

## Promoter Agreement

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Date:

12<sup>th</sup> October

2018

### Parties

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1. **Bernard Lynton Gillon** (referred to as "Promoter" )
2. **Bay Venues Limited** (referred to as "Licensor")

### Background

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- A. The Licensor licensed the promoter to operate speedway events at ASB Baypark Stadium ("the Venue") for speedway seasons 2014/15 to 2017/18.
- B. The parties wish to continue to operate on the terms of an updated Agreement. The purpose of this agreement is to update the parties' intentions and form a binding agreement regarding the licence for the 2018/19 and 2019/20 speedway seasons and any conditions under which this term may be extended.

### Agreement

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#### 1. Speedway events

- 1.1.A "speedway event" is any event held under the governance of Speedway New Zealand Incorporated ("Speedway New Zealand") and any practice day.

#### 2. Grant of licence

- 2.1. The Licensor grants the Promoter the right to operate as Promoter at the Venue for the 2018/19 and 2019/20 speedway seasons, on and subject to the terms set out below.
- 2.2. The Promoter may assign his rights under this agreement to an entity under the Promoter's control subject to the approval of the Licensor, in which event the Promoter will remain personally liable for the fees payable under this agreement and for all guarantees and warranties in this agreement.
- 2.3. The Promoter will not transfer or assign any of its liabilities or rights under this agreement to any other person without the prior written consent of the Licensor, which the Licensor shall not unreasonably withhold or delay if the following condition is fulfilled:
  - 2.3.1. The Promoter proves to the reasonable satisfaction of the Licensor that the proposed assignee is a fit and proper person with the requisite experience to operate the speedway business at Bay Park. The Licensor may, for the purpose of determining whether a person is fit and proper: (a) seek and receive any such information as the Licensor thinks fit; (b) consider information obtained from any source, and (c) where the proposed assignee is a limited liability company, the Licensor may require a personal guarantee of the Directors and/or Shareholders of the proposed assignee.

#### 3. Term and renewal

- 3.1. The licence will apply to the 2018/2019 and 2019/2020 speedway seasons. The parties will meet immediately following the 2019/20 season to discuss the future options for the speedway licence and the incumbent promoter.



#### 4. Promoter's obligations

##### Compliance with Speedway New Zealand requirements

- 4.1. The Promoter must hold a track licence from Speedway New Zealand.
- 4.2. The Promoter must comply with all rules and regulations promulgated from time to time by Speedway New Zealand, including but not limited to:
  - 4.2.1. Requirements for track licensing;
  - 4.2.2. Safety requirements;
  - 4.2.3. Holding the relevant insurance.
- 4.3. The Promoter further agrees not to do anything that might jeopardise its status as a "Promoter" as defined in Speedway New Zealand's rules and regulations.

##### Resource consent

- 4.4. The Promoter must operate speedway events at the Venue in accordance with Tauranga City Council's Activity Rules, attached at Appendix One, and the Noise Management Plan, attached at Appendix Two. The Licensor will appoint an Event Manager for all speedway events. The Promoter must comply with the reasonable instructions of the Licensor's Event Manager in any matters relating to compliance with these rules and plans.

##### Speedway season

- 4.5. The speedway season (as per the applicable resource consent) runs from the beginning of October until the end of May. During this period the promoter is permitted to operate 20 speedway event days, inclusive of any practice days.
- 4.6. The Promoter must operate a minimum of 10 Speedway events but the Licensor's preference is for 14 or 15 events per season.

##### Calendar

- 4.7. The Promoter must provide a draft season calendar to the Licensor a minimum of three months prior to the commencement of the 2018/19 and 2019/20 seasons.

##### Speedway equipment

- 4.8. The Licensor acknowledges that the equipment listed by the Promoter and attached at Appendix Three was purchased from the Licensor and is the property of the Promoter ("Promoter's Equipment").
- 4.9. Upon termination of this agreement, and provided that a renewal term has not been initiated,, at the Promoters sole discretion the Licensor has the option to re-purchase the Promoter's Equipment for fair value, having reference to the price at which the equipment was sold by the Licensor to the Promoter and the condition of the equipment. For the avoidance of doubt, if the Promoter considers the Licensors offer to re-purchase the equipment to be less than fair market value the Promoter will be free to decline the Licensors offer and sell the Promoters equipment to a third party.
- 4.10. Subject to payment of the license fee, the Promoter will be permitted to use the additional plant and equipment belonging to the Licensor set out in clause 7.1 and otherwise such additional plant and equipment of the Licensor as may be agreed from time to time by the parties.

### **Deed with Bay of Plenty Speedway Association**

- 4.11. The Promoter must undertake all of the Licensor's obligations to BOP Speedway Association as set out in the deed between the Licensor and BOP Speedway Association and relating to the Venue (as amended, varied or replaced from time to time).

### **Venue maintenance**

- 4.12. The Licensor will provide a venue that is clean and fit for purpose for the Promoter's requirements. The Promoter agrees to hand back the Venue in the same condition at the conclusion of each speedway event.
- 4.13. The Promoter agrees to repair any damage to the Venue caused by speedway events, other than normal and reasonable wear and tear.
- 4.14. The Promoter agrees to protect the turf surface inside the track, and in particular to repair any serious damage caused during speedway events in time for any other events in the Venue to take place.
- 4.15. The Promoter agrees to erect and take down the speedway fence prior to and at the end of each season. If it is necessary to take down the fence for non-speedway events this will be the Licensor's responsibility.
- 4.16. The Promoter agrees to maintain and keep in good repair any of the Licensor's equipment used for speedway events during the term of the licence.
- 4.17. The Promoter agrees to undertake cleaning of the pits area, to remove clay from the grass playing field and to provide one day (8 hours) cleaning of the public areas, being the concrete pathways and grandstand areas, of the stadium and the stadium lounge as soon as practicable or within 24 hours after the conclusion of a speedway event to the standard required for normal use.
- 4.18. The Promoter agrees to maintain and prepare the speedway track to a reasonable standard.
- 4.19. In the event that the Promoter fails to comply with any of its venue maintenance obligations, as set out in clauses 4.13 to 4.18 above, the Licensor reserves the right to carry out the maintenance or to engage a person or persons to carry out such maintenance on its behalf, and to recover the cost of doing so from the Promoter.
- 4.20. The Promoter agrees to ensure that the Venue is locked down securely after each event in accordance with the Licensor's requirements.

### **Event costs**

- 4.21. The Promoter agrees to engage and pay all event contractors and be responsible for all event costs.

### **Health and Safety**

- 4.22. Speedway NZ is the primary controller of Speedway racing and it has the underlying responsibility for health and safety of drivers and officials undertaking racing activity during speedway race meetings.
- 4.23. Health and safety is a key aspect of event management at the Venue. The Promoter agrees to comply with all the Licensor's health and safety policies and directions and conform to the highest standards of health and safety processes and procedures in promoting and operating speedway events at the Venue. Among other safety measures, the Promoter shall provide a comprehensive health and safety plan to the Licensor prior to the commencement of the speedway season.



- 4.24. The Promoter acknowledges and accepts that, during speedway racing events, the Promoter is in the best position to control and manage health and safety risks relating to the event, as the Promoter is in control of the event, , and has specialist knowledge in managing the health and safety risks associated with speedway racing. If the promoter becomes aware of any potential risk associated with the Venue, the Promoter will notify the Licensor of such risk immediately.
- 4.25. At any other time during which there is any activity at the Venue relating to Speedway racing, the Promoter agrees and warrants that it will take all practicable steps to ensure the health and safety of persons at the Venue, including, but not limited to, complying with all relevant safety procedures promulgated by Speedway New Zealand and any legislative or regulatory requirements relating to health and safety.
- 4.26. The Promoter shall consult, co-ordinate and co-operate with the Licensor on matters relating to health and safety, including attending any meeting called for that purpose.
- 4.27. The Promoter shall promptly inform the Licensor of any accident or incident which harms or may have harmed any person at the Venue, and shall inform the Licensor what remedial measures have been taken.

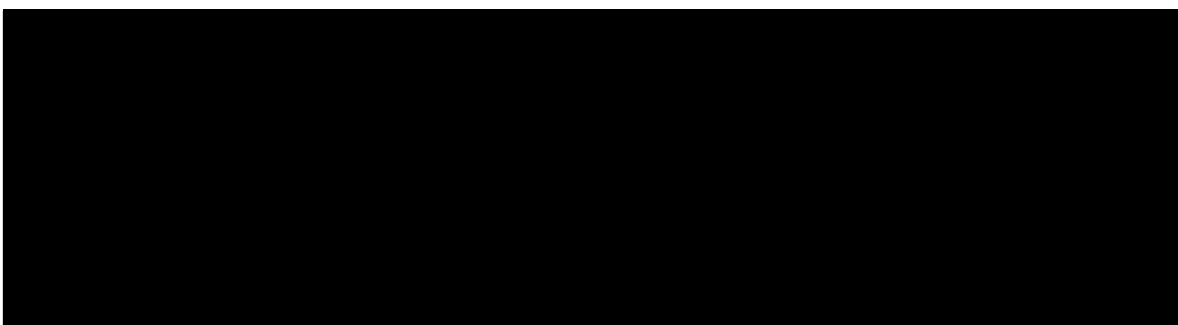
**Insurance**

- 4.28. The Promoter agrees to hold suitable insurance, including Speedway New Zealand insurance, for the purposes of operating speedway events and the use of the Licensor's plant and equipment.
- 4.29. The Promoter shall provide evidence to the Licensor of the Promoter's insurance cover and that it is current. The licensor has the right to require extra cover if it is not considered adequate.

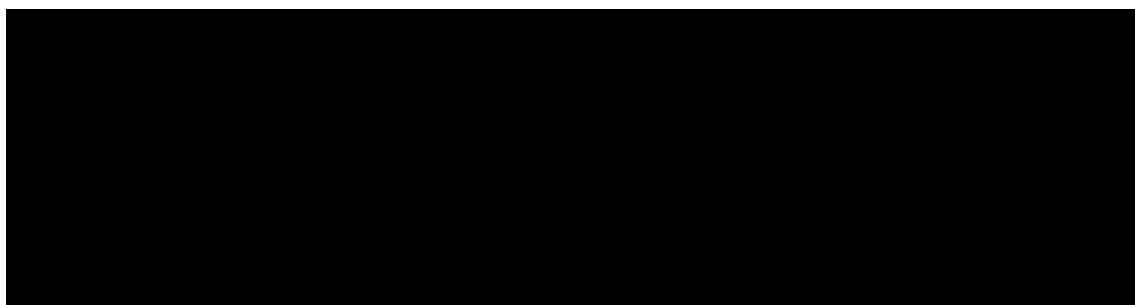
**Positive Speedway experience**

- 4.30. The Promoter agrees to encourage high quality customer service from all staff and contractors at the Venue.
- 4.31. The Promoter agrees to maintain positive working relationships with all stakeholders, including but not limited to Tauranga City Council and Bay of Plenty Speedway Association Incorporated.

**5. License fee**



The parties acknowledge and agree that:



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**Penalty Interest**

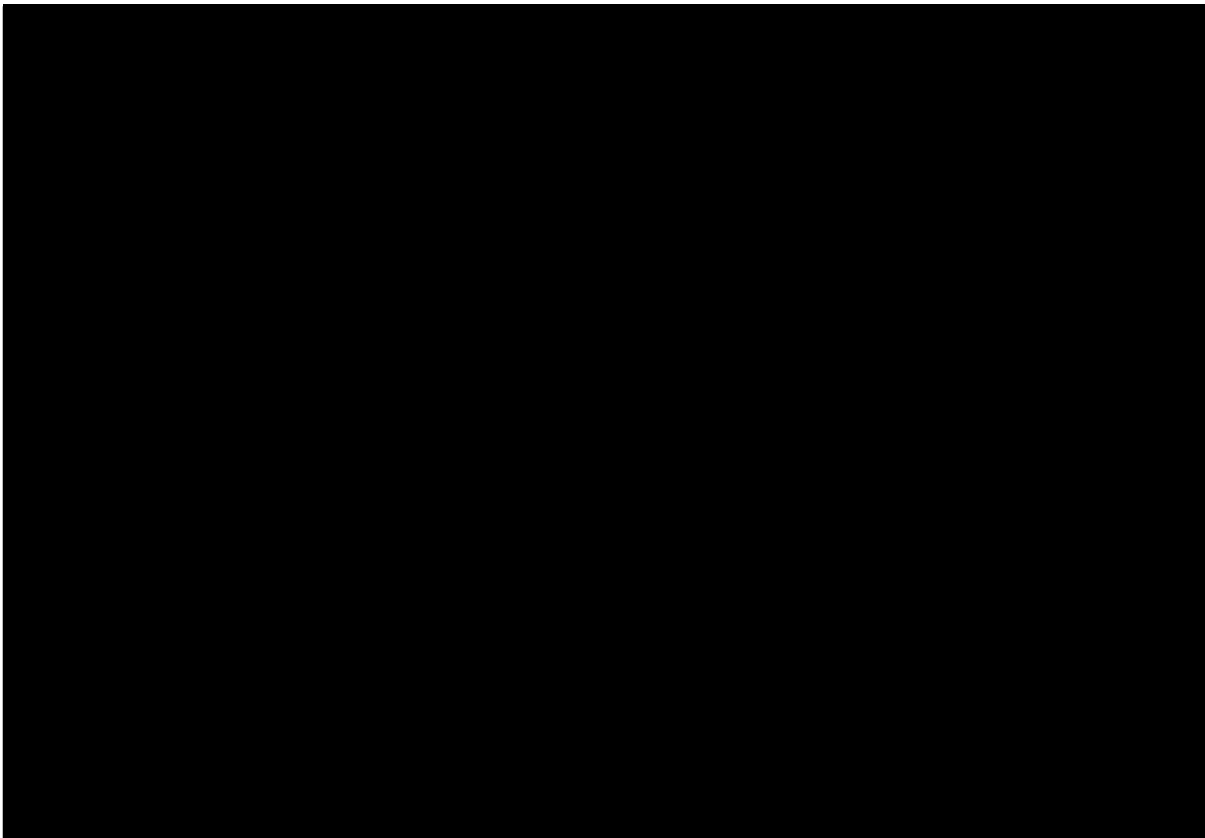
- 5.2. If the Promoter defaults in payment of the license fee under this Agreement, then the Promoter shall pay on demand interest at the default interest rate on the moneys unpaid from the due date to the date of payment.
- 5.3. Unless a contrary intention appears in this Agreement, the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5% per annum .

**6. Revenues**



**7. Promoter Entitlements**

Payment of the license fee will entitle the Promoter to the use of:



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### 7.1. Naming rights

The Promoter will be entitled to sell naming rights for the speedway season/programme, subject to the Licensor's approval, which shall not be unreasonably withheld. The Licensor may withhold approval in the case of a conflict with any of the Licensor's sponsorships, corporate partnerships or other naming rights granted.

For clarification this entitlement is distinct from the naming rights for the Venue.

## 8. Licensor obligations

### Use of the Venue

- 8.1. Following receipt of the Promoter's draft season calendar, as referred to in clause 5.7 above, the parties shall meet and discuss to confirm the calendar including any days that are not available for speedway.
- 8.2. The Licensor will endeavour to provide a minimum of 2 weekend dates per month during the speedway season for speedway events. The parties acknowledge that January may be an exception to this requirement due to the current established events calendar.
- 8.3. After the finalisation of the calendar, the Licensor may also provide the Promoter with written notice that the Venue is unavailable for a speedway event should events of significance to the venue or the city coincide with the speedway programme. An example of this may be an ITM cup semi-final or final, a major concert event, an international event or an event of significant financial or political value to the Licensor or the city.
- 8.4. The Licensor may also at any stage provide the Promoter with three months' notice that a date is not available.
- 8.5. Subject to the above, the Licensor undertakes to protect a minimum of five key dates that the promoter requires for speedway events.

### Provision of the Venue

- 8.6. The Licensor agrees to provide the Venue for use on the dates agreed upon and to grant the Promoter access to the Venue for preparation and administration of speedway events.
- 8.7. The Licensor agrees to ensure the Venue is presented in a clean and tidy manner to speedway patrons.
- 8.8. The Licensor agrees to provide a catering service at all events and the Promoter must use the Licensor's caterers at all events.
- 8.9. The Licensor agrees to provide a facility operations staff member at each event.
- 8.10. The Licensor agrees to provide storage areas for speedway machinery and equipment.

### General

- 8.11. Provide all the Promoter's entitlements as set out in clause 8.

## 9. Key Performance Indicators

- 9.1. The key performance indicators ("KPIs") for the Promoter have been agreed between the parties and are attached as Appendix Five to this agreement. The Promoter acknowledges and agrees that the extent to which the Promoter meets the KPIs during the 2017/2018 speedway season will form part of the Licensor's determination as to whether the Promoter is entitled to renew the term of this agreement under clause 3.2.

## 10. Disputes resolution

- 10.1. If a dispute arises out of or relates to this agreement (including any dispute as to breach of the agreement) a party to the agreement may not commence any Court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent injunctive relief.
- 10.2. A party to this agreement claiming that a dispute ("the Dispute") has arisen under or in relation to this agreement must give written notice ("the Notice") to the other party to this agreement specifying the nature of the Dispute.
- 10.3. On receipt of the Notice by that other party, the parties to this agreement ("the Parties") must endeavour in good faith to resolve the Dispute expeditiously.
- 10.4. If the parties do not resolve the Dispute within 14 days of receipt of the Notice (or such further period agreed in writing by them), the Parties will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed upon in writing by them or (if they are unable to agree on a mediator within five Business Days after the submission to mediation) nominated by the President for the time being of the Resolution Institute. In the event of any submission to mediation:
  - (a) the mediator will not be acting as an expert or as an arbitrator;
  - (b) the mediator will determine the procedure and timetable for the mediation; and
  - (c) the Parties will share equally the cost of the mediation.

## 11. Termination

- 11.1. Either party may terminate this agreement by giving 60 days' written notice in the event that:
  - a) the other party commits a breach of any of the terms and of this agreement or any of its obligations under this agreement; and
  - b) the party terminating this agreement has given notice to the other party specifying that breach; and
  - c) the party in breach has failed to remedy such breach within 30 days of a notice of breach being given. Licensor's rights of termination
- 11.2. The Licensor may terminate this agreement by giving 10 days' written notice if the Promoter:
  - a) Loses or jeopardises the Venue's track licence with Speedway New Zealand;
  - b) Fails to diligently exercise its duties and obligations under this agreement, including but not limited to, failing to pay the licence fee;
  - c) By act or omission brings or potentially brings the Licensor into disrepute and/or devalues the "Baypark" brand;
  - d) Fails to comply with its health and safety obligations;
  - e) By act or omission causes a clear deterioration in the business performance of the Venue;
  - f) Fails to perform in accordance with agreed KPIs; or
  - g) Becomes insolvent, goes into liquidation or makes or seeks to make an arrangement with, a compromise with, or an assignment for the benefit of creditors or if proceedings for liquidation or under any other insolvency law are issued by, on behalf of, or against the Promoter or if a receiver or trustee of the Promoter's property is appointed.

### No claim

- 11.3. On proper termination of the agreement, the Promoter has no claim against the Licensor for loss of goodwill, profits or other business claims and expenses.

## 12. Notices

12.1. Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this agreement must be in writing and may be served personally or sent by registered mail to the address of the party specified or such other address as that party may notify the other party in writing from time to time, or by fax to the fax number of that party specified or such other fax number as that party may notify the other party, in writing, from time to time.

<b>Licensor:</b>	Bay Venues Limited
<b>Licensor's Address:</b>	81 Truman Lane, Mount Maunganui
<b>Attention:</b>	Ervin McSweeney
<b>Fax Number:</b>	07 575 0279



- a) personally are served on delivery;
  - b) by post (other than airmail) or document exchange are served 5 days after posting;
  - c) by airmail are served 10 days after posting;
  - d) by fax are served on receipt of the correct answerback or receipt code.
- 12.3. Any such notice that has been served on a Saturday, Sunday or public holiday is served on the first business day after such day. A business day is a day on which registered trading banks in New Zealand are open for business.
- 12.4. A notice may be given by an authorised officer, employee or agent of the party giving the notice.
- 12.5. Notice may be given personally to a director, employee or agent of the party at that party's address or to a person who appears to be in charge of that place at the time of delivery. If the party is a natural person, partnership or association, delivery may be made by handing the notice to that person or any partner or responsible person or, if acceptance is refused, by bringing the notice to the attention of, and leaving it in a place accessible to, the person, partner or responsible person.

## 13. Indemnity

13.1. The Promoter indemnifies and holds the Licensor harmless from any claim, suit, loss, damage or expense (including reasonable legal fees) arising out of or relating to the Promoter's activities under this agreement. The Licensor must give to the Promoter notice of any such claim or suit promptly on receipt.

## 14. Waiver

14.1. The failure of any party under this agreement to insist on strict adherence to any term or terms of this agreement on any occasion is not to be considered a waiver or deprive or limit that party of the right thereafter to insist on strict adherence to that term in the particular instance or that term or any other term of this agreement in any instance. Any waiver must be in writing.

## 15. Partial invalidity

15.1. Should any part of this agreement be declared or held invalid for any reason, such invalidity will not affect the validity of the remainder which will continue in force and effect and be construed as if this agreement had been executed without the invalid portion and it is declared that the intention of the parties is that this agreement would have been executed without reference to any portion which may, for any reason, be declared or held invalid.



**16. Force majeure**

16.1. Neither of the parties is liable to the other nor to any customer of the other nor to any third party for failure or delay in meeting any obligations due to strike or any other labour disputes, lockouts, acts of God, war, fire, flood, embargo, acts of any government or any other cause (including shortages of labour and materials) beyond the reasonable control of such party.

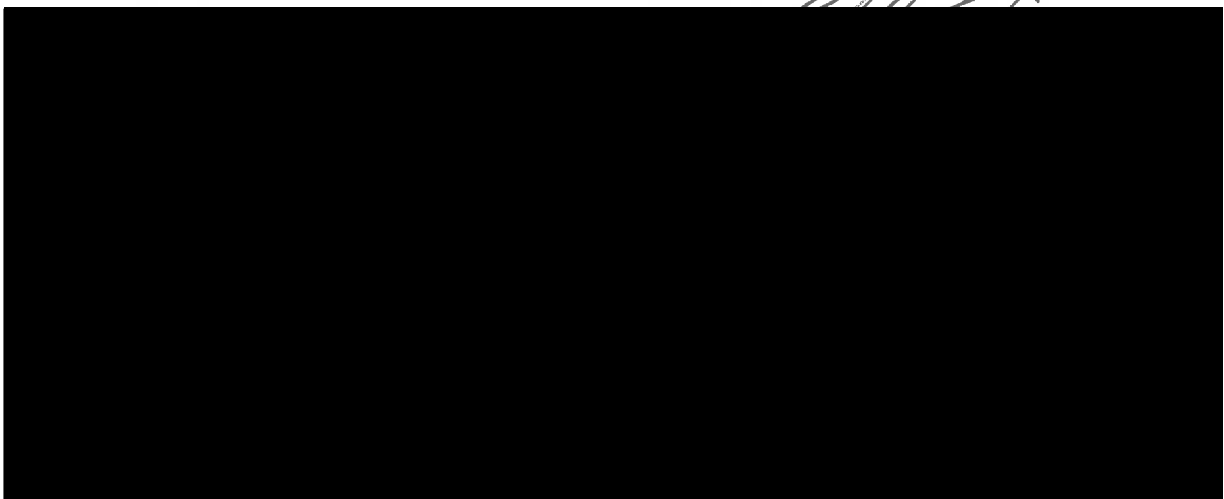
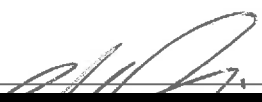
**17. No agency**

17.1. The relationship between the Licensor and the Promoter is not that of principal and agent, but that of licensor and licensee, and the Promoter must not conclude any contract or agreement or make any commitment, representation or warranty which binds the Licensor or otherwise act in the name of or on behalf of the Licensor.

**18. Governing law**

18.1. This agreement is subject to the laws of New Zealand.


**Signed by the parties**



Signed by **Bay Venues Limited** as Licensor:

  
\_\_\_\_\_  
Commercial Managers signature

Ervin McSweeney  
Commercial Manager's full name

  
\_\_\_\_\_  
Chief Executive Officer's signature

Gary Dawson  
Chief Executive Officer's full name

**Appendix One: Tauranga City Council's Activity Rules**

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The plan has been received by the Promoter



**Appendix Two: Noise Management Plan**

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(see attached)

The NMP has been received by the promoter



**Appendix Three: Promoter's Equipment**

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(see attached)



**Appendix Four: Other Promoter Entitlements**

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(see attached)

## Appendix Five: KPIs for 2018/2019 – 2019/2020 Seasons

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### Health and safety

Provision of a comprehensive health and safety plan inclusive of all measures in place at Speedway race meetings and inclusive of:

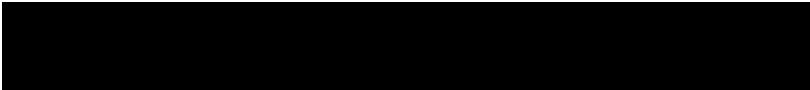
- How SNZ requirements will be complied with
- How volunteers and staff will be trained
- How registers of attendees will be kept updated
- How new staff will be dealt with during the season.

Nil serious injuries to spectators.

### Regulatory

- Achieve nil breaches of the timing limitation set out in S20A of the City Plan.
- Achieve nil breaches of the noise limitation for speedway activities set out in S20A of the City Plan.

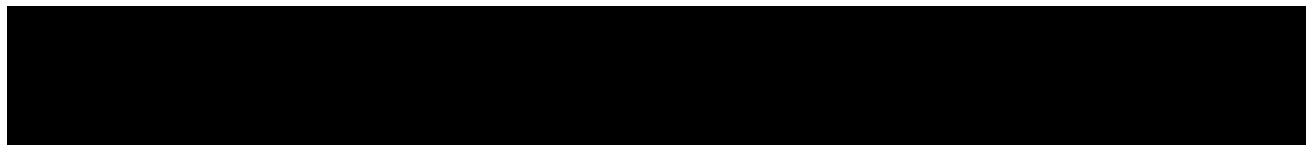
### Growth



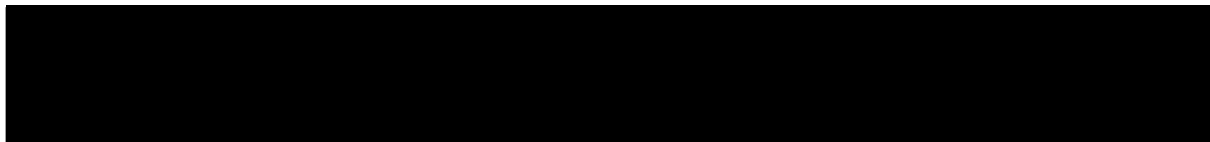
### Venue

- Ensure there is minimal damage to the infield.
- All clay is removed from the Pit area within 24 hours of the meeting finishing.
- The promoter will provide to the licensor a report within one week on the speedway event outlining attendance numbers, any venue related issues and any other matters that the licensor should be made aware of.

### Financial



### Bay of Plenty Speedway Association



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