

EARN THE FERN

**FERNMARK
LICENCE AGREEMENT**



**THE
NEW ZEALAND
FERNMARK
LICENCE
PROGRAMME**

FERNMARK LICENCE AGREEMENT – **NZFM10[xxxx]**

Between

THE NEW ZEALAND STORY GROUP, a division of New Zealand Trade and Enterprise (a crown entity established under section 7 of the New Zealand Trade and Enterprise Act 2003) (**NZTE**), of PO Box 2878, Wellington, New Zealand (**NZ Story**)

and

[LICENSEE ENTITY NAME] (Co. No. **[Number]**) of **[City]**, New Zealand (**Licensee**)

each a **Party** and together, the **Parties**

Introduction

- (a) The New Zealand Way Limited (**NZ Way**) owns the fern leaf trade mark depicted below (**New Zealand FernMark** or **FernMark**), together with the Registrations.



- (b) NZTE is a shareholder of NZ Way, and NZ Way has authorised NZTE's NZ Story division to use, and sub-license use of, the FernMark.
- (c) The Licensee wishes to obtain a licence to use the FernMark and, in consideration for the Licensee's payment of the Licence Fee, NZ Story has agreed to grant a licence to the Licensee on the terms and conditions set out in this Agreement.

Signatures

In signing this Agreement each Party acknowledges that they have read it and agree to be bound by it. The Commencement Date of this Agreement is the later of the two dates below.

<p>For and on behalf of NZ Story</p> <p>_____ Authorised Signatory</p> <p>_____ Name:</p> <p>_____ Position:</p> <p>_____ Date:</p>	<p>For and on behalf of the Licensee, [Licensee Entity Name]</p> <p>_____ Authorised Signatory</p> <p>_____ Name:</p> <p>_____ Position:</p> <p>_____ Date:</p>
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Agreement Terms and Conditions

1. Definitions and Interpretation

- 1.1. The Parties agree that the following meanings apply in this Agreement, including the Introduction:

“Agreement” means all the terms and conditions of this licence agreement between the Parties;

“Commencement Date” means the date that this Agreement has been signed by both Parties;

“Eligibility Criteria” means NZ Story's eligibility criteria for the grant of a licence, which can be found [here](http://www.fernmark.nzstory.govt.nz/eligibility-calculator) (<http://www.fernmark.nzstory.govt.nz/eligibility-calculator>), as amended by NZ Story from time to time;

“FernMark Portal” means the FernMark Licensee Portal, which contains important information relating to the FernMark and licence programme, including Licensee contact and business details, images, examples of use, FernMark resources and marketing guidelines, and a list of the Products that are approved under this Agreement;

“Initial Term” means three years from the Commencement Date;

“Licence Fee” means **[no discount: the sum of \$[AMOUNT] plus GST per annum for the Initial Term]** **[with discount: initially, for the first year of the Initial Term, the discounted sum of \$[AMOUNT] plus GST and, for subsequent years of the Initial Term the sum of \$[AMOUNT] plus GST]** and, for any Renewal Term, the sum calculated under clause 5.2 at the commencement of the Renewal Term **[ongoing discount: with a [20 or 25]% discount applied]**, payable in accordance with clause 5;

“Products” means those qualifying products and/or services that are approved to carry the FernMark under this Agreement, as recorded in the FernMark Portal. This list may be amended from time to time during the Term at the Licensee's request and upon approval by NZ Story;

“Registrations” means all applications and registrations for the New Zealand FernMark trade mark in many countries throughout the world;

“Renewal Term” means a further three-year period granted at the end of the Initial Term or an earlier Renewal Term, as the case may be; and

“Term” means the Initial Term together with any Renewal Terms granted under clause 3 below, unless terminated earlier in accordance with clause 9.

- 1.2. In this Agreement:

- a) references to clauses are to those clauses in this Agreement;
- b) headings are used for convenience only and will not affect its interpretation;
- c) references to the singular include the plural and vice versa;
- d) references to a Party include that Party's successors, executors, administrators and permitted assignees (as the case may be);
- e) references to NZ Story include (where appropriate and in order to give effect to clause 10.4) NZTE; and
- f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

2. Grant of Licence

- 2.1. NZ Story grants to the Licensee a non-exclusive, non-transferrable licence to use the FernMark for the Term in relation to the promotion of the Products and in accordance with the terms and conditions of this Agreement.
- 2.2. The Licensee is only permitted to use the FernMark for the Products as set out in this Agreement and the Licensee is not permitted to use the FernMark in any other way, or to sub-license or permit the FernMark to be used by any other person or on, or in connection with, any other product or service.
- 2.3. The Licensee is not permitted to modify the FernMark in any way, or merge it into its own trademark(s) or any other logo or image.
- 2.4. The Licensee acknowledges that the FernMark and the Registrations are the absolute property of NZ Way and that NZ Story may grant non-exclusive licences to other licensees, in NZ Story's sole discretion.
- 2.5. The Licensee acknowledges that its eligibility to be granted a licence of the FernMark and the Registrations is conditional on the Licensee and its Products (including the source and manufacture of the Products) complying, and continuing to comply, with the Eligibility Criteria, in NZ Story's sole opinion.

3. Duration of Term

- 3.1. This Agreement and the Licensee's licence to use the FernMark is initially granted for the Initial Term.

3.2. Prior to each Renewal Term, the Licensee will confirm, to NZ Story's satisfaction, that no substantial or relevant change has occurred to the Licensee, its personnel, its Products or its use of the FernMark, that would affect the Licensee's compliance with the Eligibility Criteria and/or be likely to cause NZ Story to review its decision to grant a licence under this Agreement.

3.3. This Agreement and licence will be automatically renewed for a Renewal Term at the end of the Initial Term or current Renewal Term (as the case may be), unless:

- a) the Licensee notifies NZ Story in writing no later than 14 days before the expiry of the Initial Term or current Renewal Term that the Licensee does not wish to renew this Agreement for the next Renewal Term; or
- b) NZ Story notifies the Licensee that it has decided (in its sole discretion) not to renew this Agreement for the next Renewal Term because the Licensee has failed to satisfy NZ Story of the matters referred to in clause 3.2 above, or one of the sub-clauses of 9.1 applies, or the Licensee is otherwise in breach of any of the provisions of this Agreement.

3.4. Despite the above, this Agreement may be terminated earlier in accordance with clause 9.

4. Conditions of Use

4.1. The Licensee will use the FernMark in a manner that supports and enhances the objectives of NZ Story and the reputation of New Zealand. The Licensee will not use the FernMark in a manner, or in circumstances, that damages, or may damage, the reputation of the FernMark, New Zealand, NZ Way or NZ Story.

4.2. The Licensee will submit to NZ Story at least one photograph or image depicting each use of the FernMark by the Licensee, in the manner required by NZ Story from time to time.

4.3. The Licensee will notify NZ Story in writing as soon as practicable of:

- a) any changes to the Products for which it is licensed or approved to use the FernMark, including (but not limited to) changes in packaging, advertising and/or related materials for the Products;
- b) any changes to the entity manufacturing the Products on behalf of the Licensee, including (but not limited to) where a contract manufacturer changes or where the Products were previously

manufactured by the Licensee and the Licensee has now contracted a third party to manufacture the Products on its behalf; and

- c) any Agreement, arrangement or other transaction, any legal proceeding involving the Licensee or any other circumstance which results, or may result, in a change to any of the information submitted to NZ Story by the Licensee as part of its application for a licence of the FernMark or otherwise during the Term (for example to the effective control of the Licensee).

4.4. NZ Story may review, at any time during the Term:

- a) the eligibility of the Licensee to use the FernMark and of the Products to carry the FernMark, in accordance with the Eligibility Criteria; and

- b) the Licensee's use of the FernMark,

and the Licensee will co-operate with NZ Story in completing such a review, including (but not limited to) promptly responding to questions and providing information as reasonably requested. In order for NZ Story to review eligibility, the Licensee agrees that NZ Story may contact relevant government agencies and/or regulators, including (but not limited to) the Commerce Commission, Ministry of Business, Innovation & Employment and Ministry of Primary Industries (if applicable), seeking confirmation of the Licensee's compliance with New Zealand laws and relevant regulations and/or copies, or a summary, of records held by them regarding the Licensee's compliance.

4.5. NZ Story may, at any time during the Term and at its cost, conduct an audit of the Licensee's compliance with this Agreement including, without limitation, the accuracy of all information provided by the Licensee to NZ Story under or in connection with this Agreement. If NZ Story gives notice that it wishes to conduct an audit under this clause 4.5, the Licensee will co-operate with NZ Story in conducting the audit and provide or make available to NZ Story, or its representative, at NZ Story's option, all information that is reasonably required to conduct the audit.

4.6. The Licensee will, if requested to do so, supply NZ Story with samples of packaging, advertising and materials relating to the Products, or other examples of (approved) use of the FernMark by the Licensee, together with customer references if requested.

4.7. The Licensee will, if requested to do so, provide NZ Story with information on promotional activities that relate to the Licensee's use of the FernMark.

- 4.8. Any information provided to NZ Story under clause 4.7 will only be used for statistical purposes and will not be disclosed in a form that could reasonably be expected to identify the Licensee.
- 4.9. The Licensee will notify NZ Story of any forthcoming promotions or events involving the Licensee's use of the FernMark which offer the opportunity for joint promotion with other approved licensees of the FernMark.
- 4.10. The Licensee will not use the FernMark in place of, or in connection or conjunction with, the trade marks, brands or logos of the Licensee or any other person in such a manner that:
- a) causes the FernMark to appear to be part of such trade mark, brand or logo; or
 - b) is otherwise deceptive or confusing or likely to deceive or confuse.
- 4.11. The Licensee will comply with the FernMark Marketing Guidelines that are provided in connection with this Agreement, and any other marketing guidelines issued by NZ Story from time to time for the use and reproduction of the FernMark (**Guidelines**). NZ Story may amend the Guidelines from time to time and will give reasonable notice to the Licensee of such changes, if they materially affect the way the Licensee is using the FernMark. The Licensee will comply with the amended Guidelines on and from expiry of the notice period.
- ## 5. Payments
- 5.1. In consideration of NZ Story granting the FernMark licence under this Agreement, the Licensee will pay the Licence Fee to NZ Story for each year of this Agreement.
- 5.2. Subject to review under clause 5.5 below, the Licence Fee after the Initial Term will be calculated as follows for each Renewal Term:
- a) if the Licensee's annual revenue is NZ\$2 million or less, the annual Licence Fee is \$800 plus GST;
 - b) if the Licensee's annual revenue is NZ\$2,000,001 or more, but no more than NZ\$10 million, the annual Licence Fee is \$1,600 plus GST;
 - c) if the Licensee's annual revenue is NZ\$10,000,001 or more, but no more than NZ\$20 million, the annual Licence Fee is \$3,200 plus GST;
 - d) if the Licensee's annual revenue is NZ\$20,000,001 or more, but no more than NZ\$100 million, the annual Licence Fee is \$7,500 plus GST; and
 - e) if the Licensee's annual revenue is NZ\$100,000,001 or more, the annual Licence Fee is \$10,000 plus GST.
- 5.3. For the purposes of calculating the Licence Fee in any Renewal Term of this Agreement, the annual revenue will be based on the Licensee's gross revenue for the previous financial year. For example, if the Licensee has a financial year ending on 31 March and signs this Agreement in November 2024, the annual revenue used to calculate the first year's Licence Fee will be gross revenue for the financial year ended 31 March 2024.
- 5.4. The Licensee will:
- a) within 4 weeks of the end of the Initial Term and each Renewal Term, notify NZ Story of its annual revenue (calculated in accordance with clause 5.3 above); and
 - b) provide NZ Story with any information or documentation that NZ Story reasonably requires to confirm the accuracy of the information provided under clause 5.4(a), including, without limitation, copies of the Licensee's financial statements.
- 5.5. NZ Story may, from time to time, review and amend the tiers of Licence Fees set out in clause 5.2, and any amended fees will take effect from the commencement of the next Renewal Term, if the Term is renewed.
- 5.6. NZ Story will issue invoices to the Licensee for the Licence Fee promptly following signing of this Agreement, on each anniversary of the Commencement Date during the Initial Term, and annually during the Renewal Term, if the Term is renewed.
- 5.7. The Licensee will pay all invoices under clause 5.6 within 30 days following the date of receipt by the Licensee, unless longer payment terms are agreed by the Parties.
- 5.8. If the Licensee fails to pay any amount due to NZ Story by the due date:
- a) NZ Story may charge interest on any outstanding amount on a daily basis at an annual rate of 10% from the due date until the date of actual payment; and
 - b) if NZ Story incurs any costs or expenses by reason of the Licensee's failure to pay any amount required to be paid by it to NZ Story by the due date, the Licensee will reimburse NZ Story for all costs and expenses that NZ Story incurs in connection with any actions or proceedings for recovery of such amounts.

5.9. All sums due to NZ Story under this Agreement:

- a) are exclusive of any GST, sales tax or value added tax which, where applicable, will be payable by the Licensee to NZ Story in addition on the rendering by NZ Story of an appropriate tax invoice; and
- b) will be paid in New Zealand dollars to the credit of a bank account to be designated in writing by NZ Story.

6. Infringements and Actions

6.1. The Licensee will immediately notify NZ Story of any use of the FernMark, or any mark confusingly similar to the FernMark that it becomes aware of that:

- a) infringes or may infringe any of NZ Way's trade mark rights or copy right in the FernMark;
- b) is deceptive or confusing, or likely to deceive or confuse;
- c) damages, or may damage, the reputation or the prestige of the FernMark, New Zealand, NZ Story, NZTE or NZ Way; or
- d) results, or may result, in any false representation of origin or false descriptions of the FernMark or associated products or services.

6.2. The Licensee will immediately notify NZ Story of any actual or threatened legal action, or administrative or regulatory proceedings that may concern the FernMark or the Products, including (but not limited to) any investigation or action proposed or brought by a government or regulatory agency.

6.3. Any lawsuit or other action necessary for the purpose of protecting or enforcing NZ Way's rights in the FernMark will be taken at the sole discretion of NZ Story and NZ Way, and NZ Story does not guarantee that it or NZ Way will take any such action.

6.4. The Licensee will not take any action in relation to any use or action set out in clauses 6.1 or 6.2 above without the prior written consent of NZ Story.

6.5. If requested by the Licensee by notice in writing, NZ Story will consider allowing the Licensee to pursue infringement action to protect the FernMark at its own cost. If NZ Story does allow the Licensee to pursue infringement action, NZ Story and NZ Way will retain control over the infringement proceedings and settlement and the Licensee will indemnify NZ Story and NZ Way against all liability, costs, damages and expenses suffered or incurred by them in connection with the proceedings.

6.6. NZ Story will not be liable to the Licensee for damages, losses, costs or expenses suffered or incurred by the Licensee due to the infringement of:

- a) NZ Way's rights in the FernMark by any person; or
- b) any third party's rights caused by the Licensee's use of the FernMark or any other rights granted to the Licensee under this Agreement.

7. Intellectual Property Rights

7.1. The Licensee acknowledges and agrees that any and all goodwill arising from the Licensee's use of the FernMark is for the benefit of, and is owned by, NZ Way and the Licensee will have no rights in the FernMark or the Registrations other than the non-exclusive licence rights referred to in this Agreement.

7.2. The Licensee will not seek to apply or register the FernMark in its own name or in the name of any other person and the Licensee will not otherwise hold itself out as the owner of the FernMark or any of the Registrations.

7.3. The Licensee acknowledges and agrees that NZ Way owns all rights in and to the FernMark and the Registrations, including copyright.

7.4. The Licensee agrees not to challenge NZ Way's ownership of the FernMark or the Registrations or otherwise contest the validity of the Registrations.

7.5. Nothing in this Agreement requires NZ Story or NZ Way to:

- a) apply to register, register, renew or maintain any registrations for the FernMark in any country or in any class of goods or services; or
- b) take any action to prevent or stop infringement of any rights in the FernMark in any country.

8. Changes and Amendments

8.1. NZ Story may revise or alter the FernMark at any time, but in doing so will allow the Licensee to continue using the FernMark in its then existing form for a reasonable period to be agreed by the Parties on notification of the change.

8.2. The Licensee is not permitted to change the FernMark at any time, except with the prior written approval of NZ Story, and the Licensee will not start using any variation of the FernMark until prior written approval is given.

8.3. Except as provided in clause 8.4, any change to this Agreement will be in writing and signed by both Parties.

8.4. NZ Story may amend or modify:

- a) the Guidelines at any time;
- b) the Eligibility Criteria at any time;
- c) any other terms and conditions of this Agreement on 30 days' written notice to the Licensee, provided any amendment or modification is consistent with NZ Story's or NZ Way's statutory obligations and functions.

8.5. If the Licensee wishes to update or amend the Products, by adding or deleting Products, the Licensee may submit revisions to NZ Story for approval (in its sole discretion) via the FernMark Portal at any time.

9. Termination and Expiry

9.1. This Agreement may be terminated by NZ Story immediately, by written notice to the Licensee:

- a) if the licence of the FernMark to NZ Story is terminated or expires for any reason;
- b) if, in NZ Story's sole opinion, the Licensee no longer meets the Eligibility Criteria;
- c) if the Licensee breaches any provision of this Agreement and fails to remedy the breach within 14 days of being requested to do so by NZ Story;
- d) if, in NZ Story's sole opinion, the Licensee engages in conduct that damages, or may damage, the reputation of the FernMark, New Zealand, NZTE, NZ Way or NZ Story;
- e) if any information provided by the Licensee to NZ Story at any time (including during the application and/or audit process) was materially incorrect or inaccurate at the time it was provided;
- f) if the Licensee is convicted of any offence that, in NZ Story's sole opinion, discredits its reputation and good standing as a trader or business, or if the Licensee has any regulatory or other proceeding brought against it for breach of any applicable law;
- g) if, in the case of a body corporate or incorporated Licensee, a receiver or liquidator is appointed to the Licensee;

h) if, in the case of an individual Licensee, that individual is declared bankrupt or insolvent;

i) if, in NZ Story's sole opinion, the image of the Products has altered to the extent that it damages, or may damage, the reputation of the FernMark, New Zealand, NZ Way or NZ Story;

j) if, in NZ Story's sole opinion, the Licensee ceases to be active in the marketplace for a period of more than six (6) consecutive months due to a lack of marketing or a cessation of the export of the Products;

k) if the Licensee does not pay the Licence Fee as set out in clause 5; or

l) at any time, at NZ Story's sole discretion, by giving the Licensee at least three (3) months' written notice.

9.2. If NZ Story considers it appropriate and without limiting clause 9.1, it may notify the Licensee that it is considering termination of this Agreement and provide reasons for the potential termination. In that case, the Licensee will be given an opportunity to address and rectify the situation to the satisfaction of NZ Story (in its sole discretion) prior to NZ Story giving notice under clause 9.1, or it will voluntarily cease using the FernMark.

9.3. This Agreement may be terminated by the Licensee by giving at least three (3) months written notice to NZ Story.

9.4. Upon termination or expiry of this Agreement, the Licensee will immediately cease all use of the FernMark and will:

- a) within a reasonable timeframe specified by NZ Story, withdraw all of the packaging, advertising and other materials bearing the FernMark or, with the consent in writing of NZ Story, obliterate or cover the FernMark to NZ Story's satisfaction; and
- b) sign a notice of cessation of use of the FernMark in a form provided by NZ Story for that purpose.

9.5. If this Agreement is terminated during any year of this Agreement, no part of the Licence Fee already paid or payable for that year will be refunded to the Licensee.

9.6. Clauses 6.3, 6.4, 6.5, 6.6, 7, 9.4, 9.5, 9.6 and 10 survive termination or expiry of this Agreement.

10. General

- 10.1. The Licensee will allow NZ Story to publish its name, address, contact details and any other information (e.g., logos and brands) in NZ Story's promotional material relating to the FernMark and, if the Licensee is an individual, he or she acknowledges that, for the purposes of the Privacy Act 2020, NZ Story is entitled to publish and use such information, including for promotional purposes.
- 10.2. By signing this Agreement, the Licensee consents to receiving electronic communications and messages from (or on behalf of) NZ Story, including promotional materials, newsletters, articles and updates that NZ Story believes may be of interest to the Licensee. The Licensee may opt out of such communications at any time by clicking the unsubscribe button at the bottom of the email communication.
- 10.3. This Agreement is personal to the Licensee and does not extend to the Licensee's subsidiaries, associates, affiliates or any other party. The Licensee may not transfer, assign or sub-license its rights to any other party, except with the prior written approval of NZ Story (in its sole discretion). Any such approval would be conditional upon the other party applying, and being approved, for a FernMark licence and satisfying all NZ Story's usual requirements, including (but not limited to) meeting the Eligibility Criteria.
- 10.4. NZ Story may assign or novate this Agreement to the owner of the FernMark or any other organisation(s) assuming NZ Story's role in relation to the FernMark (from time to time), and the Licensee will do all things, including signing all documents, required to give effect to such assignment or novation.
- 10.5. To avoid doubt, the Parties acknowledge and agree that NZ Story is a division of NZTE, that the NZ Story contracting entity under this Agreement is NZTE and that NZTE has the obligations, and can exercise the rights, of NZ Story under this Agreement.
- 10.6. The Licensee will indemnify NZ Story, its shareholders and its authorised agents in matters relating to the FernMark from any claims, costs, damages or expenses suffered or incurred by them arising from the Licensee's breach of this Agreement, or from any use of the FernMark by the Licensee.
- 10.7. The Licensee agrees that NZ Story's total aggregate liability under any claim or claims of whatever nature, whether in contract, tort (including negligence), breach of statutory duty or otherwise, howsoever arising directly or indirectly from or relating to this Agreement, will in no event exceed the lesser of:
 - a) three (3) times the Licence Fees paid by the Licensee at the date on which the cause of action arose; and
 - b) \$50,000.
- 10.8. During the Term and for three (3) years afterwards, the Licensee will maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Licensee.
- 10.9. Any delay or failure by NZ Story to exercise any right, power or remedy under, or in connection with, this Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this Agreement will not be effective unless that waiver is in writing and is signed by NZ Story. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.
- 10.10. Any differences or disputes between the Parties relating to this Agreement will be referred to a single arbitrator to be agreed upon by the Parties and, failing Agreement, by the President of the Wellington District Law Society. The decision of the arbitrator will be final and binding on the Parties and the Parties will abide by the findings of such arbitrator.
- 10.11. This Agreement is governed by and interpreted in accordance with New Zealand law. All money is in New Zealand dollars. Dates and times are New Zealand time.



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