

BETWEEN
NELSON CITY COUNCIL
AND
XX

STREET STALL
LICENCE to OCCUPY

LICENCE TO OCCUPY

BETWEEN NELSON CITY COUNCIL a local authority having its offices at
110 Trafalgar Street, Nelson (“Licensor”)

AND **XXX** of, (“Licensee”)

BACKGROUND

- A.** The Licensor is the owner of road laid out in the City of Nelson, including certain inner city streets, carparks and footpaths.
- B.** The Licensor has agreed to grant the Licensee a personal and non-transferable licence to occupy the land referred to in the Schedule to this Licence for the purposes of operating a Stall, upon the terms and conditions of this Licence.

IT IS AGREED:

1. Interpretation

1.1 In this Licence:

- (a) “Licence Fee” means the Licence Fee described in the Schedule to this Licence
- (b) “Licensed Area” means the land described in the Schedule to this Licence
- (c) “Permitted Hours” means the hours during which the Licensee is permitted to occupy the Licensed Area, described in the Schedule to this Licence
- (d) “Permitted Use” means the permitted use described in the Schedule to this Licence
- (e) “Person” includes an individual, the Crown, a corporation sole, trust and any body of persons (whether corporate or unincorporate)
- (f) “Persons under the Licensee’s control” includes all employees, agents, contractors, suppliers, customers and invitees of the Licensee
- (g) “Stall” means all structures and equipment brought onto the Licensed Area for the Permitted Use that have been approved in writing by the Licensor
- (h) “Term” means the term of this Licence described in clause 3.1 of this Licence
- (i) “Working day” shall have the meaning given to those words by the Property Law Act 2007.

1.2 In this Licence:

- (a) Where obligations bind more than one person those obligations shall bind those persons jointly and severally;

- (b) Words importing the singular number include the plural, and vice versa;
- (c) Any schedule to this Licence shall have the same effect as if set out in the body of this Licence;
- (d) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence.

2. Grant of Licence

- 2.1 Subject to clause 2.3, the Licensor grants the Licensee, and the Licensee accepts, a personal and non-transferable licence to occupy the Licensed Area during the Permitted Hours for the Permitted Use.
- 2.2 This Licence is granted by the Licensor pursuant to section 45 Public Works Act 1981.
- 2.3 The Licensor may at any time give the Licensee 7 day's notice that the Licensor wishes to use the Licensed Area for any reason for all or part of a day and the Licensee shall not occupy the Licensed Area during the times set out in the Licensor's notice.
- 2.4 For each day that the Licensee is unable to use the Licensed Area because of the exercise by the Licensor of its rights under clause 2.3, the Licensor shall refund the Licensee the amount paid by the Licensee to use the Licensed Area on that day (calculated by dividing the Annual Licence Fee by 365).

3. Term

- 3.1 The term of this Licence shall commence on the Commencement Date and shall end on the Expiry Date described in the Schedule to this Licence, unless previously terminated in accordance with this Licence.

4. Licence Fee

- 4.1 The Licensee shall pay the Licensor the Licence Fee at the rate and in the manner described in the Schedule to this Licence.
- 4.2 If the Licence Fee or any other money payable by the Licensee under this Licence remains unpaid for seven calendar days after the due date for payment, the Licensee shall pay interest on the unpaid amount at the default interest rate described in the Schedule to this Licence, calculated from the due date for payment to the date of payment.

5. General Conditions

- 5.1 The Licensee may only place on the Licensed Area a Stall that is in keeping with the street scape, and has been approved in writing by the Licensor. Where the Licensee is permitted to cook, the Stall shall include a fixed drip tray. The Licensor may impose other conditions on any approval given pursuant to this clause.
- 5.2 The Licensee shall each day remove the Licensee's Stall from the Licensed Area before the expiry of the Permitted Hours, unless the Licensee has the prior written consent of the Licensor for the Licensee's Stall to remain on the Licensed Area in which case the Licensee shall remove the Stall at the expiry of the period referred to in the Licensor's consent.

- 5.3 The Licensee shall not do or permit to be done on the Licensed Area anything which in the opinion of the Licensor is or may become a nuisance or disturbance to, or cause damage to the property of, the Licensor, the owners or occupiers of property in the vicinity of the Licensed Area, or users of the adjoining footpath or road.
- 5.4 The Licensee shall keep and maintain the Licensed Area in a safe, clean and tidy condition during the Permitted Hours. The Licensee shall keep the Stall tidy at all times and shall keep all items not for sale concealed from public view, except for one chair for the attendant.
- 5.5 The Licensee shall take all practicable steps to ensure no objectionable smells, noise, fumes, smoke or dust emanate from the Licensed Area.
- 5.6 The Licensee shall immediately make good any damage to the Licensed Area caused by the use of the Licensed Area by the Licensee or Persons under the Licensee's control. Without limiting the foregoing, any stained or damaged paving or footpath must be cleaned or replaced by the Licensee to a standard approved by the Licensor.
- 5.7 The Licensee shall comply with all statutes, ordinances, regulations, rules, codes of practice, and by-laws, and with all requirements or notices or orders which may be given by any competent authority in respect of the Licensed Area, anything located on the Licensed Area, or the use of the Licensed Area.
- 5.8 Without limiting anything in clause 5.7, the Licensee shall at all times during the term of this Licence comply with its obligations under the Health and Safety in Employment Act 1992 and regulations, rules, guidelines and codes of practice made thereunder, as amended, and any legislation in substitution therefor. Without limiting the foregoing, the Licensee shall take all practicable steps to:
- (a) provide and maintain a safe working environment;
 - (b) ensure that persons on, or on land in the vicinity of, the Licensed Area are not exposed to hazards that are under the control of the Licensee;
 - (c) develop procedures for dealing with emergencies that may arise at the Licensed Area;
 - (d) ensure that there are in place effective methods for identifying existing hazards and new hazards and determining whether a hazard is a significant hazard, and give written notice to the Licensor of hazards and significant hazards identified by the Licensee;
 - (e) immediately give notice to the Licensor of any accident that harms (or, as the case may be, might have harmed) any person at the Licensed Area.
- 5.9 If the Licensee shall default in carrying out its obligations under clause 5.8 and if the Licensor shall choose to carry out any necessary work to remedy the default then the Licensee shall forthwith upon demand reimburse to the Licensor all money so expended or incurred by the Licensor.
- 5.10 The Licensee shall collect all litter from within the Licensed Area, and all litter within a 10 metre radius of the Licensed Area that is attributable to the

Licensee's use of the Licensed Area. The Licensee shall take all practicable steps to prevent litter from escaping from the Licensed Area. The Licensee shall deposit the litter collected by it in suitable receptacles provided by the Licensee. The Licensee shall not deposit litter in the Licensor's litter receptacles.

- 5.11 The Licensee shall not erect any structure other than the Stall on the Licensed Area, or make any alterations or additions to the Licensed Area.
- 5.12 The Licensee shall not attach anything to the Licensor's fixtures or chattels, (including bollards, chains, seats, plant protector frames, trees and other plantings).
- 5.13 The Licensee shall at all times ensure that the Licensee's Stall does not impede the view of the adjoining road by persons using the road. There shall at all times be a vertical clearance of 2.1m between the footpath and the Licensee's awnings, verandahs, or sunshades.
- 5.14 The Licensee's awnings, verandahs and sunshades shall not extend over the kerb of the footpath.
- 5.15 The Licensee shall not assign its rights or obligations under this Licence to Occupy to any Person.
- 5.16 The Licensee shall not display or place, or permit to be displayed or placed, any signs, notices, advertisements or posters within the Licensed Area unless they promote the Licensee's Stall, are fixed to the Stall, and are located entirely within the Licensed Area.
- 5.17 Prior to the Commencement Date, the Licensee shall pay the Licensor an Administration Fee for the preparation of this Licence, being the amount described in the Schedule to this Licence.
- 5.18 The Licensee acquires no legal interest in the Licensed Area. The right to possession and control of the Licensed Area remains vested in the Licensor at all times.
- 5.19 The Licensee shall not store or display goods or personal belongings outside of the Licensed Area.
- 5.20 Except in an emergency, the Licensee's Stall shall be attended by the Licensee, or the Persons under the Licensee's control, at all times while the Stall is present on the Licensed Area. The attendant must act in a courteous manner, maintain a tidy appearance, be competent to carry out the Permitted Use at the Licensed Area, and do nothing to prejudice the good name and reputation of the City of Nelson.
- 5.21 The Licensor may direct the Licensee to remove from the performance of services at the Licensed Area any person if the Licensor considers that the conduct of that person is prejudicial to either the business carried on at the Licensed Area, or the good name or reputation of the City of Nelson. The Licensee shall comply with such direction to the extent permitted by law.
- 5.22 The Licensee shall obtain all necessary consents, approvals or permits for its use of the Licensed Area.
- 5.23 The Licensee shall permit the Licensor, its employees, contractors and agents to inspect the Stall on the Licensed Area at any time for the purpose

of examining the condition of the Stall and to check whether the Licensee is complying with the terms of this Licence.

- 5.24 The Licensee, or any Person under the Licensee's control, shall not bring any dog into the area bordered by Halifax Street, Collingwood Street, Selwyn Place or Rutherford Street while the Licensee is using the Licensed Area.
- 5.25 The Licensee shall ensure that towbars attached to the Stall are not an actual or potential cause of injury to any person.
- 5.26 The Licensee shall actively occupy the Licensed Area during the Permitted Hours for a minimum of 5 days per week for 6 months of each year, wet days excluded. The Licensee shall keep a written record of those days the Licensed Area is actively occupied, and those days when wet weather prevents the Licensed Area being occupied.
- 5.27 The Licensee shall not supply or provide goods at the Licensed Area that are, in the opinion of the Licensor, unsatisfactory in any respect. The Licensee shall not conduct themselves in a manner that is, in the opinion of the Licensor, unsatisfactory in any respect.

6. Insurance and indemnity

- 6.1 The Licensee shall not do, or permit to be done, anything in the Licensed Area that causes any insurance effected by the Licensor or by the Licensee to be rendered void or voidable or (except with the Licensor's prior written approval) causes the premiums payable on any such insurance to be liable to increase. The Licensee shall pay all extra premiums payable by the Licensor resulting from any extra risk caused or permitted by the Licensee.
- 6.2 The Licensee agrees to occupy the Licensed Area at the Licensee's risk and releases to the full extent permitted by law the Licensor from all claims and demands of any kind and from all liability which may arise in respect of any damage to any property or injury to any person as a result of the Licensee's use and occupation of the Licensed Area.
- 6.3 To the extent permitted by law, the Licensee shall keep the Licensor indemnified against all liability, fines, penalties, damages, losses and costs of any nature which the Licensor may suffer or incur or for which the Licensor may become liable in respect of, or arising out of:
 - (a) the neglect or careless use or misuse by the Licensee, or Persons under the Licensee's control, of the Licensed Area;
 - (b) any damage to property or injury to any person on, or in the vicinity of, the Licensed Area caused directly or indirectly by any act or omission by the Licensee or Persons under the Licensee's control.
- 6.4 The Licensee shall effect, and keep current, in respect of the Licensed Area and the Licensee's use of the Licensed Area, a policy of public risk insurance for an amount not less than \$2,000,000 for any one occurrence with a substantial reputable insurer first approved in writing by the Licensor (such approval not to be unreasonably withheld). Prior to the Commencement Date, the Licensee shall deliver to the Licensor a certificate

from the insurer confirming that the insurance required by this clause is in force.

7. Termination

7.1 The Licensor may terminate this Licence at any time if:

- (a) The Licence Fee is unpaid and in arrears for 10 Working days after any of the days appointed for payment of the Licence Fee and the Licensee has failed to remedy the breach within the period specified in a notice given in accordance with section 245 Property Law Act 2007;
- (b) The Licensor gives written notice to the Licensee specifying a breach of one or more of the provisions of this Licence, and the Licensee has failed to remedy the breach within the period specified in a notice given in accordance with section 246 Property Law Act 2007;
- (c) The Licensee, if an individual, is adjudged bankrupt;
- (d) The Licensee, if a company or incorporated society or trust board, is put into liquidation or placed in receivership or under official or statutory management;
- (e) The Licensor requires the Licensed Area for use as a road (which may include use as carparks), or a footpath, and has given three month's written notice of termination to the Licensee.

7.2 Termination of this Licence for any reason shall be without prejudice to the rights and remedies of either party against the other.

7.3 Upon the expiry or termination of this Licence, the Licensee shall forthwith remove the Stall and all of the Licensees' chattels from the Licensed Area and make good any damage caused by such removal.

7.4 The Licensee may terminate this Licence by notice in writing to the Licensor at any time provided the License Fee is paid up to date.

Dated 2015

SIGNED on behalf of)
NELSON CITY COUNCIL)
as Licensee in the presence of:)
Group Manager Infrastructure

..... Witness
..... Address
..... Occupation

SIGNED by)
as Licensee in the presence of:)

..... Witness

..... Address

..... Occupation

SCHEDULE

Licensed Area:	Part of the footpath situated adjacent to the property at 189 – 197 Trafalgar Street, Nelson, outlined in red on the plan attached, such area not to exceed 4.2m ² , and as defined on the said footpath by the Licensor.
Licence Fee:	\$5,791.29 plus GST per annum. The Licence Fee shall increase on 1 July in each year during the Term by a percentage equal to the annual percentage increase (if any) in the Consumer Price Index (all groups) to the March quarter preceding the review date, as published by Statistics New Zealand or an equivalent index if the CPI is not published.
Initial Review of Annual Licence Fee:	<p>The Licensor shall undertake a review of the Annual Licence Fee prior to 31 December 2015. The reviewed Licence Fee will be effective from 1 January 2016 and paid by monthly instalments thereafter.</p> <p>It is acknowledged that the reviewed Annual Licence Fee will not be greater than the fee charged as at 1 July 2015.</p> <p>For avoidance of doubt, the annual increase of Licence Fee by the CPI as at 1 July of each year will still occur.</p>
Frequency of Payment of Licence Fee:	The Annual Licence Fee is payable by 12 equal monthly payments of \$482.61 plus GST each in advance by direct debit on the first day of each and every month during the Term.
Permitted Hours:	8:00am to 10:00pm each day during the Term of this Licence.
Permitted Use:	The sale of the following goods: xxxxxxxxxx
Commencement Date:	1 July 2015
Expiry Date:	30 June 2021
Administration Fee:	\$200 plus GST (not applicable for those holding a Licence as at 30 June 2015)
Default Interest Rate:	12% per annum