



‘Outdoor Dining on Footpath Licence to Occupy’ Agreements

Area Specifications

- 01 The maximum extent considered for outdoor dining is the total length of footpath in front of the existing business and for a clear passage of at least 1.8m to be provided on the footpath for pedestrian traffic. No chairs to be placed on the side of the table nearest the kerb and the tables must touch the wall of the owners business – see clause 7.
- 02 The operator addresses the requirement for any liquor licence.
- 03 The area of occupation is clearly defined.
- 04 The operator is responsible for keeping the area in a clean and tidy condition and controls litter emanating from that area.
- 05 The operator is responsible for any safety issues of both customers and passers by.

Rental

- 06 The rental assessment for outdoor dining on footpath will be a \$200 fee plus GST per year. This fee is to be payable regardless of the length of time the licensee wishes to utilise the area. No refunds will be issued.

Pedestrian and Road User Safety and Access

- 07 Provision must be made to ensure the remaining footpath is sufficient to ensure that there is no interruption to the pedestrian flow and it caters for people with a range of disabilities. The licensee is required to acknowledge the priority of pedestrian traffic.

Location

- 08 It is a prerequisite that dining facilities must also be available within the current business premises before an outdoor dining licence will be considered.
- 09 Outdoor dining on any footpath will be approved on a case by case basis, taking into consideration all of the applicable criteria and specifications.
- 10 Applicants will need to provide a copy of their public liability insurance on a yearly basis with the required fee.

DATED _____ 20



**KAIKOURA
DISTRICT COUNCIL**

BETWEEN

KAIKOURA DISTRICT COUNCIL

AND

**OUTDOOR DINING LICENCE
FOOTPATH**

THIS DEED made this day of20.....

BETWEEN THE KAIKOURA DISTRICT COUNCIL at Kaikoura (hereinafter called “the Licensor”) of the one part:

AND (hereinafter called “the Licensee”) of the other part:

BACKGROUND

- A. The Licensor is the owner of road laid out in the district of Kaikoura comprising certain inner business streets.
- B. The Licensor has agreed to grant a personal and non-transferable licence pursuant to Section 45 Public Works Act 1981 to occupy the land referred to in the Schedule hereto for the purposes of providing an outdoor dining thereon upon the following terms and conditions.
- C. Any revenue generated will be set aside for work undertaken in and upgrading of the Town Centre.

THIS LICENCE WITNESSES:

1. Interpretation

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, words importing the masculine gender shall include the feminine and neuter, and vice versa;
- (c) A “person” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of state, government department or municipal authority in each case whether or not having separate legal personality;
- (d) Any schedules to this Licence shall have the same effect as if set out in the body of this Licence;
- (e) Clause headings are inserted for reference only and shall not affect the interpretation of this Licence;
- (f) Reference to any statute refer also to any regulation, by-law, order and notice made under or pursuant to the statute and;
 - (i) references to statutes and regulations refer also to statutes and regulations amending, consolidating or re-enacting those referred to;
 - and
 - (ii) expressions defined or explained in any statute shall bear those meanings in this Licence; and

- (g) "Persons under the Licensee's control" includes all employees, agents, contractors, suppliers, customers and other invitees of the Licensee.
- (h) "Licensed area" means the land specified in the Schedule to this licence.
- (i) "The facility" means the outdoor dining facility permitted in terms of this licence
- (j) "Chief Executive Officer" means the officer of the Licensor for the time being holding that position or such other officer of the Licensor designated by the Licensor in his place.

2. Grant of Licence

The Licensor grants and the Licensee accepts a personal and non-transferable licence to occupy the land referred to in the Schedule hereto during the period of this licence for the purposes of providing thereon an outdoor dining facility.

3. Term

- 3.1 This licence shall be for an unlimited duration subject to the conditions of this agreement.
- 3.2 Upon the expiry of the licence the Licensee's rights pursuant to clause 2 hereof shall absolutely cease and determine but the Licensee shall not be released from any liability hereunder for any antecedent breach of the terms of this licence and any rent in arrears.

4. Rental

- 4.1 The Licensee shall pay to the Licensor by way of rental the sum of \$200 flat fee plus GST per year. This shall be paid at the time of agreement and then billed on a yearly basis. It is the responsibility of the licence holder to inform Council if the license is no longer required. The licensee may cancel this licence upon giving one month written notice to Council to do so.
- 4.2 The Chief Executive Officer of the Licensor in his sole discretion shall be entitled to review on a yearly basis, the rental payable hereunder and if it thinks fit increase the same.

5. General Conditions

- 5.1 In providing the facility on a paved or bricked footpath:
 - (a) The Licensee shall be entitled to place within the licensed area tables and chairs, pot plants and other decorative items.
- 5.2 The design and style of the outdoor furniture to be used thereon shall be in keeping with the existing streetscape and be approved by the Chief Executive Officer or his designated representative.
- 5.3 The Licensee shall not do or permit or suffer anything in or upon this licensed area which may be or become a nuisance or annoyance or cause damage to the owners or occupiers of other property in the vicinity or to the users of the adjoining road and/or parking areas.

- 5.4 The Licensee shall operate the facility in a tidy and efficient manner, and shall be responsible for maintenance of the site, and shall ensure that the licensed area is at all times kept in a safe, clean and tidy condition. Excessive smoke, noise, fumes, objectionable smells or dust should not emanate from the facility.
- 5.5 The Licensee shall at the Licensee's expense immediately make good damage to any part of the licensed area caused by operation or use of the facility. Any stained or damaged paving must be cleaned or replaced by the Licensee at no cost to the Council.
- 5.6 The Licensee shall at the Licensee's expense at all times comply in all respects with the requirements of the Health and Safety in Employment Act 1992, the Health Act 1956, the Sale of Liquor Act 1989 and any act passed in substitution thereof and any other statute, proclamation, order, regulation or by-law including the Licensor's District Plan affecting or relating to the operation and use of the facility.
- 5.7 The Licensee shall at the Licensee's expense comply with any notices or orders given by any competent authority in respect of the licensed area or its use and shall keep the Licensor indemnified in respect of all such matters.
- 5.8 The licensee is responsible for control of litter originating from their facility within a ten-meter radius of the defined area. Street litter bins are not to be used for this purpose.
- 5.9 The licensee must provide a full detailed plan of the proposed site, showing any planned works to the site. The plan must be submitted and approved by the Chief Executive Officer before any work on the site commences.
- 5.10 The Chief Executive Officer's designated representative has final approval of the design, materials and layout of any structures.
- 5.11 The licensee cannot extend the shop premises, building structure, permanent walls and verandas etc out, on to, or over the footpath without council approval.
- 5.12 The licensee cannot make any structural changes or additions to the footpath, without prior written approval from the Chief Executive Officer's designated representative.
- 5.13 The area must be returned to its original condition at the cost of the licensee at the conclusion or termination of the licence.
- 5.14 That the area to be occupied is clearly defined and the licensee shall have a site plan available at all times for inspection.
- 5.15 Where the facility is established on the kerbside of the footpath at an intersection, the airspace between 1.2m and 1.8m above the footpath must not be occupied with any walls, partitions, signs, fixtures or goods.
- 5.16 Table umbrellas shall be permitted within the designated site area only, provided they are firmly secured and not obstruct or impede pedestrian or vehicle access or visibility.

- 5.17 The Licensee shall not assign the benefit of this Licence, grant any sublicense, or otherwise deal in any manner with this Licence or the right to use the licensed area without the prior written approval of the Chief Executive or his designated representative.
- 5.18 The Licensee shall not display or place any signs, placards, posters or advertising material within the licensed area apart from those fixed permanently to furniture and promoting the outdoor dining activity or the business. All such signage is at the discretion of the Chief Executive Officer. Additional Signage may be permitted, at the discretion of the Chief Executive Officer or his delegated officer, subject to the Kaikoura District Plan (Signs Bylaw) rules.
- 5.19 The Licensee acquires no right or legal interest in the land which is the subject of this Licence. The legal right to possession and control over the licensed area remains vested in the Licensor throughout the term of this Licence.
- 5.20 The Licensor acknowledges that it has no right or interest in any business of the Licensee.

6. Insurance and indemnity

- 6.1 The Licensee shall not do, or permit to be done, anything in the licensed area causing 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) causing 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 and the Licensor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the licensed area.
- 6.3 The Licensee shall keep the Licensor indemnified against all claims, actions, losses and expenses 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 and persons under the Licensee's control of the licensed area;
 - (b) any accident or damage to property or any person arising from any occurrence in or near the licensed area by reason of any act or omission by the Licensee and persons under the Licensee's control.
- 6.4 The Licensee at the Licensee's expense 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 \$500,000 for any one event with a substantial reputable insurance office or company and confirmation provided to the Licensor annually.

7. Remedies for breach and determination

- 7.1 In the event of a breach by the Licensee of any terms of this licence the Licensor may (without prejudice to any other remedy the Licensor may have) recover all costs, charges and expenses for which the Licensor shall become liable in consequence of or in connection with any breach or default by the Licensee in the performance or observation of any of the terms covenants and conditions of this Licence.
- 7.2 On this licence coming to an end by whatever means and whether pursuant to a provision of this licence or not the Licensee shall forthwith remove anything placed in the licensed area and reinstate the licensed area to its original condition.
- 7.3 In the event of the termination or sooner determination or revocation of this licence for any reason whatsoever the Licensee shall not be entitled to compensation or any payment whatsoever from the Licensor.

8. Cancellation or Termination of Licence for Noncompliance

This Licence shall be cancelled by the Council if the Licensee fails to comply with any of the conditions hereof or fails to maintain payment of the rent in the manner described herein. Any default in the payment of the agreed rent for a period longer than 14 days after the due date will result in cancellation of the Licence. Should the Council be of the opinion that the service being rendered by the Licensee is unsatisfactory in any respect, or that the management, control, efficiency, or conduct of the Licensee is unsatisfactory in any respect, and after having given the Licensee seven days' notice in writing requiring the Licensee within such time to remedy such default, and such default not having been remedied, the Council may forthwith terminate this Licence.

9. Cancellation of Use of Site by the Council

Council may cancel this license for any reason at any time. However, it will endeavour to give three months prior warning to the licensee. The Council may vary the position of the site either temporarily or permanently, or offer an alternative site, for the purposes of Public Works, street or footpath or services repair or realignment, or a relevant planning requirement.

IN WITNESS WHEREOF this Deed has been executed this..... day
of.....20.....

FIRST SCHEDULE

The footpath situated in (name street) marked in red
on the plan attached.

SIGNED by.....

In the presence of:

..... Name
..... Address
..... Occupation

SIGNED on behalf of **KAIKOURA DISTRICT COUNCIL**

..... Chief Executive Officer

In the presence of:

..... Name
..... Address
..... Occupation

By signing below I confirm that I have a current Public Liability Insurance Policy for the
licensed area for an amount of not less than \$500,000 for any one event.

Signed By.....

SITE PLAN