Mansfield Shire

Lessor:
Mansfield Shire Council ("Council")

Lessee:
Mansfield Historical Society Incorporated

Premises:
Railway Station Building & Platform, Carriages and Undercover Area – 177 High Street, Mansfield VIC 3722

Our Ref: AG1460

DRAFT

Mansfield Shire Council
www.mansfield.vic.gov.au

33 Highett Street
Mansfield, VIC, 3722
Private Bag 1000
Mansfield VIC 3724

T: 03 5775 8555
E: council@mansfield.vic.gov.au

Part 1 of the Generic (CoM CLRA) Lease template

This document is an extract from the Lease template - Generic (CoM CLRA). It contains the non-editable:

- Operative Provisions (Page 2); and
- Schedule 2 Special Conditions (Page 41)

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Operative Provisions

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Operative Provisions

1. Definitions and Interpretation

1.1. Definitions

In this Lease unless otherwise indicated by the context or subject matter:

Act means the Act specified in Item 3.

Applicable Leasing Power means the leasing power at Item 3.

Associate(s) means:

(a) any officer, employee, agent, contractor, subcontractor, consultant, adviser, invitee, licensee or servant of a party to this Lease, to the extent that such person or entity is performing an act or a function directly related to the Lease; and

(b) only where the Landlord is the Minister, includes the Crown in right of the State of Victoria and any other person, committee or delegate (including any Government Agency or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions under the Act, the functions of the Landlord under this Lease or emergency management functions.

Authorised Representative means in respect of:

(a) the Landlord, the person whose details are set out at Item 1; and

(b) the Tenant, the person whose details are set out at Item 2;

authorised by the relevant party to give and receive Notices on its behalf.

Bank Guarantee means the bank guarantee, if any, specified in Item 14 and as a Special Condition.

Business Day means any day that is not a Saturday, Sunday or a public holiday in Melbourne, Victoria specified under the *Public Holiday Act 1993 (Vic).*

Claim includes any claim, demand whether made by the Landlord or the Landlord's Associates, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action.

Code of Practice means any code of practice prepared by a Government Agency or any relevant industry body expressly relating to the care, maintenance and use of the Premises or the carrying out of the Permitted Use on the Premises.

Commencement Date means the date on which this Lease commences set out in Item 7.

Contaminant or Contamination means anything (including without limitation a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Premises, the Land or the Environment:

(a) unsafe or unfit for humans or animals;

(b) degraded in any way, including in its capacity to support plant life;

(c) materially diminished in value; or

(d) assessable as being in a condition that contravenes the *Environment Protection Act 1970* or successor Acts of Parliament.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever including where appropriate and without limitation, all legal fees.

Crown means the Crown in right of the State of Victoria.

Environment means all components of the earth, including without limitation the land, air, soil, any living organism, habitat, surface waters, groundwaters, any layer of the atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscapes. In this Lease the Environment includes without limitation the Environment around the Land.

Environmental Management means the environmental management referred to in clause 28 and Special Condition 6.

Environmental Management Plan means the environmental management plan referred to in Special Condition 6.3.

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the Environment.

Environmental Report means the environmental report referred to in Special Condition 6.2 describing the condition of the Premises as at the Commencement Date.

Essential Term means an essential term of this Lease as set out in clause 21.7.

Further Term means the further term or terms, if any, set out in Item 13.

Government Agency means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity, department or authority and includes a Minister of the Crown or the Commonwealth of Australia and any person, body, entity or authority exercising a power under an Act of Parliament.

Governor in Council means the Governor acting on the advice of the Executive Council as referred to in section 87A of the *Constitution Act 1975*.

GST means the Goods and Services Tax as defined in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

Guarantor means each Guarantor (if any) who guarantees the performance by the Tenant of its obligations under this Lease.

Insolvency Event means the happening of any of these events or anything similar to any of these events:

(a) an order is made that a body corporate be wound up or an order appointing a liquidator or provisional liquidator in respect of the body corporate is made, or a liquidator or provisional liquidator is appointed whether or not under an order;

(b) except to reconstruct or amalgamate while solvent on terms approved by the other party, a body corporate enters into or resolves to enter into a scheme of arrangement or composition with or assignment for the benefit of all or any class of its creditors or it proposes a re-organisation, moratorium or other administration involving any event;

(c) a body corporate resolves to wind itself up or otherwise to dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;

(d) a body corporate is or states that it is insolvent;

(e) as a result of the operation of s 459F(1) of the *Corporations Act 2001* (Cth), a body corporate is taken to have failed to comply with a statutory demand;

(f) a body corporate is or makes a statement from which it may be reasonably deduced by the other party that the body corporate is the subject of an event described in s 459(C)(2)(b) or s 585 of the *Corporations Act 2001* (Cth);

(g) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation, or an administrator is appointed to a body corporate;

(h) a receiver or a receiver and manager is appointed to a body corporate;

(i) a person becomes insolvent under administration as defined in s 9 of the *Corporations Act 2001* (Cth) or action is taken that would result in that event; and/or

(j) a person becomes bankrupt.

Item means an item of Schedule 1.

Land means the land described at Item 4 to a depth of 15 metres below the surface unless the Premises Plan specifies otherwise.

Landlord means the Landlord named in Item 1 and, where appropriate, the authorised delegate of the Landlord and the person for the time being entitled to the reversion immediately expectant upon the determination of the Term.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise.

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Lease means this lease and includes all schedules, appendices, annexures and exhibits to it.

Major Works means all works to the Premises that are not Minor Works.

Minister means the Minister of the Crown for the time being responsible for the Act and includes the Minister's successor in law or such other Minister of the Crown or Government Agency to whom responsibility for this Lease may at any time be given and, where appropriate, the authorised delegate of the Minister and the person for the time being entitled to the reversion immediately expectant upon the determination of the Term.

Minor Works means:

(a) any non-structural works to the Premises; and

(b) structural works to the interior of the Premises.

Notice means any notice or other communication in writing.

Outgoings means all existing and future rates and taxes, duties, charges, assessments, levies, impositions and outgoings now or at any time imposed, charged or assessed on or against the Premises or the Landlord or the Tenant or payable by the owner or occupier of the Premises and any charges payable under the Act or any other Act (Commonwealth or State) or any regulations under any Act.

Permitted Use means the use of the Premises set out in Item 10.

Premises means the premises as shown on the Premises Plan and described in Item 5, and includes without limitation any services at the Premises pertaining to the utilities.

Premises Plan means the plan of the Premises at Attachment 1.

Related Body Corporate has the same meaning as that term is defined in the *Corporations Act 2001* (Cth).

Rent means the Rent set out in Item 8.

Requirement includes any requirement, Notice, order, permit, licence, approval, authority, direction, recommendation or similar notification given by any Government Agency or issued under any Law, whether in writing or otherwise, directed to a party under this Lease or a Landlord's Associate, the Minister or the Crown, irrespective of to whom the Requirement is addressed or directed.

Retail Act means the *Retail Leases Act 2003*.

Review Date means the review date(s), if any, specified in Item 9.

Security means the security referred to in clause 27, being of the type and for the amount specified in Item 14, if any.

Security Deposit means the security deposit, if any, specified in Item 14.

Special Conditions means any obligations set out in Schedule 2 or Schedule 3.

State means the State of Victoria.

Stratum of Land means a part of Land consisting of a space of any shape, below on or above the surface of the land, or partly below and partly above the surface of the Land, all the dimensions of which are limited.

Supplier means the party who gives a *taxable supply* under this Lease (where the expression in italics has the meaning given in the GST Act).

Tenant means the Tenant named in Item 2, and includes, where appropriate, its employees, agents, contractors or other authorised persons and in the case of a:

(a) corporation, includes the Tenant, its successors and permitted assigns; and

(b) natural Person, includes the Tenant, the Tenant's executors, administrators, permitted assigns and invitees.

Tenant's Improvements means all buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles and chattels of all kinds which are at any time erected or installed by the Tenant in or on the Land, including without limitation:

(a) all Major Works and Minor Works constructed by the Tenant on the Premises; and

(b) any items set out in Item 18, Item 19 and Item 20.

Term means the term of this Lease set out in Item 6 commencing on and from the Commencement Date.

1.2. Interpretation

In this Lease, unless the context otherwise requires:

(a) a reference to this Lease or any other document referred to in this Lease includes any variation or replacement of any of them;

(b) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c) the singular includes the plural and vice versa;

(d) headings and the table of contents to this Lease are for guidance only and do not affect the interpretation of this Lease;

(e) a reference to a person includes a firm, a body corporate, an unincorporated association or a responsible authority, as constituted from time to time;

(f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, servants, agents, consultants, contractors, advisers, financiers, subcontractors, licensees and invitees;

(g) a reference to any professional body, association or institute includes any succeeding body, association or institute with similar objects;

(h) if reference is made to any person, division, body or Government Agency and that person, division, body or Government Agency has ceased to exist, then the reference is to be deemed a reference to the person, division, body or Government Agency that then serves substantially the same objects as the person, division, body or Government Agency that has ceased to exist;

(i) a reference to an agent of the Landlord in this Lease includes a public authority acting for the Landlord that is created by Law or any agent appointed by the Landlord whether expressly named or not in this Lease;

(j) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(k) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it, and a reference to a group of persons is a reference to any one or more of them;

(l) a covenant, promise, undertaking or agreement by the Tenant to perform or refrain from performing some act or thing, includes a covenant by the Tenant to procure that the Tenant's Associates also perform or refrain from performing such act or thing;

(m) a reference to a recital, clause, item, schedule or attachment is to a recital, clause, item, schedule or attachment in or to this Lease, unless a contrary intention is expressed;

(n) day means the period of time commencing at midnight and ending 24 hours later;

(o) the payment of money within a specified time is a reference to the full clearance of any personal cheque into the account of the payee within that time;

(p) where a word or phrase is defined, its other grammatical forms have corresponding meanings;

(q) ‘dollars’ or ‘$’ refers to Australian currency;

(r) a reference to any professional body, association or institute includes any succeeding body, association or institute with similar objects;

(s) no rule of construction will apply to disadvantage a party because that party proposed a provision of this Lease or the Lease itself;

(t) if anything to be done under this Lease falls on a day which is not a Business Day, it must be done on the next Business Day;

(u) in respect of any warranty given by the Tenant under this Lease, the Tenant indemnifies the Landlord and the Landlord’s Associates for any reasonably foreseeable loss, damage or expense arising out of or associated with a breach of that warranty;

(v) unless other otherwise stated, no word or provision of this Lease limits the effect of any other word or provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation;

(w) each provision of this Lease continues to have full force and effect until it is satisfied or completed and all clauses intended to survive the expiry or termination of this Lease shall survive the expiry or termination including without limitation clauses 18, 22.5, 22.6, and 28; and

(x) responsibility and risk allocations for Contamination, the Environment and/or Environmental Management are effective to the extent that the Law permits.

2. Lease of premises and reservations

2.1. Grant of Lease

Under the Applicable Leasing Power, the Landlord grants to the Tenant a lease to occupy the Premises for the Term beginning on the Commencement Date, subject to:

(a) the terms and conditions of this Lease;

(b) the encumbrances affecting the Land; and

(c) any reservations set out in this Lease.

2.2. Reservations

This Lease is granted subject to:

(a) the reservation to the Crown of:

(i) all gold and minerals as defined in the *Mineral Resources (Sustainable Development) Act 1990* and Petroleum within the meaning of the *Petroleum Act 1998* (the **Reserved Minerals**) in on or under the Premises;

(ii) the rights of access for the purpose of searching for and obtaining Reserved Minerals; and

(iii) the rights of access for pipeline works and any other purposes necessary to obtain and convey on and from the Premises any Reserved Minerals;

(b) the right of any person authorised under the *Mineral Resources (Sustainable Development) Act 1990* to enter on the Premises and to search and mine for gold or minerals within the meaning of that Act and to extract and remove them from the Premises by carrying out any work necessary to do so; and

(c) the right of the Governor in Council to resume the Premises for mining purposes under s 205 of the *Land Act 1958*.

3. Rent

The Tenant must pay the Rent at the times and in the manner set out in Item 8 without demand, abatement, deduction or right of set-off.

4. Outgoings

4.1. Tenant to pay Outgoings

(a) Unless otherwise agreed the Tenant must pay on time the Outgoings to the:

(i) assessing authority if assessed directly against the Tenant or the Premises; but otherwise

(ii) to the Landlord within 30 days of demand for reimbursement.

(b) If the Retail Act applies to this Lease, the Tenant will not be required to reimburse the Landlord for any land tax payable in respect of the Premises or the Land.

4.2. Tenant to produce receipts

Upon the Landlord's request, the Tenant must promptly produce receipts to the Landlord evidencing payment of the Outgoings by the due date for payment if the Tenant is required to pay them to the assessing authority.

4.3. Apportionment

If necessary, the Outgoings will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

5. Costs

Unless the Retail Act applies and provides otherwise, the Tenant must pay to the Landlord all the Landlord's and Minister's Costs, including without limitation Costs of surveyors and other consultants engaged by the Landlord, of and incidental to:

(a) the preparation, negotiation and execution of this Lease;

(b) any proposed assignment, subletting or other dealing with the Tenant's leasehold estate, whether or not consent is granted;

(c) any variation, extension, renewal, surrender or termination (otherwise than by effluxion of time) of this Lease;

(d) any default by the Tenant or the Tenant's Associates in observing or performing any covenants contained or implied in this Lease, including without limitation any enforcement action taken by the Landlord; and

(e) any request for consent or approval under this Lease, whether or not consent or approval is granted.

6. Interest

(a) The Tenant must pay on demand interest on any Rent or other money which the Tenant has not paid on the due date for payment at the rate fixed under the *Penalty Interest Rates Act 1983*.

(b) Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

(c) If the Landlord requires the Tenant to pay interest, it is without prejudice to any other rights, powers and remedies which the Landlord may have under this Lease or at law.

7. Use of Premises

7.1. Tenant's obligations

The Tenant must:

(a) not use the Premises or permit the Premises to be used for any purpose other than the Permitted Use;

(b) not use the Premises for any illegal purpose;

(c) ensure the Premises are kept secure, clean and free from debris and rubbish;

(d) except as required for the Permitted Use and subject to this Lease, not do anything in or on the Premises which in the reasonable opinion of the Landlord causes or may cause interference, nuisance, disturbance or danger to the Landlord, any other occupier(s) of the Land, or the occupier(s) or owner(s) of any other property (including without limitation the occupier(s) or owner(s) of any adjacent land or land linked to the Land);

(e) not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Premises except as required for the Permitted Use, or create fire hazards;

(f) not overload the floor, walls, roof or any other part of the Premises or, not without the Landlord’s consent, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Landlord to cause damage to any part of the Premises;

(g) not erect, display, affix or exhibit on or at the Premises any signs except for signs that:

    (i) are reasonably necessary in connection with the Permitted Use; and

    (ii) comply with all Laws, and then only after obtaining necessary planning and building permits from the relevant Government Agency;

(h) observe fire precautions;

(i) at all times exercise due care, skill and judgement and act with the utmost good faith;

(j) only install fixtures or fittings that are necessary for the Permitted Use;

(k) observe any relevant Code of Practice;

(l) at all times carry out the Permitted Use in a businesslike and reputable manner as determined by the Landlord in the Landlord's absolute discretion;

(m) provide the Landlord (and keep the Landlord updated when it changes) with the name, address, telephone number and email address of a person or persons to contact during and after business hours if an emergency arises which affects the Premises; and

(n) obtain, maintain and comply with all consents or approvals from all Government Agencies which, from time to time, are necessary or appropriate for the Permitted Use. The Tenant must not by any act or omission cause or permit any consent or approval to lapse or be revoked.

7.2. No warranty as to use

(a) The Landlord makes no promise or warranty (either present or future) that the Premises are or will remain fit for the Permitted Use.

(b) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Premises may be used now or in the future.

8. Works

8.1. Major Works

(a) If the Landlord is not the Minister then, in this clause 8.1, wherever the Landlord's consent or approval is required, the Tenant must also immediately notify the Minister in writing of the proposed Major Works including the same details as are required under clause 8.1(c).

(b) Subject to the Retail Act, the Tenant must not, and must not permit any other person to, construct any Major Works on the Premises without the Landlord’s prior written consent, which consent is at the Landlord's absolute discretion.

(c) In seeking the Landlord’s consent, the Tenant must submit any plans and specifications for the proposed Major Works to the Landlord for approval. If the Landlord initially declines to grant consent, the Tenant must re-submit revised plans and specifications for the Landlord's consideration.

(d) The Landlord may give consent on Condition that:

(i) subject to the Retail Act, in carrying out any Major Works, the Tenant complies with all reasonable directions of the Landlord in accordance with the consent given by the Landlord, and such directions may include Requirements in relation to materials and contractors or tradesmen to be used to construct the Major Works;

(ii) any Major Works are completed promptly and continuously in a proper and workmanlike manner, in accordance with all Laws and Requirements and the terms of the consent given by the Landlord;

(iii) in carrying out the Major Works the Tenant does not do anything that in the reasonable opinion of the Landlord causes or may cause interference, nuisance, disturbance or danger to any other occupier(s) of the Land, or the occupier(s) or owner(s) of any adjacent land or land linked to the Land;

(iv) the Tenant pays on demand all Costs incurred by the Landlord in considering or inspecting the Major Works and its supervision, including without limitation the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Landlord for this purpose;

(v) the Tenant obtains, maintains and complies with the terms of any approvals or permits from Government Agencies which are required in connection with the proposed Major Works, and must on request by the Landlord produce for inspection copies of all such approvals and permits;

(vi) within 30 days of completion of the Major Works, the Tenant produces to the Landlord, copies of any unconditional certificates of compliance or satisfactory completion issued by relevant Government Agencies and a certificate by a consultant approved by the Landlord that the Major Works have been carried out in accordance with the plans and specifications approved by the Landlord; and

(vii) the Major Works are completed within the time period (if any) reasonably specified by the Landlord.

8.2. Minor Works

(a) The Tenant may construct Minor Works on the Premises by providing the Landlord with 14 days prior written notice, with the exception of an emergency whereby the Tenant must notify the Landlord as soon as reasonably possible.

(b) In carrying out the Minor Works, the Tenant must comply with the requirements and obligations in:

(i) Clause 8.1(d)(ii), with the exception that, as there will be no consent required to be obtained by the Tenant from the Landlord for Minor Works, there will be no terms of consent by the Landlord;

(ii) Clause 8.1(d)(iii);

(iii) Clause 8.1(d)(v); and

(iv) Clause 8.1(d)(vi), with the exception that the Tenant is only required to supply the items listed in clause 8.1(d)(vi) upon the request of the Landlord,

in respect of the Minor Works.

9. Ownership of Improvements

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9.1. During the Term

Until the Lease comes to an end, the Tenant's Improvements will be owned, maintained and, may be, depreciated by the Tenant.

9.2. End of Lease

At the end or sooner determination of this Lease, the Tenant's Improvements and property will be dealt with in accordance with clause 22.2.

10. Construction works

(a) In:

(i) Clause 10(c), **Workplace** has the meaning given to that term by s 8 of the *Work Health and Safety Act 2011* (Cth) (**Commonwealth OHS Act**); and

(ii) Clause 10(d), **Workplace** has the meaning given to that term by s 5(1) of the *Occupational Health and Safety Act 2004* (Vic) (**Victorian OHS Act**).

(b) The Tenant will comply with the applicable Laws in place from time to time with respect to work health and safety on the Premises.

(c) This Clause shall apply to the exclusion of clause 10(d) in the event that the Tenant is covered by the Commonwealth OHS Act rather than the Victorian OHS Act and the *Occupational Health and Safety Regulations 2017* (Vic) (**Victorian OHS Regulations**).

(i) If the Tenant undertakes construction work at the Premises that is a ‘construction project’ for the purposes of regulation 292 of the *Work Health and Safety Regulations 2011* (Cth) (**Commonwealth OHS Regulations**):

(A) the Tenant acknowledges and accepts that:

(I) it is the person conducting a business or undertaking that commissions a construction project; and

(II) the Tenant is the principal contractor for the project; and

(III) the Tenant will discharge the duties of a principal contractor under the Commonwealth OHS Regulations; or

(B) the Tenant will engage a suitably qualified person as ‘principal contractor’ for the construction project and will authorise that principal contractor to have management and control of the Workplace and to discharge the duties imposed on a principal contractor under the Commonwealth OHS Regulations; and

(C) notwithstanding the appointment of a principal contractor by the Tenant under the Commonwealth OHS Regulations, the Tenant will do all things necessary to:

(I) procure the agreement of the subcontractor to comply with the terms of the Victorian OHS Act and the Victorian OHS Regulations as if the principal contractor had been appointed as principal contractor in accordance with the Victorian OHS Regulations; and

(II) ensure that any principal contractor appointed by the Tenant satisfies the obligations of a principal contractor under the Victorian OHS Act and Victorian OHS Regulations.

(ii) If, for any reason, the engagement of a principal contractor by the Tenant under clause 10(c)(i)(B) is not effective, the Tenant will be responsible for and will do all things necessary to fulfil the duties imposed on a principal contractor under the Commonwealth OHS Regulations.

(d) This clause shall apply to the exclusion of clause 10(c) in the event that the Tenant is a duty holder covered by the Victorian OHS Act and the Victorian OHS Regulations:

(i) If the Tenant undertakes construction work at the Premises that is a 'construction project' for the purposes of regulation 333 of the Victorian OHS Regulations then:

(A) the Landlord appoints the Tenant to act as principal contractor for the construction project and authorises the Tenant to have management and control of the Workplace to the extent necessary to discharge the duties imposed on a principal contractor; and

(B) the Tenant agrees to fulfil the duties imposed on a principal contractor under the Victorian OHS Regulations for the construction project and the Tenant acknowledges and accepts management and control of the Workplace to the extent necessary to discharge the aforementioned duties imposed on a principal contractor; or

(C) the Tenant will appoint a suitably qualified person as 'principal contractor' for the construction project and will authorise that principal contractor to have management and control of the Workplace to the extent necessary to discharge the duties imposed on a principal contractor under the Victorian OHS Regulations; and

(ii) If, for any reason, the appointment of a principal contractor by the Tenant under subparagraph 10(d)(i)(C) is not effective, the Tenant will be responsible for and will do all things necessary to fulfil the duties imposed on a principal contractor under the Victorian OHS Regulations.

Operative Provisions

11. Compliance with Laws and Requirements

11.1. Compliance with Laws and Requirements

(a) The Tenant at its own Cost must comply with all Laws and Requirements relating to the Premises, the Tenant's Improvements and the Permitted Use. Where the Tenant receives any Notice associated with any such Law or Requirement, the Tenant must promptly provide a complete copy of the Notice to the Landlord.

(b) The Tenant must keep in force and available for inspection by the Landlord all licences, permits and registrations required for the carrying on of any business use or other activity conducted by the Tenant in or upon the Premises.

11.2. Landlord may comply if Tenant defaults

If the Tenant fails to comply with clause 11.1(a) then the Landlord may elect to comply with any Law or Requirement referred to in clause 11.1(a) either in part or whole and may require the Tenant to comply with the balance of any such Law or Requirement. If the Landlord does this:

(a) any Costs incurred by the Landlord must be paid or reimbursed to the Landlord by the Tenant; and

(b) it is without prejudice to any of the Landlord's other rights in respect of non-compliance by the Tenant with its obligations under this Lease.

11.3. Landlord's compliance Costs

(a) If compliance with a Law or Requirement was the Tenant’s responsibility but was undertaken by the Landlord, the Tenant must on demand pay to the Landlord all reasonable Costs incurred by or on behalf of the Landlord.

(b) The Tenant must pay any Costs owing under clause 11.3(a) within 30 days of the Landlord's demand.

12. Maintenance and repair

12.1. General repairing obligation

(a) The Tenant's repair and maintenance obligations are set out in Item 11.

(b) The Tenant must immediately notify the Landlord in writing of any damage to the Premises.

(c) The Tenant, at its Cost, must promptly repair damage to the Premises and the Tenant's Improvements to the extent that it has been caused or contributed to by the Tenant.

(d) In carrying out repairs required under this Lease, the Tenant must use high quality materials and workmanship and such repairs must be in keeping with the standard, quality and appearance of the Premises.

(e) If the Retail Act applies to this Lease, to the extent permitted by the Retail Act, the Tenant must reimburse the Landlord on demand for any Costs

incurred by the Landlord in maintaining the structure of the Premises in accordance with s 52 of the Retail Act, as an incident of the Tenant's obligation to pay Outgoings under clause 4.1 above.

12.2. Landlord's right of inspection

The Landlord or any person authorised by the Landlord may enter the Premises to:

(a) view the state of repair and condition of the Premises and the Tenant's Improvements;

(b) determine the Tenant's compliance with the Tenant's obligations and requirements under this Lease;

(c) implement fire prevention, protection or suppression measures on the Premises; or

(d) carry out such testing as reasonably required by the Landlord to monitor the environmental condition of the Land and the Tenant’s compliance with clause 28,

if the Landlord:

(e) does so in the presence of a responsible officer of the Tenant (if required by the Tenant); and

(f) enters at reasonable times and on reasonable notice (except in the case of an emergency when no notice is required).

12.3. Enforcement of repairing obligations

(a) The Landlord may serve on the Tenant a Notice:

(i) specifying any failure by the Tenant to carry out any repair or maintenance of the Premises and the Tenant's Improvements; and

(ii) requiring the Tenant to carry out the repair or maintenance within a reasonable time.

(b) If the Tenant fails to comply with the Landlord's Notice under clause 12.3(a), the Landlord may elect to carry out the repair or maintenance and any Costs incurred or paid by the Landlord must be paid by the Tenant when demanded by the Landlord.

12.4. Landlord may enter to repair

(a) The Landlord, and those authorised by the Landlord, may at all reasonable times after giving the Tenant reasonable notice (except in the case of emergency when no notice is required) enter the Premises to carry out any repairs and maintenance, at the cost of the Tenant, in the circumstances set out below. In doing so the Landlord must endeavour not to cause undue inconvenience to the Tenant.

(b) The circumstances for entry are:

(i) to carry out any repair or maintenance which the Landlord considers necessary or desirable or which relate to anything which the Landlord is obliged or entitled to do under this Lease;

(ii) where a Government Agency requires any repair or work to be undertaken on or to the Premises or the Tenant's Improvements which the Tenant has failed to do promptly and which the Landlord in its discretion elects to do; or

(iii) if the Landlord elects to carry out any repair work which the Tenant is required or liable to do under this Lease but has failed to do so.

13. Fire protection works

The Tenant must:

(a) undertake all fire protection, prevention and/or suppression works on the Premises as required by Law to the satisfaction of the Landlord and the responsible fire Authority (which may include the Landlord or the Landlord's Associates); and

(b) allow the Landlord with or without vehicles and equipment, workmen or others at all times to enter the Premises for fire protection, prevention and/or suppression purposes.

14. Vegetation

The Tenant must not without obtaining all necessary permits:

(a) ringbark, fell, cut, destroy, injure or remove any living or dead vegetation (with the exception of weeds), tree or timber (including, without limitation, fallen timber) on the Premises;

(b) plough, cultivate, work, break up or remove soil or construct any earthworks on the Premises; or

(c) plant any vegetation, seed or crop on the Premises.

15. Reporting

Upon the request of the Landlord, the Tenant must provide to the Landlord, by the date reasonably required by the Landlord, a written report setting out any information reasonably requested by the Landlord pertaining to this Lease.

16. Assignment and subletting

16.1. No assignment of Tenant's interest

(a) The Tenant must not without the prior written consent of the Landlord, which consent will be at the Landlord's absolute discretion:

(i) assign, transfer, grant any licence, or part with or share the possession or occupation of or otherwise deal with or dispose of the Tenant's estate or interest in the Premises or any part of the Premises; or

(ii) declare itself trustee of the Premises or any part of the Premises or of any legal or equitable estate or interest in the Premises.

(b) This clause does not limit clause 16.2.

(c) Where the Landlord is not the Minister, the Tenant acknowledges that before granting any consent under clause 16.1(a), the Landlord must obtain the Minister's approval and consent.

16.2. Deemed assignment on change of shareholding

(a) There is a deemed assignment under clause 16.1 if the Tenant is a corporation and there is any change in:

(i) the beneficial ownership of 50% or more of the shares in the capital of the corporation or any holding company of the corporation whether that change occurs as a result of one or more transactions; or

(ii) the beneficial ownership of the business or assets in the corporation or part of it which results in a change in the effective control of the Tenant.

(b) If any of these events occur, then the Tenant must obtain the Landlord’s written consent under clause 16.1 and provide written notification to the Minister.

(c) Subject to anything to the contrary in the Act, this does not apply in relation to:

(i) the sale of shares in the Tenant or the Tenant’s holding company where the Tenant or the Tenant’s Holding Company is listed on a recognised Stock Exchange;

(ii) the first Tenant under this Lease or a Related Body Corporate to that Tenant; or

(iii) a company whose shares are listed on a recognised Stock Exchange.

16.3. Conditions of assignment - general

In requesting an assignment of this Lease, the Tenant must:

(a) request in writing that the Landlord consent to the assignment of the Lease to a new tenant;

(b) remedy any breach of this Lease of which the Tenant has received written notice from the Landlord;

(c) provide to the Landlord the name and address of the new tenant and prove to the Landlord's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;

(d) execute, and procure the new tenant to execute, an assignment of lease which must include a condition by which the Tenant releases the Landlord from any claims arising under or in connection with the Lease from the date of assignment and is otherwise in a form approved by the Landlord;

(e) where the new tenant is a corporation, procure such directors or shareholders of the new tenant, as may be reasonably required by the Landlord, to execute a guarantee and indemnity, in a form provided to them by the Landlord; and

(f) pay the Landlord's reasonable Costs incurred in connection with approving the new tenant and the Costs of the preparation, negotiation and stamping of any document required under this Clause.

16.4. Conditions of assignment - Retail Act

If the Retail Act applies, the Landlord will consent to a proposed assignment of this Lease if:

(a) the Tenant seeks the Landlord's consent in the manner provided by the Retail Act;

(b) the Tenant is not in breach of this Lease when it makes the consent request;

(c) the Tenant proves to the satisfaction of the Landlord, that the proposed assignee is a respectable, responsible and solvent person having the financial capacity and trading experience necessary to enable the Permitted Use to be successfully undertaken. The Tenant must submit to the Landlord all information reasonably required by the Landlord about the proposed assignee including, without limitation:

(i) at least two references as to the proposed assignee's business experience;

(ii) at least two references as to the proposed assignee's financial circumstances; and

(iii) a detailed statement of the financial circumstances of the proposed assignee and any proposed guarantor;

(d) the Tenant arranges for the proposed assignee to execute a deed of assignment of lease:

(i) to which the Landlord is a party;

(ii) in a form approved by the Landlord; and

(iii) which contains a covenant by the assignee to be bound by the terms of the Lease, and unless the Retail Act provides otherwise, an acknowledgment by the Tenant that the Tenant is not to be released from its obligations under the Lease;

(e) if the proposed assignee is a company (other than a company whose shares are listed on the Australian Stock Exchange), all the directors and

shareholders of the company and any ultimate holding company (as defined in the *Corporations Act 2001* (Cth)) of that company must by deed (in a form acceptable to the Landlord) guarantee the due performance by the company of the terms and conditions of the Lease;

(f) the Tenant pays to the Landlord all Costs and expenses incurred by the Landlord in enquiring as to the respectability, responsibility and solvency of the proposed assignee and of obtaining the approval by the Landlord's solicitors of the documents referred to in this clause 16.4; and

(g) the Landlord has obtained the Minister's approval and consent.

16.5. No sub-letting

(a) The Tenant must not without the prior written consent of the Landlord, which consent will be at the Landlord's absolute discretion, sublease the Premises. The Tenant acknowledges that:

(i) any sublease of the Premises must be in a form approved by the Landlord and must provide that the sublease will automatically end if this Lease is ended for any reason; and

(ii) any sublease of the Premises must contain a prohibition on granting any further sublease and must also contain any other terms and conditions required by the Landlord.

(b) The Tenant acknowledges that the Landlord's consent under clause 16.5(a) is subject to the Minister's prior approval and consent.

16.6. Mortgage or charge

The Tenant must not without the prior written consent of the Landlord, which consent will be at the Landlord's absolute discretion, grant any mortgage, charge or financial security over the Lease. The Landlord may give consent subject to any conditions given by the Landlord at its discretion and only after obtaining the Minister's approval and consent.

16.7. Acceptance of rent by Landlord

The acceptance by the Landlord of any rent or other payment from any person other than the Tenant does not constitute an acknowledgment by the Landlord that it recognises that person as the authorised assignee or sub-tenant.

16.8. Section 144 excluded

Section 144 of the *Property Law Act 1958* does not apply to this Lease.

17. Insurance

17.1. Insurances to be taken out by Tenant

(a) The Tenant at its Cost must effect and maintain in the name of the Tenant, noting the interests of the Landlord, the insurance policies, on terms that are acceptable to the Landlord, set out in Item 12, and any other insurance the Landlord reasonably requests from time to time.

(b) All policies must be:

(i) endorsed to give the Landlord full cover as principal under a principal's indemnity for its vicarious liability arising from the Tenant's use and occupation of the Premises under this Lease, that is not contributory with any policy taken out by the Landlord;

(ii) endorsed to extend the indemnity under the policy to include the Tenant's liability under clause 18; and

(iii) on terms that:

(A) any act, omission or breach of duty or condition by an insured person will not prejudice the rights or interest of any other insured person; and

(B) each insured person is covered as if a separate policy has been issued to that person.

17.2. Tenant’s insurance obligations

The Tenant must:

(a) ensure that the policies of insurance effected by the Tenant under this clause 17:

(i) are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia or otherwise as reasonably approved by the Landlord;

(ii) are for such amounts, cover such risks and contain such conditions as are reasonably acceptable to or reasonably required by the Landlord and the Landlord's insurer(s); and

(iii) have no exclusions, endorsements or alterations other than required by this Lease unless first approved in writing by the Landlord;

(b) when required by the Landlord, produce to the Landlord the policies of insurance required under clause 17.1, the certificates of currency; and

(c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

17.3. Effect on Landlord's insurances

The Tenant must not without the prior consent in writing of the Landlord do anything or fail to do anything or allow anything to be done or not done to or on the Premises which will or may:

(a) increase the premium for any Landlord’s insurance related to the Land, the Premises, or the Tenant's Improvements;

(b) vitiate or render void or voidable any insurance related to the Land, the Premises or the Tenant's Improvements (as applicable); or

(c) conflict with any Law or any Requirement or with any requirements of the Landlord's insurer(s) relating to fire, fire safety or fire prevention or with any insurance policy related to the Land, the Premises or the Tenant's Improvements.

17.4. Extra Costs of insurance

The Tenant must pay to the Landlord on demand all extra reasonable Costs of insurance in respect of any other matters or related to the Premises or the Tenant's Improvements because of the extra risk caused or contributed to by the Tenant's use or occupation of the Premises.

18. Release and indemnities

Except to the extent of any negligence by the Landlord or the Landlord's Associates and to the extent permitted by Law and in equity the Tenant:

(a) acknowledges that:

(i) the Tenant occupies the Premises at its own risk;

(ii) all property located in, on or under the Premises is at the sole risk of the Tenant; and

(iii) the Landlord and each of the Landlord's Associates is not liable for any Claim that the Tenant or the Tenant's Associates or any person claiming by, through or under the Tenant may incur or make for any damage, or loss to any property or death, injury or illness to any person regardless of the manner of its occurrence;

(b) releases the Landlord and each of the Landlord's Associates, from all Claims of every kind and from all liability resulting from any accident or damage to property or death of or injury or illness to any person of whatsoever nature or kind from any cause including, without limitation:

(i) the carrying out of the Permitted Use;

(ii) entering on the Premises;

(iii) any breach or non-observance of this Lease; and

(iv) damage to the Premises arising as a result of climate change;

(c) indemnifies and keeps indemnified the Landlord and each of the Landlord's Associates against all Claims (including without limitation Claims relating to damage to the Premises, damage to or loss of any property on or from the Premises or the death, injury or illness of any person on the Premises) for which the Landlord and each of the Landlord's Associates will or may be or become liable, whether during or after the Term, in respect of or arising from any cause whatsoever including:

(i) the carrying out of the Permitted Use;

(ii) entering on the Premises; and

(iii) any breach or non-observance of this Lease,

whereby this indemnity does not limit any other indemnity in this Lease; and

(d) for the avoidance of any doubt, acknowledges that any release or indemnity given by the Tenant under this Lease extends to any loss, liability, damage or expense, including without limitation:

(i) loss of profit;

(ii) liability to third parties;

(iii) legal Costs (on a party-party basis) in respect of enforcing the release or indemnity or defending any claim brought by any party, including a third party, in respect of a matter which is the subject of the release or indemnity; and

(iv) loss, liability, damage or expense arising from or in any way connected with an act, default or omission or other event in respect of which the release or indemnity is given.

19. Landlord's covenant, decisions and actions

19.1. Landlord covenant

If the Tenant pays the Rent and observes and performs in a reasonable time its obligations under this Lease, the Tenant may occupy and enjoy the Premises during the Term without any interruption by the Landlord or by any person claiming through the Landlord except as provided in this Lease. The Landlord must at all times exercise due care, skill and judgement and act with the utmost good faith.

19.2. Climate Change

The Tenant acknowledges and accepts that the Landlord's decisions under this Lease and/or any Law may be informed by the Landlord’s assessment of the potential impact of the decision on climate change in accordance with s 17 and s 20 of the *Climate Change Act 2017*.

20. Damage and destruction

(a) Unless the Retail Act applies, if the Premises or any part of the Premises are damaged or destroyed, or there is interruption to the access of the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the Permitted Use and otherwise unfit for the occupation or use of the Tenant or inaccessible by any usual means of access, the Landlord, in its absolute discretion, may:

(i) offer the Tenant an equally convenient means of alternative access;

(ii) repair, at the Tenant's Cost, the damage or destruction to the Premises, unless the Tenant is required to repair all, or any part, of the Premises under clause 20(a)(iii);

(iii) direct the Tenant to repair, at its Cost, the damage or destruction to the Premises or any part of the Premises;

(iv) direct the Tenant to remove any remaining Tenant's Improvements and reinstate the surface of the Premises to its condition as at the Commencement Date; or

(v) terminate this Lease by Notice to the Tenant.

(b) If the Landlord elects to repair the Premises under clause 20(a)(ii):

(i) the Landlord must commence such repairs as soon as practicable following such damage, destruction, interruption or inaccessibility, and complete the repairs within 12 months of commencing such repairs; and

(ii) a reasonable proportion of the Rent will abate from the date of such damage, destruction, interruption or inaccessibility until such repairs are completed.

(c) If the Landlord directs the Tenant to repair the Premises or any part of the Premises under clause 20(a):

(i) the Tenant must commence such repairs within a reasonable timeframe as directed by the Landlord of such damage, destruction, interruption or inaccessibility, and complete the repairs within 12 months of commencing such repairs; and

(ii) a reasonable proportion of the Rent will abate from the date of such damage, destruction, interruption or inaccessibility until such repairs are completed.

(d) Subject to clause 20(b), if the Landlord:

(i) fails to meet the timelines in clause 20(b); or

(ii) fails to construct an alternative means of access under clause 20(a)(i) or terminate this Lease under clause 20(a)(v) as soon as reasonably practicable after such damage, destruction, interruption or inaccessibility first occurs,

the Tenant may immediately terminate this Lease by Notice to the Landlord.

(e) The Tenant cannot exercise its right to terminate under clause 20(d) where the Tenant has caused or materially contributed to the event giving rise to the right of termination.

(f) If the Tenant fails to meet the timelines in clause 20(c), then the Landlord, in its absolute discretion, may:

(i) at the Tenant's Cost, carry out such works required to be undertaken by the Tenant under clause 20(a); or

(ii) terminate this Lease, whereby the Tenant will not have any right whatsoever to claim any compensation.

21. Termination and default

Operative Provisions

21.1. Events of default

The following are events of default:

(a) if the Rent or any other money payable under this Lease is not paid on the due date for payment whether legally demanded or not;

(b) if the Tenant at any time fails to perform or observe any of its obligations under this Lease; and/or

(c) if there is an Insolvency Event affecting the Tenant or any Guarantor.

21.2. Forfeiture of Lease

If an event of default occurs the Landlord may, to the extent permitted by and having complied with the requirements imposed by Law and without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other person, at any time re-enter the Premises or any part of it in the name of the whole at which time this Lease will be absolutely determined.

21.3. Re-entry

The right of re-entry for breach of any covenant or condition to which s 146(1) of the *Property Law Act 1958* applies must not be exercised until the expiration of 14 days after the Landlord has served on the Tenant the Notice required under that section.

21.4. Landlord may rectify

If the Tenant is in default under this Lease and fails to commence to rectify that default within 14 days of the Landlord notifying the Tenant in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Landlord may, but will not be obliged to, remedy at any time without further notice any default by the Tenant under this Lease. If the Landlord so elects all reasonable Costs incurred by the Landlord (including without limitation legal Costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Tenant to the Landlord on demand.

21.5. Waiver

(a) To be effective, any waiver must be by Notice.

(b) The Landlord's failure to take advantage of any default or breach of covenant by the Tenant will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by the Tenant of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default.

(c) Acceptance of Rent or any other payment under this Lease does not constitute a waiver by the Landlord of a default by the Tenant.

(d) A waiver by the Landlord of a particular breach or default is not deemed to be a waiver of the same or any other subsequent breach or default.

21.6. Tender after determination

If the Landlord accepts money from the Tenant after the Landlord ends this Lease the Landlord may (in the absence of any express election of the Landlord) apply it:

(a) first, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date of the Lease is ended; and

(b) second, on account of the Landlord's Costs of re-entry.

21.7. Essential Terms

The Landlord and the Tenant agree that each of the following covenants by the Tenant are essential terms of this Lease:

(a) to pay the Rent;

(b) to use the Premises solely for the conduct of the Permitted Use;

(c) to comply with Laws and Requirements;

(d) to keep the Premises and the Tenant's Improvements in good condition;

(e) not to part with possession or occupation of the Premises or grant any rights in relation to the Premises otherwise than in accordance with this Lease;

(f) to effect and maintain all insurances required to be taken out by the Tenant;

(g) to pay or reimburse the Outgoings; and

(h) any other covenant in respect of which the Tenant's breach or non-observance is serious, persistent and of a continuing nature.

21.8. Damages for breach

The Tenant covenants to compensate the Landlord for any breach of an essential term of this Lease. The Landlord may recover damages from the Tenant for any of these breaches. The Landlord's entitlement under this clause is in addition to any other remedy or entitlement to which the Landlord is entitled (including the right to terminate this Lease).

21.9. Repudiation by Tenant

(a) If the Tenant's conduct (whether an act or omission):

(iii) constitutes a repudiation of this Lease or of the Tenant's obligations under this Lease; or

(iv) is a breach of any Lease covenants,

the Tenant covenants to compensate the Landlord for the loss or damage suffered by reason of the repudiation or breach.

(b) The Landlord may recover damages against the Tenant as a result of repudiation or breach of covenant for the loss or damage suffered by the Landlord during the entire term of this Lease.

21.10. Acceptance of Rent

The demand or acceptance by the Landlord of arrears or of any late payment of Rent or a sum in part payment does not constitute a waiver of the essentiality of the Tenant's obligations to pay Rent.

21.11. Acts by the Landlord not to constitute forfeiture

The Landlord's entitlement to recover damages is not affected or limited if any of the following events occur:

(a) the Tenant abandons or vacates the Premises;

(b) the Landlord elects to re-enter the Premises or to terminate the Lease;

(c) the Landlord accepts the Tenant's repudiation; or

(d) the parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of Law.

21.12. Landlord may institute proceedings at any time

The Landlord may at any time institute legal proceedings claiming damages against the Tenant for the entire Term including the period before and after the repudiation, abandonment, termination, acceptance of repudiation or surrender by operation of Law referred to in clause 21.11.

21.13. Mitigation

Nothing in clause 21 operates to relieve the Landlord of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Landlord.

22. Determination of Term

22.1. Tenant to yield up

The Tenant at the expiration or sooner determination of the Term must vacate the Premises and deliver it up in good repair and condition in accordance with the Tenant’s obligations under this Lease and to the satisfaction of the Landlord, acting reasonably.

22.2. Tenant's Improvements

(a) Subject to clause 22.2(b), at the expiry or sooner determination of the Lease, the Landlord will, in its absolute discretion, by written notice inform the Tenant whether:

(i) the Tenant's Improvements and/or property (whether in whole or in part) must be removed from the Premises, whereby the Tenant must continue to pay the Rent, the Outgoings and all other money payable under this Lease until it has removed the Tenant's Improvements and/or property from the Premises; or

(ii) the ownership of the Tenant's Improvements and/or property (whether in whole or in part) reverts to the Landlord without any payment or compensation, whereby the Tenant must not remove or demolish the Tenant's Improvements and instead deliver up the Tenant's Improvements and/or property in good repair and condition in accordance with the Tenant's obligations under this Lease.

(b) Unless the Landlord agrees otherwise, at the expiry or sooner determination of the Lease:

(i) the Tenant must remove from the Premises all Tenant's Improvements set out in Item 19 if any, whereby the Tenant must continue to pay the Rent, the Outgoings and all other money payable under this Lease until it has removed the Tenant's Improvements set out in Item 19 from the Premises; and

(ii) the ownership of the Tenant's Improvements set out in Item 20 reverts to the Landlord without any payment or compensation, whereby the Tenant must not remove or demolish the Tenant's Improvements and instead deliver up the Tenant's Improvements in good repair and condition in accordance with the Tenant's obligations under this Lease.

22.3. Tenant not to cause damage

(a) The Tenant must not cause or contribute to any damage to the Premises in the removal of the Tenant's Improvements.

(b) If the Tenant causes or contributes to any damage to the Premises in the removal of the Tenant's Improvements, the Tenant must make good the damage.

(c) If the Tenant fails to make good, the Landlord may make good and clean the Premises at the Cost of and as agent for the Tenant.

22.4. Failure by Tenant to remove Tenant's Improvements

If the Tenant fails to remove the Tenant's Improvements and property in accordance with clause 22.2 or if the Landlord re-enters the Premises, the Landlord may at its option (without prejudice to any action or other remedy which the Landlord has):

(a) without being guilty of any manner of trespass, remove and store the Tenant's Improvements and property in such manner as the Landlord in its discretion deems fit at the risk and at the Cost of the Tenant;

(b) sell the Tenant's Improvements and property as the attorney of the Tenant and use the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Landlord and pay any residue promptly without interest to the Tenant; or

(c) treat the Tenant's Improvements and property as if the Tenant had abandoned them and they had become the property of the Landlord, and deal with them in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them.

22.5. Tenant to indemnify and pay Landlord's Costs

The Tenant must:

(a) indemnify and keep indemnified the Landlord for the Costs of removal and storage of the Tenant's Improvements and property and also in respect of all Claims which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the Tenant's Improvements and property by reason of the Landlord acting in any manner permitted in clause 22.4; and

(b) pay to the Landlord as a liquidated debt payable on demand any Costs incurred by the Landlord in exercising its rights under clause 22.4, including any excess of Costs over money received in disposing of the Tenant's Improvements under the Landlord's rights contained in clause 22.4.

22.6. Earlier breaches

When this Lease ends it will not prejudice or affect any rights or remedies of the Landlord against the Tenant in respect of any earlier breach by the Tenant of any Lease covenants and conditions.

23. Further Term

If there is a Further Term, then Special Condition 1 applies to this Lease.

24. Overholding

If the Tenant remains in occupation of the Premises without objection by the Landlord after the end of the Term:

(a) the Tenant will be deemed a tenant on the terms of this Lease from month to month but not for any period exceeding that permitted by Law; and

(b) either the Landlord or the Tenant may end the Lease by giving to the other party at any time one month’s Notice.

25. GST

(a) In this clause, expressions set out in italics have the meaning given to those expressions in the GST Act.

(b) An amount payable under this Lease by a party to the other party, in respect of a *supply* which is a *taxable supply*, represents the GST exclusive value of the *supply*.

(c) The party who receives a *taxable supply* under this Lease from the Supplier must, upon receipt of a *tax invoice* from the Supplier, pay GST to the Supplier in addition to the GST exclusive consideration for the *supply*.

(d) Any penalty or interest payable as a result of late payment of any GST payable under this Lease is payable by the party who causes the late payment.

(e) If the Supplier is entitled to an *input tax* credit for any GST recoverable from the other party under this Lease, the amount of GST payable by the other party is to be reduced by the amount of the *input tax* credit which the Supplier has received or is entitled to receive.

26. Personal Properties Security Act

(a) In this clause:

(i) any capitalised words and expressions that are not defined in this Lease will have the meanings ascribed to them in the PPSA;

(ii) **Landlord Personal Property** means any item of Personal Property:

(A) which is owned by the Landlord; or

(B) in which the Landlord has an interest,

that is located on the Premises at any time during the Term;

(iii) **Personal Property** has the meaning given to that term in the PPSA including, without limitation, items of equipment, plant or business inventory, but excludes any fixtures annexed to or forming part of the land;

(iv) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and includes any regulations made under that Act;

(v) **Security Interest** has the meaning given to that term in the PPSA; and

(vi) **Tenant Personal Property** means any item of Personal Property:

(A) which is owned by the Tenant; or

(B) in which the Tenant has an interest,

that is located on the Premises at any time during the Term, or following the expiry or earlier determination of this Lease.

(b) The Landlord may register any actual, impending or likely Security Interest arising from the operation of this Lease. The Tenant must not make any Claim against the Landlord in respect of any such registration, even if the registration is ended under s 151 of the PPSA, or it is determined by a court that registration of the Security Interest should not have occurred.

(c) The Tenant:

(i) must do all things reasonably requested by the Landlord to enable the Landlord to register any of the Landlord's Security Interests arising in relation to this Lease and to enforce the Landlord's rights under this clause and the PPSA;

(ii) must not grant or permit the granting of any Security Interest in the Landlord Personal Property other than with the prior written consent of the Landlord;

(iii) must not grant a Security Interest in respect of any of the Tenant Personal Property to any person other than the Landlord without obtaining the Landlord's prior written consent;

(iv) must pay the Landlord's reasonable Costs in respect of anything done or attempted by the Landlord in the exercise of the Landlord's rights under this clause or the PPSA;

(v) agrees that on the expiry or earlier determination of this Lease, the Tenant must sign (or arrange for the holder of any registered Security Interest to sign) any document that the Landlord reasonably considers necessary to discharge any registered Security Interest in relation to the Tenant Personal Property or the Landlord Personal Property;

(vi) gives the Landlord an irrevocable power of attorney to do anything the Landlord reasonably considers the Tenant must do (and is unable or unwilling to do) under this clause;

(vii) waives the right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement relating to any Security Interest granted to the Landlord by the Tenant; and

(viii) charges in favour of the Landlord all of its title and interest in the Tenant Personal Property as security for the performance of the Tenant's obligations under this Lease, and acknowledges that this charge constitutes the granting of a Security Interest.

(d) The Landlord and the Tenant agree not to disclose information of the kind that can be requested under s 275(1) of the PPSA in relation to any Security Interest held in respect of the Landlord Personal Property or the Tenant Personal Property.

(e) Without limiting any other rights of the Landlord, if this Lease is terminated by the Landlord as a result of the Tenant's breach of the Lease, the Landlord may set off any loss or damage caused by that breach by taking custody of the Tenant Personal Property and may deal with it in any manner the Landlord sees fit.

(f) If the Tenant is a natural person, the Tenant must provide the Landlord with the Tenant's date of birth and a certified copy of a Victorian Driver's Licence (or another form of identification acceptable to the Landlord) to confirm the Tenant's date of birth. The Landlord must keep the Tenant's date of birth and any supporting evidence secure and confidential at all times.

(g) If there is any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail.

27. Security

The Tenant must provide Security in the form and amount as specified in Item 14. If Security is applicable, the Tenant must comply with Special Conditions relating to the Security.

28. Contamination and Environment

28.1. Contamination

(a) The Tenant acknowledges and agrees that:

(i) the Tenant will occupy the Premises in its condition as at the Commencement Date or the date of any earlier occupation by the Tenant and has entered into this Lease on that basis; and

(ii) the Landlord does not represent that the Premises are suitable for the Permitted Use. The Tenant represents and warrants that it has relied on its own enquiries as to the environmental condition and suitability of the Land for the Permitted Use.

(b) The Tenant must:

(i) comply with all applicable Environmental Protection Legislation and Requirements in respect of any Contamination in, on or under the Premises;

(ii) use best endeavours not to cause Contamination on or of the Land and the surrounding Environment;

(iii) not spill or deposit, or carry out any activities on the Land which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Land, drainage or surrounding environment.-

(iv) notify the Landlord if the Tenant finds or if the Tenant is notified of any Contamination is found on or near the Land; and

(v) clean up the Contamination that the Tenant has caused or contributed to in accordance with all applicable Environment Protection Legislation and do everything necessary to minimise harm presented by the Contamination.

28.2. Contamination Release and Indemnity

(a) The Tenant releases and discharges the Landlord and each of the Landlord's Associates from all Claims, arising after the date of occupation under this Lease or any earlier date that the Tenant commenced occupation of the Premises, incurred by the Tenant or the Tenant's Associates, as a result of the presence of Contamination in, on, under or migrating from the Premises, except to the extent that such Claims arise out of any negligence or unlawful act or omission or default of the Landlord or the Landlord's Associates.

(b) In addition to any other indemnity in this Lease, from the Tenant's earliest occupation date, the Tenant indemnifies and keeps indemnified the Landlord and the Landlord’s Associates against all Claims (including, without limitation, any Costs or expenses incurred in relation to any

Requirement issued or made under Environmental Protection Legislation) arising from any Contamination in, on, under or migrating from the Premises that has been caused, contributed to or exacerbated by the Tenant or the Tenant's Associates occupation or use of the Premises.

28.3. Environmental management

The Tenant must comply with the Environmental Management obligations set out in Item 16 and Special Condition 6.

29. Retail Act

29.1. Application

The parties acknowledge that Item 15 sets out whether the Retail Act applies to this Lease.

29.2. Acknowledgements

Where the Retail Act applies, the Tenant acknowledges having received the following documents from the Landlord, at or prior to, the commencement of negotiations in relation to this Lease:

(a) a disclosure statement, in the form required by the Retail Act; and

(b) an information brochure about the Tenant's rights and responsibilities under this Lease and the Retail Act, in the form required by the Retail Act.

30. Landlord's delegation

If the Landlord is a Minister of the Crown in the right of the State of Victoria, then:

(a) the Landlord may appoint any person as the Landlord's delegate to exercise all powers conferred by this Lease on the Landlord expressly, including, without limitation, the power to give any consent or approval under this Lease;

(b) the Landlord may change the appointment at any time; and

(c) unless expressly excluded by any provision of this Lease, any consent, any notice, any consultation or any other thing which under the terms of this Lease is either required to be given, done or performed by the Landlord or is permitted to be given, done or performed by the Landlord may for the purposes of this Lease be properly given, done or performed by a person authorised by the Landlord to act on the Landlord‘s behalf.

31. Disclosure

31.1. General disclosure

Subject to clause 31.2, each party undertakes that it, its employees, agents or representatives will not disclose this Lease and all information flowing from it to a third person without the prior consent of all parties unless the disclosure is:

(a) related to information already within the public domain;

(b) required by Law;

(c) made to a stock exchange or similar regulatory authority the rules of which require the disclosure;

(d) reasonably necessary for the purpose of any administrative or legal proceedings involving the parties;

(e) reasonably necessary for financing purposes;

(f) made to professional advisers of a party bound to treat any information disclosed to them as confidential; or

(g) made to advisers and other experts of that party,

and the disclosure is made on the basis that it is confidential.

31.2. Minister's disclosure

This clause 31.2 applies only where the Landlord is the Minister, whereby:

(a) the Tenant acknowledges that so long as the Landlord is the Minister this Lease may be published in accordance with the State's 'Contract management and contract disclosure policy', in any medium, including, without limitation, the internet, except to the extent that the Landlord is satisfied, using as a guide the criteria provided in the *Freedom of Information Act 1982* (Vic), that the relevant term should be exempt from publication; and

(b) for so long as the Landlord is the Minister, the Landlord may for benchmarking purposes, disclose to any Government Agency (whether of Victoria or any other State or Territory of Australia) the terms and conditions of this Lease without identifying the Rent and Outgoings, provided that prior to making any disclosure, the Landlord notifies the Tenant of the proposed recipient and the extent of the proposed disclosure.

32. Miscellaneous

32.1. Landlord's consent

(a) Unless expressed otherwise, any consent or approval to be granted by the Landlord, and where applicable also the Minister, under this Lease will be at the Landlord's and Minister's absolute discretion.

(b) If the Landlord, and the Minister where the Landlord is not the Minister, fails to grant any such consent or approval within 20 Business Days from the Tenant's request then this is deemed to be a refusal of consent and/or approval.

32.2. Severability

This Lease must be interpreted so that it complies with all Laws applicable in Victoria. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all then it must be severed from the rest of the Lease.

32.3. Entire agreement

This Lease is the entire agreement of the Landlord and Tenant on the subject matter. The only enforceable obligations and liabilities of the Landlord and Tenant in relation to the subject matter are those that arise out of the provisions contained in this Lease. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Lease.

32.4. Negation of warranties

(a) The Tenant acknowledges that it has entered into this Lease solely on the basis of the terms and conditions in this Lease and that no additional warranties, representations or promises have been made by the Landlord or its agents.

(b) Without limiting clause 32.4(a), the Tenant acknowledges that:

(i) no warranties have been given by the Landlord that the Premises are suitable for the Permitted Use; and

(ii) subject to this Lease, the Tenant must do all things required, including, without limitation, obtaining all permits and approvals, to enable the Premises to be used for the Permitted Use.

32.5. Governing law

This Lease is governed by and construed according to Victorian Law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and the courts of appeal from them.

32.6. Moratorium

To the extent permitted by law, the application to this Lease or to any party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any party is excluded and negatived.

32.7. Exclusion of statutory provisions

The covenants, powers and provisions implied in leases by virtue of the *Transfer of Land Act 1958* are expressly negatived.

32.8. Notices

(a) A Notice must:

(i) be in writing;

(ii) signed by or on behalf of the party giving it; and

(A) hand delivered to the address of the Authorised Representative; or

(B) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the Authorised Representative; or

(C) sent by email to the email address of the Authorised Representative.

(b) A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the Authorised Representative:

(i) in the case of hand delivery, upon delivery at the address of the Authorised Representative;

(ii) in the case of post, on the sixth (eleventh if posted to or from a place outside Australia) Business Day after posting; and

(iii) in the case of email, at the time of receipt as specified in s 13A of the *Electronic Transactions (Victoria) Act 2000*.

(c) A party:

(i) may, from time to time, nominate a replacement Authorised Representative by Notice given in writing to the other party; and

(ii) must give Notice in writing to the other party within seven days of any change to the details of its Authorised Representative set out in Item 1 or Item 2 as applicable.

32.9. Guarantee and indemnity

If Item 17 specifies that a guarantee and indemnity is required, the Tenant must on or before the Commencement Date, procure execution by the guarantors (as directed by the Landlord) of a deed of guarantee and indemnity in the form of deed at Attachment 2 and deliver an original executed deed of guarantee and indemnity to the Minister. This Lease will not take effect until the deed of guarantee and indemnity has been properly executed by the guarantors and delivered to the Minister.

32.10. Set-Off

If the Tenant defaults in the payment of the Rent, or any other moneys payable under this Lease to the Landlord or any authority, the Landlord may set-off that amount against any money which may be payable by the Landlord to the Tenant on any account. Any set-off will not relieve the Tenant from its default.

32.11. Counterparts

This Lease may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

32.12. Further assurance

Each party must do, sign, execute and deliver and must procure that each of its Associates does, signs, executes and delivers, all deeds, documents, instruments

and acts reasonably required of it or them by Notice from another party to effectively carry out their obligations under this Lease.

32.13. Special Conditions

Any Special Condition set out in Schedule 2 or Schedule 3:

(a) binds the parties; and

(b) overrides any other provision of this Lease to the extent of any inconsistency.

Schedule 2 Special Conditions

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Schedule 2 Special Conditions

1. Further Term

1.1 Option to renew

Unless a Further Term(s) is provided in Item 13, there is no option to renew this Lease.

1.2 Notice of intention to renew

Where Item 13 provides for a Further Term:

(a) If the Tenant wishes to renew the Lease for a Further Term then the Tenant must give the Landlord a Notice of intention to renew the Lease not more than twelve (12) months or less than six (6) months before the Term expires (**Notice of Intention to Renew**).

(b) If the Retail Act does not apply or the Lease does not provide a mechanism for setting the initial annual rent from the commencement of the Further Term, then:

(i) within 2 months of receiving the Notice of Intention to Renew, the Landlord must give the Tenant a Notice specifying the current market value of the Further Term determined by the Valuer-General (where applicable), or a qualified valuer, which will be the Rent from the commencement of the Further Term (the **Further Term Notice**). The Valuer-General (where applicable), or a qualified valuer, will be instructed to disregard the following when determining the current market value of the Further Term:

(A) the value of any improvements on the Land regardless of who owns those improvements; and

(B) the value of any Tenant's Improvements and goodwill of the Tenant's business.

(c) Within one month of receiving the Further Term Notice, if the Tenant wishes to renew the Lease for the Further Term at a rent which will be the current market valuation set out in the Further Term Notice, the Tenant must give the Landlord a Notice:

(i) stating that the Tenant wishes to renew the Lease for the Further Term; and

(ii) accepting the current market value set out in the Further Term Notice (the Renewal Notice).

1.3 Renewal

Where Item 13 provides for a Further Term, the Landlord must grant to the Tenant and the Tenant must take a new lease for the Further Term if:

(a) the Tenant has given the Renewal Notice on time;

(b) there is no unremedied default of which the Landlord has given the Tenant written Notice;

(c) the Tenant has not persistently defaulted under this Lease throughout its Term and the Landlord has not given the Tenant notices of the defaults; and

(d) if the Retail Act does not apply, the Tenant does not default under this Lease after giving the Landlord the Renewal Notice.

1.4 Terms of new lease

The new lease will:

(a) commence on the day after the Term expires;

(b) if the Retail Act applies and the Retail Act provides a mechanism for setting the initial annual rent from the commencement of the Further Term, that mechanism will be used to set the initial annual rent from the commencement of the Further Term;

(c) if the Retail Act does not apply or does not provide a mechanism for setting the initial annual rent from the commencement of the Further Term, the initial annual rent will be the current market value set out in the Further Term Notice; and

(d) be on the terms and conditions contained in this Lease except with a commencement date being the day after this Lease expires, having a starting Rent in accordance with this Lease and the number of further options will progressively reduce with no option for renewal after the last option for a Further Term has been exercised.

1.5 Execution of extension of Lease

The Landlord and the Tenant at the option of the Landlord must execute either a new lease, an extension of lease or renewal of lease to be prepared by the Landlord at the Tenant's Cost, unless the Retail Act applies in which case each party will bear its own costs.

2. Rent review mechanisms

2.1 Definitions

In these Special Conditions:

(a) **CPI Review** means as set out in Item 9.

(b) **CPI Review Date** means as set out in Item 9.

(c) **Fixed Percentage** means the fixed percentage, if any, set out in Item 9.

(d) **Fixed Percentage Review** means as set out in Item 9.

(e) **Fixed Percentage Review Date** means as set out in Item 9.

(f) **Market Review** means as set out in Item 9.

(g) **Market Review Date** means as set out in Item 9.

(h) **Method of Market Rent Review** means the method of determination set out in Special Condition 3.2.

(i) **Review Date** means the review date(s), if any, specified in Item 9.

(j) **Review Mechanism** means the rent review mechanism or mechanisms (which, without limitation, may be a Market Review, CPI Review or Fixed Percentage Review), if any, set out in Item 9.

2.2 Date and mechanism

The Rent will be reviewed on the Review Date in accordance with the Review Mechanism.

3. Market Rent review

3.1 Review of Rent

(a) The Landlord may review the Rent to a Market Review on each Market Review Date in accordance with this Special Condition 3.1 and the Method of Market Rent Review.

(b) If the Retail Act applies and the Retail Act provides a mechanism for market rent review, the review will take place in accordance with the provisions of the Retail Act and Special Conditions 3.1(b) to 3.1(m) (inclusive) will not apply.

(c) If the Retail Act does not apply or does not provide a mechanism for market rent review, Special Conditions 3.1(c) to 3.1(n) (inclusive) and the Method of Determination shall apply.

(d) No later than six (6) months before the Market Review Date the Tenant must provide the Landlord with its financial profit and/or loss statement for its operation on the Premises dating back no more than the past 3 years (including the current year). For the avoidance of doubt, the Landlord is under no obligation to factor in the Tenant's financial profit and/or loss statements in determining the new rental.

(e) No later than six (6) months before the Market Review Date the Tenant must, provide the Landlord with information in writing of its provision of public benefits and commercial activities at the Premises.

(f) Not earlier than three months before the Market Review Date and not later than 60 days after the Market Review Date the Landlord must give the Tenant Notice of the new rental it proposes be paid by the Tenant during that period or part thereof.

(g) Time shall not be of the essence in respect of the Landlord’s rent review Notice and any delay by the Landlord in giving Notice will not affect the Landlord’s rights.

(h) Within 28 days of being notified in writing of the proposed new rent the Tenant may give to the Landlord written Notice of objection to the proposed new rent (**Notice of Objection Period**) and within a further 30 days from the Notice of objection supply the Landlord with a rent valuation

from a qualified valuer (**Tenant Rent Valuation Period**). If no Notice of objection is given in the Notice of Objection Period or if Notice is given and no rent valuation is supplied within the Tenant Rent Valuation Period the new rent will be the new rent as proposed in the Landlord's Notice.

(i) Within 10 Business Days of the Tenant providing the Landlord with its rent valuation, the parties must enter into good faith discussions in an attempt to agree on a new rent.

(j) If the parties have not resolved the dispute within 20 Business Days of the date the Tenant provided the Landlord with its rent valuation, either party may give Notice to the other of its election to refer the dispute to a conference of the Landlord's and Tenant's valuers (**Notice to Refer to Conference**).

(k) If a conference of valuers has either not been convened or has been convened but failed to result in agreement on the rent within 20 Business Days of the date of issue of the Notice to Refer to Conference either party may give Notice to the other of its election to refer the dispute for determination by a valuer nominated by the President for the time being of the Australian Property Institute (the **nominated valuer**) who in making a determination, must accept representations from either Party received within twenty one days of the appointment.

(l) The decision of the nominated valuer will be final and binding and the nominated valuer's Costs and fees must be paid by the parties equally.

(m) Until the new rent is agreed or determined the Tenant must pay Rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.

(n) After the new rent is determined the Tenant must pay the difference if any between the amount of the new rent paid since the date fixed for review.

3.2 Method of Market Rent Review

In determining a new rent for the Premises the nominated valuer:

(a) must as nearly as possible determine the open market rent value on the date when that rent is to apply for the Premises having regard to the following matters:

(i) act as an expert and not as an arbitrator and his decision will be final and binding on the parties;

(ii) there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;

(iii) the Landlord and the Tenant are well acquainted with the Premises and aware of any factors which might affect its value;

(iv) the length of the Term and the period between rent reviews;

(v) the terms and obligations of the Lease;

(vi) the Permitted Use;

(vii) the rental of comparable premises; and

(viii) rents paid to the Tenant under any sub leases or licences,

(b) but must disregard:

(i) any Tenants Improvements;

(ii) the goodwill of the Tenant's business.

4. CPI review of Rent

4.1 Definitions

In this Special Condition 4:

(a) **Current CPI** means the CPI number for the quarter ending immediately before the CPI Review Date.

(b) **CPI** means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, any other index that represents the rise in the cost of living in Melbourne, as the Landlord reasonably determines.

(c) **Previous CPI** means the CPI number for the quarter ending immediately before the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later).

4.2 Review of Rent

(a) Subject to the Retail Act, if a CPI Review Date is specified in Item 9, the Rent on the CPI Review Date will be adjusted to an amount equal to the Rent payable immediately before the CPI Review Date multiplied by the Current CPI and added to the Rent payable immediately before the CPI Review Date.

(b) On the next due date for the payment of the Rent, after the Tenant receives Notice of the adjusted Rent from the Landlord, the Landlord and the Tenant must make any necessary adjustment to apply on and from the CPI Review Date.

5. Fixed Percentage review

If a Fixed Percentage Review Date is specified in Item 9, the Rent on the Fixed Percentage Review Date will be increased by three percent (3%) the Fixed Percentage Review except for a Market Review Date.

6. Environmental Management

6.1 Definitions

In this Special Condition 6:

Schedule 2 Special Conditions

(a) **Environmental Consultant** means an independent person who is an expert, and has at least five years practical experience, in the assessment, management and remediation of Contamination in, on, under or migrating from land.

(b) **Environmental Improvement Plan** means an environmental improvement plan outlining the nature, cause and extent of Contamination and the recommendations for managing and cleaning up or remediating Contamination on or emanating from the Land, prepared by an Environmental Consultant.

(c) **Environmental Liability** means any Claim, action, obligation, Costs, fees and all other losses, damages, liabilities or harm, howsoever occasioned, brought against, incurred or suffered by the Landlord or the Tenant under applicable Environmental Protection Legislation, including without limitation any Cost to the Landlord or the Tenant in connection with the carrying out of any works (including without limitation investigation, clean up and remediation works) by the Landlord's or Tenant's employees and the administration of carrying out of the works in connection with or arising from ownership, occupation or use of the Premises or the Land by any party to this Lease.

(d) **Environmental Management Plan** means a written report on the Environment of the Premises which includes but is not limited to:

(i) an overview of the Contamination management methods including but not limited to management zones and activities that the Tenant must employ to prevent and manage Contamination and the Environment of the Premises;

(ii) a schedule indicating timelines of activities to prevent and manage Contamination and changes to the Environment of the Premises;

(iii) allocation of roles and responsibilities, including in relation to an environmental audit process to ensure that activities to prevent and manage Contamination and changes to the Environment of the Premises are satisfactorily carried out;

(iv) a reporting regime for informing the Landlord of Contamination and changes to the Environment of the Premises; and

(v) an overview of the management of and/or mitigation strategies for Contamination and the Environment of the Premises (including but not limited to details of native vegetation management, reinstatement, rehabilitation, waste management and Environmental incidents and emergency management at the Premises).

(e) **Environmental Notice** means any written notice, order, statement or other direction that pertains to the Environment and is issued by a Government Agency to a party to this Lease.

(f) **Environmental Report** means a report prepared by an Environmental Consultant that sets out the condition of the Premises with respect to

Contamination and the Environment in, on, under and migrating from the Premises as at the Commencement Date.

6.2 Environmental Report

(a) If an Environmental Report is specified in Item 16, prior to the Commencement Date, the Tenant must procure and deliver to the Landlord an Environmental Report at the Tenant's Cost. The Environmental Report must be undertaken in accordance with any applicable Environmental Protection Legislation.

(b) The Tenant must submit the Environmental Report to the Landlord for approval. If the Landlord initially declines to grant approval, the Tenant must re-submit a revised Environmental Report for the Landlord's consideration, multiple times if necessary until approval occurs.

(c) Subject to Special Condition 6.2(d), the parties accept that the Environmental Report accurately reflects the condition of the Premises with respect to Contamination and the Environment in, on, under and migrating from the Premises at the date of the Environmental Report and will provide a benchmark for the level of Contamination and condition of the Environment at the Premises on the Commencement Date.

(d) The Landlord may reject the Environmental Report if the Landlord is not satisfied, acting reasonably, that the Environmental Report accurately states the current condition of the Premises.

6.3 Environmental Management Plan

(a) If an Environmental Management Plan is specified in Item 16, then if requested by the landlord, prior to the Commencement Date, the Tenant must prepare the Environmental Management Plan.

(b) If requested by the Landlord, the Tenant must submit the Environmental Management Plan to the Landlord for approval. If the Landlord initially declines to grant approval, the Tenant must re-submit a revised Environmental Management Plan for the Landlord's consideration, multiple times if necessary until approval occurs.

(c) Upon the Landlord's request, the Tenant must immediately provide to the Landlord a copy of the Environmental Management Plan.

(d) The Tenant's operation, use and development of the Premises must be conducted in accordance with the approved Environmental Management Plan during the Term.

(e) The Landlord may require the Tenant to procure an Environmental Management Plan during the Term if the Landlord is satisfied, acting reasonably, that the Tenant's use or occupation of the Land has caused or is likely to cause Contamination or another adverse impact on the Environment.

6.4 Ongoing obligation

(a) If any Contamination, not otherwise disclosed within the Environmental Report procured by the Tenant under Special Condition 6.2(a), is found in, on, under or migrating from the Premises during the Term or Further Term or at the expiry or sooner determination of this Lease, the Tenant must:

(i) give the Landlord written Notice of the existence of the Contamination within 5 Business Days of becoming aware of the Contamination;

(ii) at its Cost, promptly engage an Environmental Consultant and provide the Landlord and the Environmental Consultant with access to the Premises as reasonably required to arrange or prepare an Environmental Improvement Plan as soon as practicable following the Landlord's receipt of the Tenant's notice under Special Condition 6.4(a)(i);

(iii) promptly comply with all recommendations contained in the Environmental Improvement Plan prepared pursuant to Special Condition 6.4(a)(ii) for any Contamination the Environmental Consultant determines reasonably has been caused or contributed to by the Tenant or the Tenant's Associates or that may be exacerbated by the Tenant or the Tenant's Associates proposed use or occupation of the Land; and

(iv) immediately suspend the Permitted Use on receipt of the Landlord's Notice under Special Condition 6.4(h).

(b) The Tenant's obligations under this Special Condition 6.4 apply whether or not the Tenant has obtained an Environment Report under Special Condition 6.2(a).

(c) In addition to, and without limiting, any other indemnity in this Lease, if a Government Agency issues an Environmental Notice in relation to any Contamination or Environmental Liability regarding the Land, Premises, surrounding land or area to the Land and/or the Permitted Use, the Tenant agrees that:

(i) If the environmental Notice was issued to the Tenant:

(A) The Tenant must inform the Landlord of that Environmental Notice within 5 Business Days of receipt and provide a copy of it to the Landlord;

(B) The Landlord has the right to comment on the Environmental Notice requirements and be involved in all discussions regarding the Environmental Notice, including participating in all meetings with any Government Agency and Environmental Consultant;

(C) the Tenant must keep the Landlord informed about all matters concerning the Environmental Notice, including any action, stop-works or works required by the Tenant, the Government Agency and Environmental Consultant

to comply with and rectify the Environmental Notice and any steps taken or proposed to be taken by the Tenant to rectify the Environmental Notice;

(ii) the Tenant must participate in all meetings with any Government Agency and Environment Consultant regarding the Environmental Notice if requested by the Landlord; and

(iii) the Tenant:

(A) is solely liable for any Environmental Liability; and

(B) must at its Cost do all things required to comply with all of the requirements in the Environmental Notice, to the standard applicable under the Environmental Notice and this Lease in respect of any Contamination, that the Government Agency or the Environmental Consultant (who prepares the Environmental Improvement Plan) determines acting reasonably, that is the subject of the Environmental Notice has been caused or contributed to by the Tenant or the Tenant's Associates occupation or use of the Premises after the Tenant's earliest occupation date.

(d) Despite any other provisions of this Special Condition 6, the Landlord reserves the right to require the Tenant to reinstate the Premises, the Land and/or any adjoining or surrounding land or Environment (or any part thereof), impacted by any Contamination that has migrated from the Premises and which has resulted from the Tenant's use and occupation of the Premises, to the condition detailed within the Environmental Report, where the Tenant is required by this Lease to obtain an Environmental Report. The Tenant must carry out all works to the standard in the Environmental Report.

(e) If the Tenant undertakes an environmental assessment or remediation process at the Premises or on the Land, voluntarily or in accordance with the terms of this Lease, the Tenant agrees that:

(i) it must inform the Landlord of its intention to undertake the environmental assessment or remediation process prior to work commencing; and

(ii) the Landlord will have the right to comment on and be involved in the proposed process, including reasonably determining the extent of the proposed clean up by reference to the Environmental Report.

(f) The Tenant agrees that any environmental reports it prepares or has the Environmental Consultant prepare for the Premises or Land, including clean up and remediation reports, audit reports or certificates and statements of audits, must:

(i) be provided to the Landlord 15 Business Days after the Tenant receives each relevant report including clean up and remediation reports, audit reports or certificates and statements of audit; and

(ii) allow the Landlord to rely upon those reports.

(g) Provided that the Landlord gives the Tenant not less than 15 Business Days prior written Notice, the Tenant must provide the Landlord with reasonable access to the Tenant's relevant records and evidence of compliance with the provisions of this Special Condition 6 as and when the Landlord reasonably requests.

(h) If the Environmental Consultant determines that the Tenant or a Tenant's Associates' occupation or use of the Premises has caused or contributed to, or may exacerbate, any Contamination, the Landlord may, in the Landlord's absolute discretion, by written Notice, require the Tenant to suspend the Permitted Use, in whole or in part, for the period set out in the Notice as determined by the Landlord (**Suspension Period**) in accordance with the Environmental Improvement Plan and otherwise in the Landlord's absolute discretion. For the avoidance of doubt, the Tenant:

(i) must continue to comply with this Lease during the Suspension Period; and

(ii) will have no right to abatement of Rent or Outgoings during the Suspension Period.

(i) The Tenant's breach of Special Condition 6.4(a)(iii), Special Condition 6.4(a)(iv) or Special Condition 6.4(h) is an event of default for the purposes of clause 21.2 of this Lease.

6.5 Exit obligation

(a) If an Environmental Report is specified in Item 16, then when the Tenant vacates the Premises at expiry or the sooner determination of the Term or any Further Term, the Tenant must obtain a further Environmental Report ("**Exit Environmental Report**") at the Tenant's Cost from an Environmental Consultant that will be undertaken in accordance with the methodology adopted in the Environmental Report and otherwise in accordance with any applicable Environmental Protection Legislation.

(b) If a variation is identified between the level of Contamination detailed within the Environmental Report and the Exit Environmental Report, the Landlord reserves the right to require the Tenant at its Cost to reinstate the whole or any part of the Premises, the Land and/or any adjoining or surrounding land or Environment, impacted by any Contamination that has migrated from the Premises to the condition detailed within the Environmental Report, save that the Tenant's obligation under this Special Condition 6.5(b) does not apply unless the Environmental Consultant acting reasonably concludes that the additional Contamination has been caused or contributed to by the Tenant or the Tenant's Associates use and occupation of the Premises.

6.6 Notices

Without limiting any other obligations under this Lease, the Tenant must at all times comply with all Notices, orders and requirements reasonably required by the Landlord and of any Government Agency in relation to the storage or handling of substances that are potentially hazardous to the Environment.

6.7 No merger

The rights and obligations of the parties under this Special Condition 6 survive the expiry or sooner determination of this Lease.

6.8 Dispute Resolution

(a) If any dispute arises under Special Conditions 6.2 to 6.5 between the Landlord and the Tenant, either party may give a Dispute Notice, referring the dispute for expert determination.

(b) If a dispute is referred for expert determination, appointment of the Expert will be requested by the party giving the Dispute Notice.

(c) The Expert will:

(i) fix and inform each party of a time for the parties to present their respective positions to the Expert. Unless otherwise agreed between the parties, the parties must present their respective positions to the Expert no later than 5 Business Days after the Expert's appointment;

(ii) make a determination or finding in respect of the dispute within 10 Business Days after the parties have presented their respective positions. Any determination of a dispute by the Expert will include a determination as to the award of costs and will be final and binding on all parties; and

(iii) act as an expert and not an arbitrator.

(d) The parties will continue to perform their respective obligations under this Lease pending the resolution of a dispute under this Special Condition.

(e) The Landlord and Tenant will not oppose any application for interlocutory relief pending resolution of a dispute by the Expert under this Special Condition.

(f) In this Special Condition:

(i) **Dispute Notice** means a notice in writing given by either party to the other setting out details of a dispute that has arisen in relation to this Lease between the Landlord and Tenant; and

(ii) **Expert** means an expert appointed by the President of the Law Institute of Victoria from time to time.

7. Electronic Execution

(a) The parties consent to execution of this Lease (and any Notice given under this Lease) by any signatory by an electronic signature.

(b) Where this Lease (or a Notice given under this Lease) is electronically signed by a signatory, the signatory warrants and agrees that the electronic signature has been used to identify the person signing and to

indicate that the signatory or the relevant party (as the case may be) intends to be bound by the electronic signature.

(c) This Lease may be electronically signed in any number of counterparts which together will constitute the one document.

(d) Both parties consent to the exchange of counterparts of this Lease by delivery by email or such other electronic means as may be agreed in writing.

(e) Both parties must upon request promptly deliver a physical counterpart of this Lease with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this Lease.

Lease

The Landlord as named in Item 1 of Schedule 1

and

The Tenant as named in Item 2 of Schedule 1

DRAFT

DEPARTMENT OF ENERGY, ENVIRONMENT AND CLIMATE ACTION

Version Control 25 March 2025

Recitals

This Lease is made on 20_____

between

the Landlord named in Item 1

and

the Tenant named in Item 2

Recitals

A. The Land is as described in Item 4.

B. The Landlord has been appointed by the Minister as the Committee of Management of the Land under s 14 of the Act and has power to enter into this Lease under the Applicable Leasing Power.

C. The Landlord has agreed to grant to the Tenant a lease to use the Premises in accordance with the terms and conditions set out in this document.

Operative Provisions

See Part 1

Landlord reference: AG1460 Historical Society

Signing Page

Executed as a deed.

Landlord

Committee of Management - Not incorporated

SIGNED, SEALED AND DELIVERED for and on behalf of **MANSFIELD SHIRE COUNCIL** by Chief Executive Officer, Delegate in the presence of:

Signature of Witness	Signature of Delegate

Tenant

Incorporated association - Without Common Seal

SIGNED, SEALED AND DELIVERED for and on behalf of **Mansfield Historical Society Incorporated** with the authority of the Chairman in the presence of:

Signature of Witness	Signature of Authorised Signatory
Name of Witness (print)	Name and title of Authorised Signatory (print)

MINISTERIAL ATTESTATION

Section 17D Crown Land (Reserves) Act 1978

Under Section 17D of the *Crown Land (Reserves) Act 1978* I,_____, in the Department of Energy, Environment and Climate Action as delegate of the Minister for Environment hereby:

Consent to the grant of this lease;

Approve the covenants, exceptions, reservations and conditions contained therein;

Am satisfied that the purpose for which the lease is being granted is not detrimental to the purpose for which the land is reserved.

---------- Signature and name of delegate

Landlord reference: AG1460 Historical Society

Schedule 2 Special Conditions

1.	**Landlord**	Mansfield Shire Council of 33 Highett Street, Mansfield VIC 3722 Authorised Representative: Strategic Property Program Manager Address: 33 Highett Street, Mansfield VIC 3722 Telephone: 03 5775 8555 Email: property@mansfield.vic.gov.au
2.	**Tenant**	Mansfield Historical Society Incorporated of 175 High Street, Mansfield VIC 3722 Authorised Representative: Secretary Address: 175 High Street, Mansfield VIC 3722 Telephone: 0407 178 526 Email: secretary@mansfieldhs.org.au
3.	**Act**	The relevant legislation is the *Crown Land (Reserves) Act 1978.*
	Applicable Leasing Power	The Landlord has power to grant this Lease under section Section 17D of the *Crown Land (Reserves) Act 1978.*
4.	**Land**	The Land is Crown land reserved under s 4 of the *Crown Land (Reserves) Act 1978.* The land in Crown Allotment 59A Parish of Mansfield and temporarily reserved pursuant to an Order in Council published on 20 July 1993 published in the Government Gazette 22 July 1993 at page 1965 for Public Purposes (Preservation of relics and buildings, recreation, education and tourism).
5.	**Premises**	That part of the Land shown on Premises Plan as the 'Premises' and the improvements, if any, erected on that part of the Land, including without limitation the improvements existing at the Commencement Date or that are subsequently installed or constructed on that part of the Land under this Lease, and situated at 175 High Street, Mansfield.
6.	**Term**	Ten (10) years
7.	**Commencement Date**	1 November 2026 (TBC)
8.	**Rent**	$1 per annum (excluding GST), payable
9.	**Review Date and Review Mechanism**	These Review Mechanisms and Review Dates marked with “X” below apply to this Lease: ☐ Review Mechanism to market review (**Market Review**

Landlord reference: AG1460 Historical Society

Schedule 2 Special Conditions

		Date(s) for this Market Review (**Market Review Date**): Every six years from the Commencement Date.
		☐ Review Mechanism to CPI review (**CPI Review**)
		Date(s) for this CPI Review (**CPI Review Date**): Annually from the Commencement Date except when a Market Review applies.
		☐ Review Mechanism to fixed percentage review (**Fixed Percentage Review**)
		Date(s) for this Fixed Percentage Review (**Fixed Percentage Review Date**): Annually from the Commencement Date except when a Market Review applies.
		Fixed Percentage: three percent (3%)
10.	**Permitted Use**	Historical museum operations, preservation and display of heritage assets, tourism and educational activities, community use, volunteer activities, exhibitions, meetings, and the operation of a tea room or café ancillary to and supportive of the historical and museum use of the Premises.
11.	**Maintenance and Repair**	Except for fair wear and tear and subject to the Retail Act, the Tenant must keep the Premises and Tenant's Improvements in good order and repair.
12.	**Insurance**	The insurance that applies is as marked "X" below:
		☒ Public liability for the amount of $20 million for a single event
		☐ Industrial special risks
		☐ Other
13.	**Further Term**	One further term of Ten (10) years
14.	**Security**	The security that applies is as marked "X" below:
		☐ Security Deposit for the amount of
		☐ Bank Guarantee for the amount of
		☒ Not applicable
15.	**Retail Lease**	Whether the Retail Act applies is as marked "X" below:
		☐ The Retail Act applies because the Premises are retail premises within the meaning of the Retail Act.

Schedule 2 Special Conditions

☒ The Retail Act does not apply because:

Non-retail: the Lease is not wholly or predominantly for the sale or hire goods by retail or the retail provision of services.

15 years and substantial works obligations: the Lease Term is for 15 years or longer (excluding any Further Terms) **and** this Lease imposes obligations on the Tenant or any other person as marked 'x':

☐ to carry out substantial work on the Premises that involves the building, installation, repair or maintenance of the structure of, fixtures in, plant or equipment at, or utility appliances, fittings or fixtures, at the Premises; or

☐ to pay any substantial amount of the cost for any of the matters listed immediately above.

Community or Charitable purposes: the Rent payable is $10,000 per annum or less **and** the Premises is used wholly or predominantly for any one or more of the following purposes as marked 'x':

☒ public or municipal purposes;

☐ charitable purposes;

☐ education and training of persons to be ministers of religion;

☐ as a residence of a practising minister of religion;

☐ as a club or memorial to persons who have served in a war specified under the *Veterans Act 2005*;

☐ for the Returned Services League of Australia;

☐ for the Air Force Association (Victoria Division); or

☐ for the Australian Legion of Ex-Servicemen and Women (Victorian Branch).

Schedule 2 Special Conditions

Community, cultural, sporting, or recreational purposes: the Rent payable is $10,000 per annum or less **and** the Premises are used wholly or predominantly by a Tenant that:

- exists for the purposes of, **and** uses the Premises for, providing or promoting community, cultural, sporting, recreational or similar facilities or activities or objectives; **and**
- applies its profits in promoting its objects; **and**
- prohibits the payment of any dividend or other amounts to its members.

16.	**Environmental Management**	The Environmental Management requirements are as marked "X" below ☐ Environmental Report ☐ Environmental Management Plan ☒ Not applicable
17.	**Guarantee and Indemnity**	☐ A guarantee and indemnity is required ☒ Not applicable
18.	**Tenant's Improvements to which clause 22.2(a) applies** **WHETHER IMPROVEMENTS REVERT OR NOT IS DISCRETIONARY**	☒ Not applicable (instead will rely on definition of Tenant's Improvements where not listed in Items 19 and 20) ☐ The Tenant's Improvements include (but are not limited to): •
19.	**Tenant's Improvements to which clause 22.2(b)(i) applies** **IMPROVEMENTS NOT TO REVERT**	☒ Not applicable ☐ Tenant's Improvements to which clause 22.2 (b)(i) applies:
20.	**Tenant's Improvements to which clause 22.2(b)(ii) applies**	☒ Not applicable ☐ Tenant's Improvements to which clause 22.2(b)(ii) applies:

Schedule 2 Special Conditions

1. Heritage Protection (Station Precinct)

The Tenant acknowledges that the Premises comprise a heritage building known as the Station Precinct. The Tenant must not undertake any works, alterations, additions, demolitions or installations affecting the heritage fabric, character or significance of the Premises without the prior written consent of the Landlord and all required approvals from relevant authorities. The Tenant must use best endeavours to preserve and protect the heritage values of the Premises and must comply with any heritage management requirements, reports or directions applicable to the Premises.

2. Planning Permit Responsibility

The Lessee acknowledges that any change to the use of the Premises, buildings or land, or any proposed works, development or improvements, may require planning, building or other statutory approvals. The Lessee is solely responsible for obtaining and maintaining all necessary approvals and must not commence any such activity until all approvals have been obtained.

3. Utilities Rates and Charges

(a) The Tenant must pay 100% of all electricity charges incurred in connection with the Premises and must ensure all such accounts are paid by the due date.

(b) The Landlord will remain responsible for and pay 100% of water charges associated with the Premises.

(c) Pursuant to section 154 of the Local Government Act 1989 (Vic), the Premises are classified as land used exclusively for charitable purposes and are exempt from municipal rates. Accordingly, the Tenant will not be liable for the payment of municipal rates during the Term, provided the charitable use of the Premises continues.

(d) If at any time the Premises cease to qualify for rate exemption as a result of the Tenant's use or occupation of the Premises, the Tenant must immediately notify the Landlord and will be responsible for any municipal rates or charges imposed as a consequence of that change in use.

4. Funding Responsibility for Improvements

The Lessee is responsible for securing and funding all costs associated with proposed alterations, improvements, installations, fit out works or other modifications to the Premises. Council is under no obligation to contribute towards any such costs.

5. Early Termination by Lessee

The Lessee may request to surrender this Lease before the Expiry Date by providing not less than six (6) months written notice to Council.

Council may, in its absolute discretion, agree to accept the surrender of the Lease on such conditions as it considers appropriate.

As a condition of any early surrender, the Lessee must:

a) pay all Rent, outgoings and other monies owing under the Lease up to the surrender date;

Schedule 2 Special Conditions

b) remove any property, fixtures, fittings or improvements that Council requires to be removed;

c) make good any damage and return the Premises in accordance with the Lessee's obligations under the Lease;

d) pay any reasonable costs incurred by Council arising from the surrender of the Lease.

The Lease will not terminate until Council has confirmed acceptance of the surrender in writing.

5. Community Use

The Lessee must use the Premises primarily for museum operations, preservation and display of heritage assets, tourism and educational activities, community use, volunteer activities, exhibitions, meetings, and the operation of a tea room or café ancillary to and supportive of the historical and museum use of the Premises that provide a public benefit to the Mansfield community.

6. Assignment, Transfer and Approved Café Subletting

6.1 Personal Nature of Lease

This Lease is personal to the Lessee. Except as provided in clause 6.2, the Lessee must not:

(a) assign, transfer, mortgage, charge or otherwise deal with its interest under this Lease; or

(b) sublet, licence or permit occupation of any part of the Leased Area by any other person, without the prior written consent of Council.

6.2 Tea Rooms / Café Operations

Despite clause 16.1, Council may, in its absolute discretion, grant written consent for the Lessee to engage a third party to operate food and beverage services within the designated tea rooms or café area of the Leased Area.

Any approval granted under this clause:

(a) is limited solely to the operation of a tea room, café or similar visitor refreshment service;

(b) must remain ancillary and complementary to the historical, museum, tourism and community purposes of the Premises;

(c) does not permit the third party to occupy, manage or control museum areas, exhibition spaces, railway carriages, historical collections or any other part of the Premises not expressly approved by Council;

(d) must comply with all relevant legislation, public health requirements, food safety regulations and Crown land requirements;

(e) must not alter the permitted use of the Premises or the public purpose of the Crown land;

(f) does not release the Lessee from any obligation, responsibility or liability under this Lease;

(g) may be subject to conditions imposed by Council acting reasonably; and

Schedule 2 Special Conditions

(h) may be revoked by Council if the approved use ceases to be consistent with the community, historical or public purposes of the Premises.

(i) prior to commencing operations, the approved café operator must provide evidence of all insurances reasonably required by Council, including public liability insurance, product liability insurance and workers compensation insurance (where applicable); and
(j) the approved café operator must maintain those insurances for the duration of its operation and provide certificates of currency to Council upon request.

6.3 Responsibility for Approved Operators

The Lessee remains responsible for:

(a) the actions and omissions of any approved café operator;

(b) ensuring compliance with the requirements of this Lease;

(c) maintenance of the café area unless otherwise agreed in writing by Council; and

(d) ensuring any income derived from the approved café operation is applied to supporting the objects, activities, maintenance and operation of the Mansfield Historical Society and the Mansfield Historical Museum.

Any approved café operator must:

(a) hold all food registrations and approvals required by law;

(b) comply with the Food Act 1984 (Vic);

(c) comply with all public health requirements;

(d) maintain public liability and product liability insurance of not less than $20 million;

(e) maintain workers compensation insurance where required;

(f) comply with all directions issued by Council relating to food safety and public health.

6.4 Insurance Requirements for Approved Café Operators

Where Council approves a third-party operator under clause 16.2, the Lessee must ensure that the operator maintains, at its own cost:

(a) Public Liability Insurance for an amount not less than $20 million for any one occurrence;

(b) Product Liability Insurance for an amount not less than $20 million for any one occurrence relating to the supply of food, beverages or other goods;

(c) Workers Compensation Insurance as required by law;

(d) Insurance covering the operator's plant, equipment, stock and contents;

(e) Any additional insurance reasonably required by Council having regard to the nature of the approved operation.

The policies must note the interest of Mansfield Shire Council where appropriate and be issued by an insurer authorised to operate in Australia.

The Lessee must provide Council with copies of certificates of currency before the operator commences occupation and at any time upon request.

6.5 No Exclusive Rights

Any approval granted under this clause does not create a tenancy, proprietary interest or exclusive right in favour of the café operator as against Council.

Landlord reference: AG1460 Historical Society

Schedule 2 Special Conditions

7. Gender Equality / Fair Access

The Lessee must comply with the Gender Equality Act 2020 (Vic), Council's Gender Equality Policy and Fair Access Policy and ensure equitable access and participation opportunities for all genders throughout the Term.

8. Child Safety Requirements

The Lessee must comply with the Child Wellbeing and Safety Act 2005 (Vic), the Victorian Child Safe Standards and Council's Child Safety and Wellbeing Policy, including maintaining appropriate Working with Children Checks for personnel engaged in child-related activities.

9. CCTV / Surveillance Devices

The Lessee must not install surveillance cameras, recording equipment or security monitoring devices without Council's prior written consent. Any approved system must comply with privacy legislation and Council policies.

10. Key and Access Control

The Lessee must not duplicate keys or access devices without approval. Lost keys must be immediately reported to Council. Any costs associated with re-keying required due to loss or misuse will be borne by the Lessee.

11. Incident Reporting

The Lessee must maintain an incident register and notify Council as soon as practicable of any notifiable incident, serious injury, property damage or safety risk occurring at the Premises.

12. Public Health Requirements

The Lessee must maintain the Premises in a clean, sanitary and hygienic condition and comply with all requirements of the Public Health and Wellbeing Act 2008 (Vic).

13. Events / Noise Management

The Lessee must obtain Council's written approval before conducting major events, amplified music, temporary structures or activities likely to generate significant noise, traffic or attendance levels.

Schedule 3 Special Conditions (Site Specific)

1. Common Area

(a) For the purposes of this Special Condition, **Common Area** means the areas of the Land that are licensed for common use, being the areas denoted as such on the Plan and such access routes as are reasonably required to access the Premises.

(b) The Tenant may use the Common Area to access the Premises and for the purpose for which it is intended in common with the Landlord, the Landlord's Associates and other people authorised by the Landlord.

(c) The Landlord will regularly maintain, clean and repair the Common Area, unless the need for such maintenance, cleaning and repair is caused by the Tenant, in which case these actions must be promptly attended to by the Tenant at its Cost.

Annexure B – Schedule of Maintenance Responsibilities

Item	Council Responsibility	User Group Responsibility
BUILDING Electrical and Plumbing: Any works undertaken must have written Council approval prior to works beginning and be carried out by a qualified and licensed contractor.		
Electric Wiring and Fittings in Building	All building wiring from the main supply to and including the switchboard	Report faults to Council Pay for repairs if damage caused by misuse
Light Fittings and Globes	Repair or replace faulty fittings	Replace globes/lamps (energy efficient bulbs recommended) Cost of repairs if damage caused by misuse Cost of any additional light fittings required Keep clean
Exhaust Fans	Repair or replace faulty fittings	Keep clean and operable Pay for repairs/replacement if misuse Installation of new equipment
Power Points	Repair or replace faulty power points	Cost of repairs if damage caused by misuse Cost of any additional power points required
Tag and Testing of Non-Hardwired Electrical Equipment	Tag and test hardwired building items as per legislation by a Licensed contractor	Tag and test non-hardwired electrical equipment as per legislation
Plumbing: Any works undertaken must have written Council approval prior to works beginning and be carried out by a qualified and licensed contractor.		

Schedule 3 Special Conditions (Site Specific)

Plumbing and Fixtures, (including Hot Water Services)	Major maintenance Repair and replacement costs due to age or fault	Pay for repairs if misused (e.g., blocked drains) Cost of new additional fixtures not standard within the building
Essential Services		
Fire Equipment (Extinguishers, Hydrants and Hose Reels)	Installation of required equipment and servicing Responsibility for statutory signage (e.g. emergency exits, fire safety).	Report faults to Council Cost of replacement due to misuse
Emergency and Exit Lighting	Installation, maintenance, repair and replacement costs Responsibility for statutory signage (e.g. emergency exits, fire safety).	Report any faults to Council
Item	**Council Responsibility**	**User Group Responsibility**
Emergency Repairs and Infrastructure Renewal	Major works to replace or upgrade physical structure Urgent safety repairs	Report issues to Council immediately Liaise with Council for long-term planning for consideration in Asset Plans and potential Capital Works budget
Essential Services (incl. smoke alarms, fire exit doors)	Annual servicing and inspection of Essential Safety Measures Responsibility for statutory signage (e.g. emergency exits, fire safety). Ensure emergency floor plans are current	Induct users on ESM items and safe usage Ensure emergency floor plans are visible
Tag and Testing of items that form part of the building	Tag and test hardwired building items as per legislation by a Licensed contractor	Tag and test non-hardwired electrical equipment as per legislation
Security		
External Locks and Keys	Maintain access to building, electrical switchboard, and meter boxes Council to hold a set of keys for the building	Installation, maintenance, repair, and replacement costs if damage caused by misuse Ensure Council has access to building, switchboard, and meter boxes when required Any proposed change to external locks/door hardware must be notified to Council Report issues to Council

Landlord reference: AG1460 Historical Society

Schedule 3 Special Conditions (Site Specific)

Vandalism/ Graffiti	No responsibility except where damage exceeds Council's insurance excess (approx. $3,000) Council to submit claim and liaise with User Group regarding rectification and repairs	Notify Council Remove graffiti promptly Maintenance, cleaning, and painting if damage is due to misuse; Pay all repair costs up to Council's insurance excess if damage is due to misuse
Building Fabrics		
Windows	Major structural maintenance Repair or replacement due to item age or fault	Repairs due to misuse Keep clean
Painting of Ceilings, Walls and Other Surfaces	External painting	Repairs due to misuse
Ceilings	Major structural maintenance	Repairs due to misuse
Doors	Maintenance, repair or replacement of all external and internal doors due to age Maintenance, repair or replacement of all internal doors including cupboard and storeroom doors Major structural maintenance	Regular cleaning and repair due to misuse. Any changes to external locks/door hardware must be approved in writing by Council prior to works to ensure that Building Code requirements are met.

Item	Council Responsibility	User Group Responsibility
Floor Surfaces and Coverings	Major structural maintenance	Any repair, maintenance, upgrade and replacement costs due to misuse
Roofs	All maintenance and repair costs	No Responsibility
Guttering	Maintenance, repair or replacement due to age or structural damage Cleaning of gutters	Repair if damage through misuse
External and Internal Walls	Structural maintenance External painting Regular cleaning Internal repainting as required	Repair if damage through misuse
Building Alterations	Assessing all requests and if approved, ensuring satisfactory completion of work, even when totally funded by the user group	Seek Council approval noting heritage status of the building and additional requirements regarding this.
Internal Fittings		

Landlord reference: AG1460 Historical Society

Schedule 3 Special Conditions (Site Specific)

Window Coverings	No responsibility	New installation, cleaning, repair and replacement Repairs if damage caused by misuse
Heating/Cooling fixtures	Initial installation as part of capital development or major renewal Installation of additional (or new) heating or cooling Repair, replacement and maintenance costs including annual inspection Maintenance, repair or replacement due to age or structural damage.	Repair and replacement due to misuse
Access and security systems	No responsibility	Any access or security systems (including CCTV) must have prior written Council approval before installation. Appropriate signage must be installed for CCTV in line with Privacy Legislation, and no systems are permitted in private areas (e.g., bathrooms, change rooms).
Other Permanent Fixtures	All maintenance and repair costs	Regular cleaning; repair/replacement if damage caused by misuse Installation of basic equipment with Council approval
Canteen / Kitchens (where applicable)		
Food handling areas	Initial installation, repair and replacement of basic equipment cupboards, sink and bench tops	Keep clean and maintain in accordance with the Health Act Upgrade and replacement costs New installations at lessee cost with prior approval from Council.
Stoves and cooking equipment	Initial Installation, repair and replacement of basic equipment	Keep clean and maintain in operable condition Repairs, maintenance, new installations, upgrade and replacement costs
Item	**Council Responsibility**	**User Group Responsibility**
Utilities		
Water	Initial installation of water supply Any required maintenance, repair, replacement to the facilities water supply	Cost of any new internal installations Cost of Service Use of water-efficient appliances and equipment When installing or replacing fixtures (e.g., taps, toilets, dishwashers), choose products with high water efficiency ratings (e.g., WELS-rated appliances).

Landlord reference: AG1460 Historical Society

Schedule 3 Special Conditions (Site Specific)

		Repair of leaks as soon as possible If you notice dripping taps, leaking pipes, or faulty fixtures, act quickly to prevent water waste and potential damage. Report major leaks to Council immediately. Ensuring water-saving initiatives to conserve water Implement measures like signage to encourage responsible water use, install aerators on taps, and avoid unnecessary water consumption during cleaning or other events.
Electrical	Any required maintenance, repair, to the facilities electrical supply (including main switchboard)	Cost of Service
Gas	Any required maintenance, repair, replacement, or upgrade to the facilities gas supply	Cost of Service
Telephone, Communications & ICT Internet	No responsibility	All installation, connection, maintenance, repair, replacement, upgrade, and usage/equipment costs Responsibility for Wi-Fi or network infrastructure and payment of service.
Waste Collection (within Council garbage collection)	No responsibility	Put bins out for collection and bring bins in after pick up Pick up rubbish around areas under agreement Pay for additional bins or extra garbage removal if required
Additional Waste and Bulk Rubbish (outside Council garbage collection)	No responsibility	Removal of all rubbish Ensure large volumes are taken to nearest Waste Transfer Centre at User Group's cost
Event or temporary structure approvals	No responsibility	If the user group installs marquees or temporary facilities, prior written Council approval is required, and the user group must ensure compliance with all relevant safety standards and regulations, including ensuring structures are securely tied down.
Signage	Install, maintain and replace all essential signage	Install, maintain and replace all branded signage Seek Council approval of any signage prior to installation

Landlord reference: AG1460 Historical Society

Schedule 3 Special Conditions (Site Specific)

	Install, maintain and replace all Council branded signage	
Pest Control	All structural pest control i.e., Termites	No responsibility
Other equipment /facilities added by User	No responsibility	All maintenance, repair and replacement costs Insurance of equipment and contents
No Smoking	Advise User Group of Council's NO Smoking Policy	Ensure no smoking or vaping occurs in the building or within 5m of any doorway or window Display No Smoking signage Ensure cigarette butts are picked up and disposed of properly
OH&S Requirements	Issues handled with Council and User Group	Notify Council Issues handled with Council and User Group
Storage of Equipment	No Responsibility	All equipment is to be stored in a neat and tidy manner when not in use.
Insurance	Building Insurance	Insurance of equipment and contents, Public Liability
Grounds		
Landscaping	Develop, install and maintain	No responsibility Projects to improve general amenity (subject to Council approval) Installation of any new plants or trees with Council input and approval (species selection to consider drought and frost tolerance)
Garden Maintenance/pruning	Pruning as required	No Responsibility Bulk green waste to be taken to nearest Waste Transfer Facility at User Group's cost Volunteer/ community projects to improve amenity
Grass Cutting	Basic maintenance to support amenity and safety	Additional grass cutting as required by user groups
Pathways	Develop, install and maintain	No responsibility
Trees	Tree inspection Any tree works as required	Report any dangerous trees to Council
Reserve roads and car park	Development, upgrade, repairs and maintenance	Reporting maintenance issues to Council

Notes: Misuse: Use incorrectly, mistreat or abuse.
Working at Height: User Group are not permitted to undertake any works above 2.1 meters

Landlord reference: AG1460 Historical Society

Schedule 3 Special Conditions (Site Specific)

without meeting the appropriate OH&S requirements.
Approval: No work may begin until written approval has been received from Council.
Qualified trades: Any approved works undertaken must be carried out by a suitably qualified and licensed contractor approved by Council.
Asset maintenance: If Lessee allow any installations to deteriorate to a condition that is a danger to the community or is inappropriate for a built structure in a Council reserve, it will be removed by Council and the Lessee will be charged accordingly.

Annexure C – Plan of the Land

That part of the land described in Certificate of title Volume 11801 Folio 049, being the property situated at 177 High Street, Mansfield, 3722

Figure 1 – Lease Included Area Highlighted in Red.

Figure 2 – Front Carriage and Area of New Undercover Area to be Built

Figure 3 – Two Carriages

Figure 4 – Front of Station Building

Figure 5 – Back and Platform of Station Building

Figure 6 – Back of Station Building and platform (new roof to meet up with this side of roof)