health and Safety

10.1 The Organisation shall at all times during the Term at its own cost comply with all legislation, bylaws, regulations, or directions (statutory or otherwise) made or issued by any Authority including the Council as relate to the Land or the Improvements and the undertaking of the Permitted Use.

10.2 The Organisation shall at all times during the Term comply with the Health and Safety at Work Act 2015 (HSWA) and relevant codes of practice and shall take all steps necessary to ensure that its actions or that of its employees and contractors do not endanger the health and safety of any person. The Organisation further agrees to:

- (a) provide the Council, immediately on request, with evidence of its compliance with the HSWA (including details of its programme to ensure compliance with the HSWA); and
- (b) comply with any lawful instructions given by the Council in relation to health and safety; and
- (c) meet with the Council as reasonably required to consult with each other in relation to compliance with the HSWA and any health and safety issues which may arise during the Term;
- (d) forthwith notify the Council in writing of any accident or near miss which takes place on the Improvements or the Land and of any actual or potential hazards which exist on the Improvements or the Land;
- (e) ensure that the Organisation has in place systematic checks to ascertain any actual or potential hazards which exist on the Improvements or the Land and immediately notify the Council in writing of such actual or potential hazards;
- (f) take immediately all practical steps to remove any actual or potential hazards where such are identified; and
- (g) indemnify (to the extent permitted by law) the Council for any legal costs and other expenses it incurs as a result of any noncompliance with the provisions of the HSWA.

11 Indemnity

11.1 In addition to the indemnity contained in clause 10.2(g) the Organisation shall indemnify and keep indemnified the Council from and against all claims, costs, damage, loss or penalties (excluding any fines or infringement fees under the Health and Safety at Work Act 2015) suffered or incurred by the Council directly or indirectly arising out of this Agreement, the undertaking of the Permitted Use or any use or activity on or about the Improvements or the Land whether on the part of the Organisation or the Organisation's officers members, employees, customers, contractors, invitees, licensees and any persons, including members of the public, for whom the organisation is responsible with respect to the undertaking of the Permitted Use.

- 11.2 In particular the Organisation shall fully recompense the Council for any charges or expenses incurred by the Council in making good any damage to the Land or the Improvements notwithstanding such items may be owned by the Organisation.

12 Assignment or Subletting

- 12.1 The Organisation shall not assign, charge or sub-licence this Agreement or part with possession of the Improvements or any part of the Land except as permitted by clause 12.2.
- 12.2 The Organisation may, during the Term permit use of the Improvements by other community organisations and members of the public for uses and activities which are within the Permitted Use.

13 Consequences on Termination

- 13.1 On termination of this Agreement by effluxion of time or surrender the Organisation shall have the right to transfer the Improvements to anybody or organisation approved by the Council having objects similar to the objects of the Organisation and which shall prohibit the distribution of its assets among its members and which body or organisation shall enter into a licence agreement with the Council for the use and enjoyment of the Improvements on the Land on such terms and conditions as determined by the Council.
- 13.2 The Organisation shall yield and deliver up to the Council the Improvements and to the extent applicable the Land in good clean and substantial order condition and repair fair wear and tear or damage by fire earthquake tempest or other inevitable accident alone excepted.
- 13.3 On termination of this Agreement by effluxion of time or surrender, breach of conditions or otherwise the Improvements shall revert to the Council without any compensation whatsoever being payable to the Organisation by the Council.

14 Council's Right to Inspect and Undertake Work

- 14.1 Any person authorised by the Council may at all reasonable times enter upon the Improvements and the Land and view and inspect the Improvements and upon receipt by the Organisation of a notice in writing from an officer or agent of the Council of any defect or want of repair or maintenance of the Improvements or the Land requiring the Organisation within a reasonable time, to be specified in the notice, to repair or remedy the same the Organisation shall at the cost of the Organisation with all reasonable speed cause the defect to be remedied and/or the repair to be made to the satisfaction of the Council.
- 14.2 That if default shall be made by the Organisation in complying with any notice served by the Council pursuant to clause 14.1 the Council without prejudice to its other rights and remedies shall at its option be entitled by its representative/s together with workmen and professional or expert advisers with all necessary equipment and materials at all reasonable times to enter upon the Land and the Improvements to execute such works as may be specified in such notice and all moneys expended by the Council by reason of such default of the Organisation shall be payable by the Organisation to the Council upon demand together with interest at the rate charged by the Council's principal banker on overdraft until payment.

15 Alterations, Replacements or Construction of New Improvements

- 15.1 The Organisation shall not alter or replace Improvements or construct new Improvements without first obtaining the consent in writing of the Council.

16 Sale of Liquor Act

- 16.1 The Organisation shall be responsible for compliance with the provisions of the Sale of Liquor Act 1989 and shall ensure that all necessary licences are obtained, and conditions met in relation to any liquor contained, consumed or supplied on the Land or the Improvements.

17 Council's Role as Statutory Authority

- 17.1 The Organisation acknowledges that the Council is the territorial authority for the area in which the Land is situated and that any power, right, obligation or duty of the Council under this Agreement shall be subject to compliance by the Council with the Local Government Act 2002, Resource Management Act 1991, Public Works Act 1981, Building Act 2004, Reserves Act 1977, and any other legislation regulating the conduct of the Council.
- 17.2 Any consent given by the Council for the purposes of this Agreement is in addition to and not in satisfaction of any consent that may be required from the Council for regulatory purposes.

18 Reserves Act 1977

- 18.1 If the Land is classified as reserve land under the Reserves Act 1977 this licence shall be subject to the applicable provisions of that Act.

19 Disputes and Mediation

- 19.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Agreement.
- 19.2 If the discussions referred to in clause 19.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator appointed by the Council and such appointee shall conduct the mediation at his/her discretion, including the determination of procedural rules and timetable.
- 19.3 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 19.1 and 19.2.

20 Quiet Enjoyment - Conduct

- 20.1 The Organisation paying the Annual Licence Fee and observing all the covenants and agreements expressed and implied in this Agreement shall quietly hold and enjoy the rights of use and occupation conferred by this Agreement throughout the Term without any interruption by the Council or any person claiming under the Council.

20.2 The Organisation will conduct the Permitted Use on the Improvements and the Land in a quiet and orderly manner so as not to cause a nuisance or annoyance to the occupiers of any neighbouring properties or any other licensee, occupier, or user of any other part of the Land and in particular the Organisation shall at all times during the Term comply with the conditions of noise control as set by any Authority.

21 Cancellation

21.1 The Council may (in addition to the Council's right to apply to the Court for an order for possession) cancel this Agreement by re-entering the Improvements and the Land at the time or at any time thereafter if the Organisation:

- (a) makes default for a period of 30 days in payment of any licence fee required to be paid pursuant to the terms of this Agreement; or
- (b) makes default for a period of 30 days in payment of any of the moneys agreed to be paid by it under or by virtue of any loan the Council may have made or shall make to the Organisation for the purposes of the Improvements or the undertaking of the Permitted Use; or
- (c) makes any default in performance of any other obligation whatsoever contained in this Agreement and such default continues for a period of 30 days; or
- (d) suffers or permits this Agreement and the rights and privileges granted by this Agreement or the Land or the Improvements to be seized under any proceedings for execution issued in pursuance of any judgment; or
- (e) passes any resolution to wind up; or
- (f) becomes insolvent or its affairs or assets are placed under any sort of management or receivership; or
- (g) ceases to undertake the Permitted Use on the Land;

and the Term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

22 General

Goods and Services Tax ("GST")

22.1 The Organisation shall pay to the Council as the Council shall direct the GST payable by the Council in respect of the Annual Licence Fee and other payments payable by the Organisation under this Agreement. The GST in respect of the Annual Licence Fee shall be payable on each occasion when any payment of the Annual Licence Fee falls due for payment and in respect of any other payments shall be payable upon demand.

22.2 If the Organisation shall make default in payment of the Annual Licence Fee or other moneys payable under this Agreement and the Council becomes liable to pay additional GST, then the Organisation shall on demand pay to the Council the additional GST.

Suitability

- 22.3 No warranty or representation expressed or implied has been or is made by the Council that the Land is now suitable or will remain suitable or adequate for use by the Organisation or that any use of the Land by the Organisation will comply with the bylaws or ordinances of the requirements of any Authority.

Non-Waiver

- 22.4 The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Agreement or the waiver by either party of any term or right under this Agreement or of any default by the other party shall not be deemed or construed as a waiver by such party of any such term right or default in the future.

Costs

- 22.5 The Organisation shall pay the Council's legal costs (as between solicitor and own client) of and incidental to the negotiation and preparation of this Agreement and any variation, extension or renewal or any document recording an assessment or reassessment of the Annual Licence Fee. The Organisation shall pay the Council's reasonable costs incurred in considering any request by the Organisation for the Council's consent to any matter contemplated by this Agreement and the Council's legal costs (as between solicitor and own client) of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies, and powers under this Agreement.

Entire Agreement

- 22.6 This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

Amendment

- 22.7 This Agreement shall not be amended or varied except in writing signed by both parties or as otherwise provided in this Agreement.

23 Notices

- 23.1 All notices must be in writing and must be served by one of the following means:

- (a) 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) In all other cases, unless otherwise required by sections 352 to 261 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 or ordinary mail, or by facsimile, or by email.

- 23.2 In respect of the means of service specified in clause 23.1(b)(ii), a notice is deemed to have been served:

- (a) in the case of personal delivery, when received by the addressee;
- (b) in the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
- (c) in the case of facsimile transmission, when sent to the addressee's facsimile number; or
- (d) in the case of email, when acknowledged by the addressee by return email or otherwise in writing.

23.3 In the case of a notice to be served on the Organisation, if the Council is unaware of the Organisation's last known address in New Zealand or the Organisation's facsimile number or email address, any notice placed conspicuously on any part of the Land or the Improvements shall be deemed to have been served on the Organisation on the day on which it is affixed.

23.4 A notice shall be valid if given by any chief executive officer, director, general manager, solicitor or other authorised representative of the party giving the notice.

24.1 **Smokefree**

The Organisation shall be responsible for compliance with the Smokefree Kaipara Policy adopted in 2018.

24.2 The Smokefree Kaipara Policy states that the following areas are Smokefree:

- All Council-owned and/or controlled parks, playgrounds, sports fields, reserves and skate parks
- Swimming pool complexes
- All Council-owned, controlled, leased, or occupied buildings and facilities including within four metres of their entranceways, openings and any surrounding outdoor public areas.

24.2 Council will ensure all contractual agreements to hire, lease or occupy, Council-owned, or controlled, land buildings and facilities or equipment use will be required to incorporate smokefree provisions on renewal.

24.3 Council funded, run and supported events will be smokefree.

24.4 Areas are to be promoted as smokefree through signage, promotion and marketing.