

# NAIT Accreditation: Trademark Licensing Agreement

**BETWEEN** National Animal Identification and Tracing (“**NAIT**”) Limited a company duly incorporated under the Companies Act 1993 acting as the NAIT organisation (“**NAIT Ltd**”)

AND the individual or organisation named below as the Trademark Licensee (“**Trademark Licensee**”)

Individually a “**Party**”, together the “**Parties**”

## Table 1: the Trademark Licensee

### Trademark Licensee to complete

*I confirm that I have read, understood, and will abide by this NAIT Accreditation Trademark Licensing Agreement.*

**Trademark Licensee**

**Accreditation type (Accredited Entity Dealing with NAIT Animals)**

**Signature**

**Full name**

**Position**

**Date**

## 1. Preamble and Definitions

- 1.1. NAIT Ltd is the NAIT organisation, which is designated by statute to implement the NAIT scheme under section 8 of the National Animal Identification and Tracing Act 2012 (“**NAIT Act**”).
- 1.2. Terms that are defined in the NAIT Act have the same definition in this NAIT Accreditation Trademark Licensing Agreement (“**Agreement**”) as in the NAIT Act.
- 1.3. Clause 12.1 of the NAIT Standard: Accreditation of Entities Dealing with NAIT Animals (“**Accredited Entities Standard**”) and NAIT Standard: Accreditation of Information Providers (“**Information Providers Standard**”) state that
  - 1.3.1. an accredited entity dealing with NAIT animals or an accredited information provider can apply for a licence to use the NAIT logo; and

- 1.3.2. unless there are exceptional circumstances, the NAIT organisation will grant this licence where the accredited organisation seeks permission to use a NAIT organisation-approved logo stating that they are NAIT accredited.
- 1.4. “**NAIT Trademarks**” means the NAIT Trademarks licensed under this Agreement, which are set out in Appendix 1.
- 1.5. In this Agreement, “**Use**” has the same meaning as set out in section 7 of the Trade Marks Act 2002.
- 1.6. The purpose of this Agreement is to grant this licence, as well as other associated NAIT licences the Accredited Organisation may wish to Use, on certain terms and conditions.
- 1.7. Per clauses 13(4)(a)(iii) and 13(5)(a) of Schedule 2 of the NAIT Act, use of a mark, design, or logo that identifies the NAIT organisation, in circumstances including without the NAIT organisation’s prior written approval, may constitute an offence. This Agreement once signed constitutes the prior written approval of the NAIT organisation for the Trademark Licensee to use the NAIT Trademarks on certain terms and conditions. The Trademark Licensee accepts that, consequentially, breaches of this Agreement are done without the NAIT Organisation’s approval and may incur liability including under the NAIT Act and the Trade Marks Act 2002.
- 1.8. The Trademark Licensee agrees that, as a part of assessing compliance with the Information Provider Standard or the Accredited Entities Standard as applicable, the assessor may consider compliance with this Agreement.
- 1.9. Components of the NAIT Trademarks that are represented as images may be acquired as files for Use by the Applicant in accordance with this Agreement from the New Zealand Intellectual Property Office Trade Mark register.

## 2. Ownership

- 2.1. NAIT Limited is the owner of the NAIT Trademarks and has the right to grant licences to them.
- 2.2. The Trademark Licensee will not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the NAIT Trademarks except the rights of Use as are specifically set out in this Agreement.

## 3. Term

- 3.1. This Agreement commences where
  - 3.1.1. this Agreement is signed by an applicant for accreditation: **AND**
  - 3.1.2. the accreditation of the applicant (under the Information Provider Standard, or the Accredited Entities Standard as applicable) takes effect.
- 3.2. This Agreement supersedes all other express or implied agreements previously held in relation to the Use of the NAIT Trademarks.
- 3.3. This Agreement will continue in full force and effect without limit of period unless terminated in accordance with clause 9 of this Agreement.

## 4. Grant of Licence

- 4.1. NAIT Limited grants to the Trademark Licensee, subject to the conditions in this Agreement, the non-exclusive right to Use the NAIT Trademarks set out in Appendix 1, for:
  - 4.1.1. advertising and promotion of services the Trademark Licensee offers by virtue of being NAIT Accredited including, but not limited to, where relevant:
    - 4.1.1.1. Use of the NAIT Trademarks on the Trademark Licensee’s website;
    - 4.1.1.2. Use of the NAIT Trademarks on publications produced by the Trademark Licensee, and
  - 4.1.2. education and engagement regarding the NAIT Scheme or NAIT obligations.
- 4.2. All reputation and common law rights arising from the Use of the NAIT Trademark by the Trademark Licensee will be owned by NAIT Limited. To the extent that such reputation and common law rights may not be owned by NAIT Limited, this clause 4.2 will operate as an assignment of such rights to NAIT Limited.

## 5. Conditions of Usage of the NAIT Trademarks - General

- 5.1. The Trademark Licensee must not:
  - 5.1.1. Use the NAIT Trademarks in a way that is incorrect, misleading or contrary to the intention of the NAIT Scheme, the NAIT Act and any regulations or standards made under that Act (for example, it undermines the processes necessary for NAIT Limited to trace animals, or it advocates for actions that would breach the NAIT Act);
  - 5.1.2. Use the NAIT Trademarks in any way that could lead them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of NAIT Limited.
- 5.2. The Trademark Licensee must observe all reasonable directions, guidelines, recommendations, and requirements given or specified by NAIT Limited from time to time as to the form and appearance of the NAIT Trademarks.
- 5.3. The Trademark Licensee must not mislead or imply that any product not covered by this clause 4.1 of this Agreement is endorsed by NAIT Limited.
- 5.4. The Trademark Licensee may Use the NAIT Trademarks on its website as long as any link navigable from the NAIT Trademarks is only to <https://ospri.co.nz/> or a page on that website.

### Misprint of NAIT Trademarks

- 5.5. If the Trademark Licensee becomes aware of the printing of a NAIT Trademark by the Trademark Licensee that is a material breach of this Agreement, the Trademark Licensee must either:
  - 5.5.1. advise NAIT Limited in writing of the misprint in order to seek approval to Use the misprinted NAIT Trademarks on a 'one-off' basis; or
  - 5.5.2. destroy the affected material.
- 5.6. If the Trademark Licensee is seeking approval to Use a misprinted NAIT Trademark, they must provide the following information to NAIT Limited:
  - 5.6.1. the quantity of materials that are affected by the misprint;
  - 5.6.2. the type of material that has been affected; and
  - 5.6.3. a picture or photo of the misprinted NAIT Trademarks.

### Sub-licences

- 5.7. The Trademark Licensee may not grant sub-licences of the rights granted to the Trademark Licensee under clause 4.1 unless given written permission from NAIT Limited.

### Liability

- 5.8. NAIT Ltd excludes liability under this Agreement, and excludes all other forms of liability that it is permitted to exclude liability for under New Zealand law, related to the Use of the NAIT Trademarks or their fitness for any particular purpose.

## 6. Payment

- 6.1. Payment of the fees set by regulation 4A of the National Animal Identification and Tracing (Fees and Forms) Regulations 2012 constitutes consideration for the NAIT Trademarks.

## 7. Jurisdiction

- 7.1. This Agreement only applies to the grant of a licence in New Zealand.
- 7.2. New Zealand law wholly governs this Agreement.
- 7.3. The Parties are bound by New Zealand laws including (but not limited to) the National Animal Identification and Tracing Act 2012, the Trade Marks Act 2002, the Fair Trading Act 1986, and the common law of passing off.

## 8. Variation

- 8.1. NAIT Limited may vary the terms of this Agreement from time to time when NAIT Limited considers it necessary or desirable to change them.
- 8.2. Situations in which NAIT Limited will deem it necessary or desirable to change the terms of this Agreement include, but are not limited to:
  - 8.2.1. legislative or regulatory changes, or the introduction of new legislation or regulation,
  - 8.2.2. developments in the industry, or
  - 8.2.3. changes to the NAIT Trademarks, NAIT branding, or NAIT brand management strategy.
- 8.3. A variation of this Agreement will be effective from ten business days after written notice of a variation from NAIT Limited to the Trademark Licensee.

## 9. Termination

- 9.1. NAIT Limited may terminate this Agreement at any time by written notice to the Trademark Licensee:
  - 9.1.1. EITHER if the Trademark Licensee is in breach of its obligations under this Agreement, and
    - 9.1.1.1. the breach cannot be remedied, or
    - 9.1.1.2. if the Trademark Licensee does not remedy the breach within 30 days of receipt of a notice setting out the breach in reasonable detail;
  - 9.1.2. OR if a notice of performance concerns or a notice of non-conformance is issued to the Trademark Licensee under clause 7 of the Information Provider Standard or the Accredited Entities Standard;
  - 9.1.3. OR if NAIT Limited otherwise wishes to terminate this Agreement for reasonable cause.
- 9.2. This Agreement is automatically terminated if the Trademark Licensee's accreditation lapses, is revoked, or is suspended. If the suspension ends and the Trademark Licensee's accreditation resumes, this Agreement automatically resumes from the date of resumption of accreditation.
- 9.3. The Trademark Licensee may terminate this Agreement at any time by written notice to NAIT Limited.
- 9.4. In the event of termination or expiry of this Agreement for any reason the Trademark Licensee will immediately cease using the NAIT Trademarks and will no longer be licensed to Use the NAIT Trademarks in any way, either directly or indirectly. In particular, the Trademark Licensee will, no later than 20 business days from the date of termination, remove or obliterate the NAIT Trademarks from all and any materials used in connection with the business that are in the possession or control of the Trademark Licensee.
- 9.5. Upon termination of this Agreement for any reason, the provisions of clauses 1.7, 3, 4.2, 5.1, 5.8, 5.1, 9.3, 9.4, and 9.5 will remain in full force and effect.
- 9.6. Termination of this Agreement will be without prejudice to the rights and remedies of NAIT Limited and the Trademark Licensee that have accrued prior to termination, including for any prior breach of this Agreement.

## 10. Dispute resolution

- 10.1. The Trademark Licensee and NAIT Limited shall endeavour, in good faith, to resolve any dispute that arises in respect of this Agreement.
- 10.2. If the dispute cannot be resolved within 20 days of the nature of the dispute being known, the dispute shall be referred to mediation.
- 10.3. The parties will use best efforts to agree on a mediator and a fee for that mediator.
- 10.4. However, if the parties cannot agree within five working days of referral to mediation, the mediator will be selected, and the mediator's fee determined by the President of Wellington District Law Society or their nominee, or the Arbitrator and Mediators Institute of New Zealand (the nominating organisation).



- 10.5. Mediation will be conducted in all respects in accordance with the nominating organisation’s mediation standards, and the parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 10.6. Pending settlement of the Dispute, the parties will continue to perform their obligations under this Agreement as far as is practicable as if the Dispute had not arisen.

## 11. General

- 11.1. **Entire agreement:** This Agreement constitutes the entire agreement between the Parties regarding the Use of the NAIT Trademarks and supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties, which relate to the Use of the NAIT Trademarks. The Parties acknowledge that they are not relying on any term, condition, representation or agreement that is not set out in this Agreement, unless such term or condition is implied by law.
- 11.2. **Privity:** Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship between the Trademark Licensee and NAIT Ltd. Neither Party has authority to bind or represent the other Party in any way or for any purpose. Only a Party to this Agreement may enforce, and have any benefit of, this Agreement unless specifically provided otherwise.
- 11.3. **Relationship:** This Agreement is not an exclusive arrangement between the Parties.
- 11.4. **Waivers:** No waiver of any rights or benefits arising under this Agreement is effective unless it is in writing and signed by the Party waiving. A waiver of a breach does not prejudice the waiving Party’s rights in respect of any other breach. No delay, failure or forbearance by the Parties to exercise (in whole or in part) any right, power or remedy under this Agreement will operate as a waiver.
- 11.5. **Assignment:** The Trademark Licensee may not directly or indirectly assign or otherwise transfer any of its rights or obligations under this Agreement without NAIT Ltd’s prior written approval (such approval not unreasonably to be withheld).
- 11.6. **Severability:** If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of this Agreement will remain in full force and effect.
- 11.7. **Signature:** This document may be signed by either electronic or physical means.

## Appendix 1: NAIT Trademarks Licensed Under this Agreement

*This Appendix forms part of the Agreement.*

Number	Title	Mark	Class
1027356	NAIT	 NAIT	6, 9, 20, 35, 38, 42, 44, 45
1138339	NAIT	Word Trademark: NAIT	6, 9, 20, 35, 42, 44, 45
1196612	NAIT ACCREDITED	 NAIT ACCREDITED	42