

# LICENCE AGREEMENT

BETWEEN

**ROTORUA DISTRICT COUNCIL**

AND

.....

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PO Box 565  
Auckland  
Ref: T376273 NGF

## LICENCE AGREEMENT

AGREEMENT made this                    day of  
(hereinafter called “the commencement date”).

**BETWEEN**                    ROTORUA DISTRICT COUNCIL, a New Zealand body corporate  
duly constituted under the Local Government Act 1974 of Hinemaru  
Street, Rotorua, New Zealand (hereinafter called “the Licensor”)

**AND**

Name .....  
Company .....  
Address .....  
Town/City .....

**RECITALS:**

- 0.1** The Licensor is the proprietor of the ROTORUA FEEL THE SPIRIT MANAAKITANGA Stylised and Takarangi Device marks (hereinafter referred to as “the trade marks”) which are the subject of New Zealand trademark Application Nos. 274810, and 282746/7 respectively. Representations of the trademarks and the goods and services for which registration is sought in the above applications appear in Schedule 1 to this Agreement.
- 0.2** The Licensor is the owner of the goodwill and reputation in the trade marks in relation to all goods and services including these for which registration is sought as outlined in Schedule 1.
- 0.3** The Licensor is the owner of any copyright subsisting in the trade marks as represented in Schedule 1 of this Agreement (“the copyright works”).
- 0.4** The Licensor has agreed, at the request of the Licensee, to permit the Licensee to manufacture and market those products (“royalty-generating activities”) as defined in Schedule 2 of this Agreement bearing the trade marks and the copyright works.

## **THE PARTIES AGREE AS FOLLOWS**

### **1.0 GRANT**

**1.1** Subject to the performance and observance of the Licensee's obligations herein contained, the Licensor HEREBY GRANTS to the Licensee a non-exclusive right to use the trade marks and the copyright works in New Zealand ("the territory") in accordance with the products defined in Schedule 2 of this Agreement. The Licensee shall have no right to use the trade marks or the copyright works on any product other than those specified in Schedule 2 of this Agreement.

### **2.0 TERM**

**2.1** The term of this licence shall commence from the commencement date and continue for a period of one year from that date unless previously terminated or unless renewed for one further year in writing by the Licensor.

### **3.0 NO RIGHT TO SUB-LICENCE**

**3.1** The Licensee does not have the right to sub-licence the use of the trade marks or any of the copyright works which subsist in the trade marks as represented in Schedule 1.

### **4.0 QUALITY STANDARDS**

**4.1** The Licensee agrees to use the trade marks and the copyright works upon and in relation to the products only in such a manner and only to such a standard or quality as may be approved by the Licensor in writing from time to time and not otherwise.

**4.2** All packaging, labels, invoices, catalogues, price lists, notices, advertisements and literature issued by the Licensee relating to the products/services shall refer to the trade marks in such terms as are consistent with the brand standard card issued by the Licensor or any other directions issued by the Licensor from time to time.

**4.3** On request by the Licensor, the Licensee shall furnish to the Licensor or its authorised representative information and samples showing the way in which the trade marks and the copyright works are used upon or in relation to any of the products and shall furnish copies of packaging, labels, invoices, catalogues, price lists, notices, advertisements and other literature in which the trade marks or the

copyright works issued by the Licensee appear.

- 4.4** All goods/services in respect of which the Licensee uses the trade marks and the copyright works shall meet all quality standards specified by the Licensor and the Licensee shall not use the trade marks or the copyright works which subsists in the trade marks in relation to any product/service not in strict compliance with such quality standards.

## **5.0 NOT CONTEST VALIDITY**

- 5.1** The Licensee undertakes that throughout the term of this Agreement it will never directly or indirectly challenge, contest or call into question or raise any question concerning the ownership or validity of the trade marks or any registrations thereof and will never contest the Licensor's right to use and register the trade marks in the territory.

- 5.2** The Licensee shall not at any time during the term of this Agreement directly or indirectly challenge, contest or call into question or raise any question concerning the originality or ownership of the copyright works which subsist in those original artistic works comprised by the trade marks.

- 5.3** The Licensee shall not incorporate a company using the trade marks as part of a company name or use a trading name incorporating any similar mark the use of which is likely to cause consumer confusion or deception. If such a company is registered by the Licensee, the Licensor reserves the right to require the Licensee to withdraw that registration and cease use of that company's trading name. Failure to do so shall result in the termination of this Agreement and shall not prejudice the Licensor's rights.

## **6.0 LICENCE/ROYALTY FEES**

- 6.1** In consideration for granting of this licence, the Licensee shall make an initial payment to the Licensor of \$125.00. The initial payment is at the discretion of the licensor.

- 6.2** If the user is a commercial entity, in addition to the initial payment a fee for royalty-generating activities shall be negotiated between the parties and shall be calculated and payable monthly on the last day of each month during the term of the licence.

- 6.3** Subject to Clause 6.2, within 30 days of the due date for royalties the Licensee shall submit to the Licensor a report showing the number of sales made, the total net sales price (i.e. the invoice price paid by purchasers less any tax included in the invoice price) and payment for royalties due for such sales.
- 6.4** All payments identified in this Agreement shall be exclusive of GST. If the Licensor is registered for GST purposes, the Licensor may charge GST which will be payable by the Licensee in addition to the payments.
- 6.5** All payments identified shall be prior to the calculation and/or retention of any withholding tax.
- 6.6** The Licensor may nominate one or more bank accounts to receive any payment and the Licensee shall make all payments as instructed by the Licensor to that account/s.
- 6.7** The Licensee shall keep at its principal place of business separate and clear accounts and records relating to the sale of products bearing the trade marks and the copyright works together with any costs incurred so as to allow speedy and accurate calculation of all royalties payable hereunder.
- 6.8** Each royalty payment made by the Licensee to the Licensor shall be accompanied by a written statement indicating how the payment is calculated.

## **7.0 ENFORCEMENT OF INTELLECTUAL PROPERTY**

- 7.1** The Licensor shall have the sole right in this discretion to bring or prosecute actions for trade mark or copyright infringement or passing off or a breach of the Fair Trading Act or any unlawful use of the trade marks for any confusingly similar mark or the copyright works and unless it be at the request of the Licensor, the Licensee shall not be entitled to bring or prosecute any action.
- 7.2** The Licensee shall in any proceedings taken by the Licensor pursuant to this clause, fully co-operate with the Licensor and shall give the Licensor all reasonable assistance in the prosecution of the said proceedings and if directed to do so by the proprietor of the trade marks and the copyright works, the Licensee shall lend its name to such action or proceedings.

**7.3** The Licensee shall promptly notify the Licensor of any instance of any apparent infringement or passing off or other unlawful use in respect of the trade mark of which it becomes aware.

## **8.0 TERMINATION**

**8.1** If the Licensee commits a breach of any of the provisions of this Agreement and does not remedy such breach within thirty (30) days receipt of a written notice from the Licensor requiring it do so, the Licensor shall be at liberty to terminate this Agreement by written notice at which date all rights of the Licensee shall cease forthwith and not prejudice to any remedy sought by the Licensor.

## **9.0 CONSEQUENCES OF TERMINATION**

**9.1** Upon termination of this licence for any reason:

- (a) The Licensee shall immediately cease use of the trade marks and the copyright works in the territory and shall not thereafter use upon or in relation to the products for which the trade marks are registered or any trade mark nearly resembling the same as to likely to deceive or cause confusion or any artistic work identical to or which is a substantial reproduction of the copyright works.
- (b) The Licensee shall at the direction of the Licensor deliver up or destroy any materials in the territory in which the trade marks or the copyright works appear or are used.

## **10.0 PROPER LAW**

**10.1** The proper law for interpretation of this Agreement is the law of New Zealand and proceedings relating to any dispute or claim over this agreement shall be brought in the High Court of New Zealand unless the parties hereto, in writing, submit to arbitration.

## **11.0 NOTICES**

**11.1** Notices to a party under this agreement shall be by registered mail or by facsimile to the following address:



**Signed on Behalf of )**  
**The Said Licensee )**  
**By: )** .....

SIGNATURE

.....  
FULL NAME

.....  
POSITION

**Witnessed By:**

.....  
SIGNATURE

.....  
Full Name

.....  
OCCUPATION

**SCHEDULE 1**

<b>Number</b>	<b>Trade Mark</b>	<b>Date</b>	<b>Class</b>	<b>Goods/Services</b>
274810	ROTORUA FEEL THE SPIRIT MANAAKITANGA Stylised	02/04/97	41	Entertainment, recreational and sporting activities in this class.
TBA	ROTORUA FEEL THE SPIRIT MANAAKITANGA Stylised	07/10/97	25	Clothing, footwear, headgear
282746	Takarangi Device	25/09/97	25	Clothing, footwear, headgear.
282747	Takarangi Device	25/09/97	35	Marketing and promotional services; public relation services; advice relating to the aforesaid services.

**SCHEDULE 2**

[Enter precise goods/ services to be licensed]