

# **LICENCE AGREEMENT**

## **COUNCIL OUTDOOR DINING PLATFORM**

**The Licensee:** xxxxxxxxxxxxxxxx

**Licensee Business:** xxxxxxxxxxxxxxxxxxxxxx

**Licensee Premises:** xxxxxxxxxxxxxxxxxxxxxx Street, PARKES

**PARKES SHIRE COUNCIL** (*“the Council”*) of 2 Cecile Street Parkes, New South Wales hereby grants approval to xxxxxxxxx of xxxxxxxxxxxxxxxxxxxxxxxxx (*“the Licensee”*) to use part of **the footway and road at xxxxxxxxxxx Street, PARKES** (*“the Licensee premises”*) as set out on the Plan marked **“Annexure A”** (*“the Approved Area”*) for the purposes of outdoor dining associated with the Licensee’s adjacent xxxx known as xxxxxxxxxxxxxxxxxxxxxx (*“the Licensee Business”*) subject to the conditions set out in this Agreement.



## INTERPRETATIONS

In this Agreement, except where inconsistent with the context:

“**Council**” shall include the administrators and successors and assigns of the Council.

“**Licensee**” shall include the administrators and permitted assigns of the Licensee.

“**Approved Area**” in Annexure A shall include the footpath, dining platform and umbrella structure.

## SCHEDULE

- A. The Approved Area is xxxx square metres and is shown outlined in red and cross hatched on the Plan marked “**Annexure A**”.
- B. The Term of Agreement is for a 2 year period from 1 July 2024 to 30 June 2026.
- C. The Annual fee for Dining Platforms is \$50/m<sup>2</sup> plus GST.
- D. The monthly License fee paid for the term of this Agreement shall be \$xx.xx GST inclusive. The fee will be subject to the annual CPI adjustments.
- E. The Security Bond required pursuant to heading **BOND** is \$500.00

## CONDITIONS

### 1. LICENCE FEE

- (a) the Licensee must pay the Licence fee identified at item C on the schedule to the Council by calendar monthly instalments in advance.
- (b) the monthly Licence shall be payable by the Licensee to the Council by calendar monthly instalments to which an invoice will be supplied.

### 2. BOND

- (a) the Licensee shall on or before the execution of this Agreement, pay to Council a Bond as security for the Licensee’s observance of these conditions.
- (b) the Bond shall be \$500.00.
- (c) the Bond shall be refunded to the Licensee on the expiry or cancellation of this Agreement and vacation of the Approved Area by the Licensee PROVIDED THAT the Approved Area has been returned to its original condition, save and except for fair wear and tear, and all outstanding licence fees have been paid.
- (d) Council shall be entitled to deduct from the said Bond or apply the same towards satisfaction of, any amount that may be payable to Council as a result of any breach by the Licensee of any of the conditions of this Agreement. Any such



deduction shall not be deemed to waive the Licensee's breach of any such Condition.

4. **GST**

The Fees and all other monies payable by and on behalf of the Licensee under this Agreement are stated exclusive of Goods and Services Tax (GST) unless otherwise indicated. Liability for GST payable in respect of any taxable supply is additional. GST is payable by the Licensee to the Council at the same time as the licence fee and other monies are payable.

5. **HOURS OF OPERATION**

The hours of operation are restricted to the agreed hours of operation of the Business or no later than 11.00pm or if applicable the Licensee's Liquor Licence being, until 12.00 midnight Monday to Saturday evenings and 10.00pm on Sunday Evenings..

6. **USE**

- (a) The Licensee shall only use the Approved Area for the conduct of an outdoor dining area for the placement of the approved furniture and equipment, to be used only and strictly in association with the Licensee business.
- (b) The Licensee must not cause or permit any amplified music system or patrons to emit noise that is offensive. Any noise created by the Approved Area activity must be managed and controlled to ensure that there is no adverse impact on the occupiers of surrounding properties or on the amenity of the area generally.
- (c) The Approved Area must not be used for the purposes of entertainment without the prior written consent of Council.
- (d) The Licensee will be liable for any stolen or damaged furniture.
- (e) Council will be responsible for the upkeep and integrity of the platform and ensure that it complies with any and all legislation, including Work Health and Safety legislation.
- (f) Consultation between the Licensee and the Council will be required before the Elvis Festival in each year to ascertain whether any temporary safety or other measures should be agreed to be implemented during that period.
- (g) Any additions to the Approved Area, including signage, must be approved by Council



## 7. HEALTH REQUIREMENTS

- (a) The Licensee Business must be registered with Council as a Food Premises.
- (b) The serving of food by the Licensee in the Approved Area must comply with the *Food Act 1993* at all times.
- (c) Pursuant to *Section 14A of the Companion Animals Act 1998* animals are permitted within the Approved Area however, the Lessee has the right to refuse animals within the Approved Area.

## 8. SERVING OF ALCOHOL AND ALCOHOL FREE ZONES

Serving of alcohol is prohibited in all areas under the *Liquor Act 2007*, unless the business owner holds an appropriate Liquor Licence for the Approved Area and obtains written approval from Council to serve alcohol on the footpath area. Evidence of the Liquor Licence covering the Approved Area must be supplied to Council

## 9. LIQUOR LICENSED PREMISES (IF APPLICABLE)

- (a) the Licensee must also hold a current and appropriate Liquor Licence in accordance with the *Liquor Act 2007*.
- (b) consumption of alcohol within the Approved Area is only permitted during trading hours of the Licensee Business. The designated outdoor dining area reverts to an Alcohol Free Zone (AFZ) during non-trading hours.
- (c) alcohol is only permitted to be sold and consumed in accordance with the terms of the Licensee's liquor licence.
- (d) Staff serving alcohol are required to hold a Responsible Service of Alcohol (RSA) Certificate, or equivalent.
- (e) the licensed area must be clearly delineated in accordance with the *Liquor Act 2007*.
- (f) it is the responsibility of the Licensee of the Approved Area to ensure that illegal consumption of alcohol does not occur within the Approved Area during its approved trading hours. Should the Licensee fail with that responsibility, then Council may take action such as cancelling the Outdoor Dining Licence Agreement.

## 10. INSURANCE

The Licensee shall insure and keep insured against Public Risk in the sum of not less than Twenty million dollars (\$20,000,000.00) (or such other amount the Council may



require from time to time) for each claim with an Insurance Company approved by the Council and noting the interests of the Council as a principal insured on such policy and the Council shall not be liable for any injury or damage caused to any property or person in or about the Approved Area during Business hours whether arising by accident or by reason of any negligence or other acts of the Licensee its agent invitees or of any person employed by it and shall be indemnified by the Licensee against all liability therefor. The Licensee shall produce the Policy of such required insurance to the Council at each anniversary of this Agreement and otherwise on demand.

#### 11. **LIABILITY**

The Licensee agrees to occupy, use and keep the Approved Area at the risk of the Licensee and hereby releases to the full extent permitted by law the Council and its agents, servants, contractors and employees from all claims and demands of every kind in respect of or resulting from any accident, damage or injury connected with the use of the Approved Area by the Licensee, its servants, agents or invitees and the Licensee expressly agrees that the Council shall have no responsibility or liability for any loss, damage or injury suffered by the Lessee (whether to or in respect of the Licensee's person or property or the business conducted by the Licensee) as a result of any breakage, accident or event on or about the Approved Area during Business hours.

#### 12. **APPROVED AREA**

- (a) The Licensee shall only install equipment and furniture on the Approved Area to a standard deemed suitable and as approved by the Council.
- (b) The Approved Area must be cleared of furniture and equipment when the Business is closed, unless that furniture or equipment is secured in a manner approved by Council.

#### 13. **PEDESTRIAN ACCESS**

- (a) the Licensee shall allow the unimpeded, free flow of pedestrian traffic through the Approved Area known as "FOOTPATH"
- (b) the Licensee shall not place any table, chairs or items or structures of any kind within the "FOOTPATH", unless agreed by Council.



- (c) the Licensee shall comply with any written directions from the Council or its authorised officers which the Council considers in its absolute discretion is necessary to more properly give effect to the provisions of this condition or this Agreement generally.

#### 14. **SUITABILITY**

The Licensee acknowledges and declares that no promise, representation, warranty or undertaking has been given by or on behalf of the Council in respect of the suitability of the Approved Area for any particular activity to be carried on there.

#### 15. **ALTERATIONS**

The Licensee shall:

- (a) not make any alteration to the "FOOTPATH" or improvements presently constructed on the Approved Area
- (b) ensure that during Business hours no damage is caused to the "FOOTPATH" or improvements presently constructed on the Approved Area and the adjacent road by persons using the facilities provided by the Licensor and the Licensee must ensure that any damage which is so caused is made good and repaired at the expense of the Licensee without delay under the supervision of and to the standards set by Council.

#### 16. **RULES AND REGULATIONS**

The Licensee shall at its own expense, in all respects, observe and comply with all rules, regulations, by-laws, conditions and notices laid down or given by any Government or any duly constituted authority, relating to the use and occupation of the Approved Area and the conduct of the business of the Lessee thereon, PROVIDED THAT no work of a structural nature or affecting the footpath will be conducted without the prior written approval of the Council.

#### 17. **COUNCIL WORKS**

Council may carry out any works in the Approved Area or the footpath or the adjacent road which it deems necessary or appropriate which may include:

- (a) demolishing and/or reconstructing any part of the approved area, footpath or road
- (b) extending or reducing the size of the footpath or road



- (c) renovation or refurbishment including street beautification
- (d) altering the size, location, composition and arrangement of any parts of the footpath or road
- (e) altering the means of access to the footpath or road or to the Approved Area.
- (f) Maintenance of platform .

Council will not be liable to the Licensee for nuisance, negligence, any other tort, or any breach of this Agreement for carrying out the works, or for anything related to doing so.

Where Council is directly responsible for the business interruption and where the business interruption is equal to or more than seven (7) consecutive days, Council may agree to a rental rebate and each case will be considered on an individual case basis upon written application to Council's General Manager.

#### 18. UTILITIES

Service authorities will have the right of access to the Approved Area to maintain their services and mains.

#### 19. MAINTENANCE

During the term of this Agreement the Licensee will be responsible for:

- (a) maintaining the Approved Area and immediate surrounds free of litter at all times (such as food, serviettes, sugar wrappers etc.)
- (b) maintenance of the Approved Area, including the requirement to carry out, at its own expense, cleaning of the Approved Area by using a hot, high-pressure steam cleaning method at intervals of not more than six (6) months or more frequently if by inspection by an authorised Council Officer deemed necessary.
- (c) the Approved Area must be maintained in a clean and tidy condition during Business hours.
- (d) all cleaning activities must not cause pollution and must comply with the provisions of the *Protection of the Environment Operations Act 1997*. All cleaning activities are to comply with current water restrictions.
- (e) if the terms of Condition 26 (a) and (b) are not complied with and the Approved Area is not maintained to a satisfactory condition, Council may, at its discretion, arrange the necessary cleaning of the subject area at the Licensee's expense.



- (f) in the event that the furniture is damaged or broken as a result of use or misuse by patrons the Licensee will replace with like for like furniture within 21 days. Fair wear and tear excepted.
- (g) in the event that replacement furniture described in Condition 26(f) is discontinued, the Licensee will meet with Council to decide on a suitable alternative, at the Lessee cost.
- (h) the Licensee has the right to increase the number of chairs and tables, only after consultation from Council and at the Licensee's expense.

## 20. **ILLEGAL ACTIVITIES**

The Licensee shall not allow or conduct any gambling, illegal or immoral activities, noisome, noxious or offensive business or activity on the Approved Area and shall not cause or permit a nuisance or annoyance or cause damage to the Council or to the occupiers of neighbouring premises or to users of the roadway or footpath adjacent to the Approved Area.

## 21. **SMOKE FREE**

The Licensee acknowledges Council's Smoke Free Outdoor Areas Policy. Council Policy states that smoking is prohibited in all leased, licensed Council land and all Council owned and managed lands and properties. Council expects the Licensee to ensure a clean and healthy environment for all members of the public whilst utilising public land during Business hours.

## 22. **CONVEYANCING ACT**

The provisions of *Section 170 of the Conveyancing Act 1919* shall apply to any notice under or in respect of this Agreement from either party to the other as if such had been a notice authorised under that Act.

## 23. **HOLDING OVER**

At the end of the term, if the Licensee continues in occupation of the Approved Area with the consent of Council, month to month holding over is permitted to a maximum of twelve (12) months, under all the Conditions of this Agreement, determinable by either party giving one (1) month's notice in writing to the other expiring on any day.

## 24. **TERMINATION**





- (a) if the Agreement is terminated by Council, Council will have the right to remove the Licensee's property from the Approved Area and to sell, or in any other way, dispose of the Licensee's property at the absolute discretion of the Council.
  - (b) where the Council sells any such property, the proceeds of sale will be applied towards payment of any money owed by the Lessee to Council and to any expenses incurred by Council and any surplus shall be sent to the Licensee at the Licensee's last known address.
  - (c) should the Licensee seek to terminate the Agreement unduly before the expiration of the initial term, Council may impose a financial penalty in recognition of the investment made in establishing the Approved Area.
  - (d) Licensee has to continue to pay the nominated license fee until the fixed term ends or until a new Licensee takes over an Outdoor Dining Platform Licence for the same nominated amount. If the new Licensee pays a lower licence fee, then the current Licensee is liable for the difference until the fixed term period ends: or
  - (e) Council stipulates a flat rate of liquidated damages.
25. The Licence shall terminate forthwith in the event of:
- (a) the Licensee at the end of the term, the renewal period and any permitted holding over period, failing to negotiate a further Agreement.
  - (b) the Licensee ceasing to occupy the business premises
  - (c) the business premises ceasing to be used as a restaurant or café by the Licensee
  - (d) any change in effective control of the Licensee where the Licensee is a Company
  - (e) the Licensee ceasing to be the owner or Licensee of the business.
26. (a) The Council agrees with the Licensee that in the event of the Licensee selling the business conducted by it in the business premises, the Council will give consideration to granting a new Agreement on similar terms and conditions to those herein contained to such purchaser if the purchaser is approved by the Council.
- (c) The Council shall be under no obligation to grant any such new Agreement and shall be at liberty to consider any such request in the light of its experience with this Agreement and in the light of the circumstances existing at that time.



27. Council shall be entitled by notice in writing to the Licensee to terminate this Agreement immediately in the event that:
- (a) any licence fees or other monies payable under this Agreement shall remain unpaid for twenty eight (28) days after the date due (although no formal or legal demand shall have been made for the same)
  - (b) the Licensee otherwise fails to perform or observe any one or more of the covenants or provisions on the part of the Lessee expressed or implied in this Agreement, unless the non-performance or non-observance has been waived or excused by the Council in writing
    - (i) the Licensee ceases or threatens to cease to carry on business or goes into liquidation, whether voluntarily or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed
    - (ii) an administrator is appointed to the Licensee
    - (iii) the Licensee is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement.

## 28. **SUSPENSION OF LICENCE**

During periods of major infrastructure upgrades within the CBD precinct which affect the trade opportunities of the Approved Area, Council reserves the right to temporarily remove the structure and will subsequently suspend the Outdoor Dining License Agreement for that period and reactivate the Licence Agreement from the date of reinstallation, subject to the Licence having been adhered to.

## 29. **EXCLUSIVITY**

The right of occupancy of the Approved Area granted by this Agreement shall not be exclusive and shall in no way deprive the Council and those authorised by it of the right of access to the Approved Area.

## 30. **NO TENANCY**

Nothing contained in this Agreement is intended to or shall confer on the Lessee any right as tenant between the Council and the Licensee and any such implication or inference is hereby expressly negated.



**31. NO ASSIGNS**

This Outdoor Dining Licence Agreement shall not be construed as conferring any ownership of the Approved Area and may not be sublet or assigned.

**SIGNED by Licensee:** .....

XX

Pursuant to S127 Corporations Act, 2001

(Print Full Name): .....

**XXXXXXXXXXXXXXXXXXXX  
DIRECTOR**

Dated: ..... 2025

**SIGNED by General Manager:** .....

**Kent Boyd  
PARKES SHIRE COUNCIL**

Dated: ..... 2025