

Contract Parties	<p>This Contract is between:</p> <ol style="list-style-type: none"> 1. Licensor (XXXX); and 2. Licensee (Presumably You but it will be whoever's name is entered on Schedule 1 – currently blank). <p>Note:</p> <ul style="list-style-type: none"> • The Licensor is referred to throughout the Contract as the “Owner”. • XXXX International Pty Ltd (CANXXXX) is a company registered in Queensland Australia.
Contract Type	Licensing agreement
Key Obligations	<p>Of the Licensor:</p> <ol style="list-style-type: none"> 1. Grants a license to the Licensee permitting the use by the Licensee of the “XXXX” business name and associated Trade Marks, defined more specifically in Section 1.1 of the Contract. <p>Note: The business name and Trade Marks are collectively referred to in the Contract as the “Intellectual Property”.</p> <ol style="list-style-type: none"> 2. Ownership rights in the Intellectual Property are retained by the Licensor. However the Licensee can use the intellectual property: <ol style="list-style-type: none"> a. in relation to the business of installing concrete kerbing, b. on the terms and conditions set out in the Contract. <p>Of the Licensee:</p> <ol style="list-style-type: none"> 1. Many of the Licensee's Obligations are set out in Clause 4 of the Contract. 2. They include obligations to behave in a competent, professional and reputable manner, together with obligations not to incur liability or enter Contracts on the part of the Licensor. 3. They also include obligations regarding the use and protection of the Intellectual Property including an obligation to use (and only use) the XXXX Kerb business name for the operation of the business. 4. The Licensee should ensure that they are familiar with the wording of all obligations set out in Clause 4. 5. The Licensee should also note the obligations in Clause 5 of the Contract. These include a restriction on registering or recording the Intellectual Property (or similar) except as permitted by the Contract or with the Prior Written Consent of the Owner. This is of note because it appears that the Intellectual Property is currently registered in Australia but not in New Zealand, where one assumes the Licensee will be operating. 6. Clause 5 also contains obligations to notify the Owner of any threats or infringements to the Intellectual Property and thereafter to behave in a certain manner regarding such threats or infringements. 7. Except insofar as mentioned in the Contract, the Licensee has no specific obligations related to following any prescribed system or marketing plan set out by the Owner (Clause 7).

	<p>8. The Licensee has non-compete obligations in Clause 9 that apply for up to 5 years after the Contract has been terminated. These basically restrict the Licensee from having any role in a similar business for a significant period of time after their relationship with the Owner has ended.</p>
Key Risks	<p>The following are suggested risks. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> 1. The Owner has unilateral rights to terminate the Contract at any time where there has been a breach of the Contract on the part of the Licensee or in certain situations related to bankruptcy and criminal conviction. There is a 14 day grace period to rectify certain of the breaches. For other breaches the Contract may be terminated immediately. (See Clause 8). This leaves the Licensee exposed to early termination of the Contract. 2. The Contract may be mutually terminated by agreement in writing between the Owner and Licensee. The Licensee may look to insert wording such as “such agreement by the Owner not to be unreasonably withheld” to allow themselves an “out” should they wish to end the Contract. 3. The Licensee may not assign or sub-license their rights under the Contract without the prior written consent of the Owner and the Owner does not have to justify its reasons for withholding consent. This could restrict the ability of the Licensee to expand its business or exit from it in the most advantageous position for the Licensee. 4. There is no provision in the Deed for the Licensee to pay a fee to the Owner, nor for the Owner to provide any training to the Licensee. There are, therefore, a number of standard provisions related to payment of a fee that are omitted from the Contract. The “Confirmation Order” provided separately specifies an amount for certain equipment ordered and refers to training and expenses for a training course. However, this is currently very poorly drafted and not in any way integrated into the Contract or drafted to relate to the Intellectual Property that is the subject of the Contract. Such ambiguity exposes both parties to the risks of misinterpretation associated with not having clear and explicit written Contract terms. 5. No dispute resolution provisions are written into the Contract other than Clause 14 which specifies that the applicable law is the law of Queensland and the courts of Queensland and the Commonwealth of Australia shall hear any lawsuit regarding the Contract. This puts a New Zealand party to the Contract at a disadvantage should a dispute arise between the parties relating to the provisions of the Contract. Further, there is a potential for conflict of laws between Australia and New Zealand and the Licensee should familiarise themselves with where these could arise. 6. Few limitations are placed on the Licensee’s liability under the Contract.

	<p>7. The Licensee does not have reciprocal rights to terminate, e.g. for the Licensor's material breach or for the Licensor going into liquidation or receivership.</p> <p>8. There is no force majeure clause.</p> <p>9. The Licensee must comply with several obligations and restrictions including a significant non-competition clause.</p> <p>10. The Contract provides for few obligations on the part of the Owner in favour of the Licensee. If it is foreseen that the Owner will provide, for example, ongoing training, business support, updates in methodology, responses to queries about the machinery or techniques for using it, etc. then these should be drafted into the Contract as obligations.</p> <p>11. The Licence is non-exclusive, which means that the Owner could grant the same or similar licence to another NZ person/entity who could then operate in competition with the Licensee. Any agreement as to the Licensee having exclusive rights to the Intellectual Property for a particularly geographical area, for example, should be specified.</p>
Key Liabilities	<p>The following are suggested liabilities. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> 1. Once signed, each party to the Contract is liable for a breach of their obligations thereunder (see above for the key obligations). Civil law remedies via the Australian court system will be the available recourse. 2. The Licensee indemnifies the Owner pursuant to Clause 6 of the Contract. The indemnity is essentially unlimited so far as it relates to losses, liabilities and costs (whether paid by the Owner or not) related to the Licensee's use of and rights to the Intellectual Property. 3. The 'Key Risks' section above, identifies several risks that expose both parties (but particularly the Licensee) to liabilities under the Contract. 4. Omissions such as wording relating to payment of fees, or exclusivity of business operating area, or any ongoing obligations on the part of the Owner result in a lack of protection for the Licensee which can prove costly in Court. Further, provisions allowing for a form of Alternative Dispute Resolution could mitigate costly court action for the parties should a dispute over a provision in the Contract arise.
Suggested Amendments	<p>The following are suggested key amendments. You should seek legal advice on how to proceed further:</p> <ol style="list-style-type: none"> 1. The date on the Contract has been inserted as 22 July 2017. This date should be amended to whatever date the parties sign the Contract. 2. The drafting of the non-compete provisions in Clause 9 suggest that the Contract was designed for the length of non-compete time to be an election of either 1, 3 or 5 years. However as currently presented, all 3 apply. The shorter the length of non-compete time, the less onerous

	<p>the restriction is on the Licensee. The Licensee, therefore, should request to have these amended to the shortest time period possible (i.e. 1 year). The Licensee could also request that a carve out be made so that the Licensee could, for example, be an employee of a competing company with the written consent of the Owner.</p> <ol style="list-style-type: none"> 3. The drafting around assignments and subletting is currently very restrictive. If the Licensee foresees a situation where they may wish to expand their business or exit it by involving another party, then it would be advantageous to have less restrictive wording in Clause 10. 4. The Licensee could seek to limit its liability for loss and consequential loss to the Owner. 5. Limitations on the Licensee's liability for breach of the Contract due to reasonable behaviours, time periods and the like could be included also. 6. The Licensee should be given the right to terminate for convenience and the right to terminate for the Owner's material breach, receivership or liquidation. Consent by the Owner for mutual termination should not be unreasonably withheld. 7. Consider including a force majeure clause. 8. If assignment or sub-licencing is contemplated by the Licensee, the Contract should be amended to allow for this. 9. Any fees to be paid to the Owner by the Licensee should be included within the Contract, together with any associated obligations on the part of the Owner to provide training, support, advice, equipment warranties, upgrades or repairs (insofar that these are linked/related to the Intellectual Property License). 10. Any agreement between the parties as to the Licensee having exclusive use of the Intellectual Property for a certain geographical area, or the like, should be included within the Contract. 11. Dispute resolution provisions should be written into the Contract with an alternative dispute resolution process allowed for. This will allow for disputes between the parties to the Contract. Consideration should also be given as to whether any reference needs to be made to dealing with disputes between the Licensee and its customers. 12. Relevant boilerplate confidentiality provisions should be included.
Suggested Negotiation Points	<p>The following are suggested negotiation points. You should seek legal advice on how to proceed further:</p> <p>The majority of the suggested amendments above are likely to require negotiation between the parties.</p>

Assumptions made by Contract Check	<ol style="list-style-type: none"> 1. The Licensee is located in New Zealand and the work is to be undertaken in New Zealand. 2. Both parties are duly authorised to enter into the Contract and have complied with all company governance documents (if applicable) before doing so. 3. That the parties to the Contract are each aware of relevant laws (including the laws of Queensland and the Commonwealth of Australia) that might be applicable to this Contract and their legal rights, obligations and liabilities arising out of those laws. Such rights, obligations and liabilities are separate from and additional to those contained in the Contract. 4. That the parties to the Contract will consult a lawyer for any legal advice relating to this Contract.
Other Comments	<ol style="list-style-type: none"> 1. The presence of an Australian party to this Contract complicates it. The Licensee is advised to seek more specific legal advice regarding any issues that might arise from those laws. 2. The entity type of the Licensee is not known and the client should ensure that they have taken advice as to the appropriate entity to be the Licensee under this Contract.

Please note: This report and any advice that Contract Check provides about your Contract is business advice which has been informed by our legal and business teams. Nothing on this report should be construed in any way as legal advice. If you're looking for specialised legal advice, we suggest you contact a lawyer who can assist or visit www.nzls.org.nz (The New Zealand Law Society) to find one.