

*Standard Form Lease –  
Building Lease / Community*

**YARRIAMBIACK SHIRE COUNCIL**

and

**THE TENANT  
Rupanyup Recreation Reserve Inc.  
A0035484F**

**LEASE RECREATION RESERVE**

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Premises: *Rupanyup Recreation Reserve  
Gibson st Rupanyup 3388*

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## PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**  
of 34 Lyle Street, Warracknabeal VIC 3393  
("Landlord")
- 2 **RUPANYUP RECREATION RESERVE INC**  
  
Gibson Street Rupanyup  
("Tenant")

## RECITALS

- A The Landlord is the registered proprietor of the Premises.
- B The Landlord aims to:
- maximise the use of community assets and maximise community benefit arising from the use of community assets, including the Premises; and
  - ensure that community assets, including the Premises, are appropriately and responsibly managed, in consideration of the environment, community impact and involvement, and the overall wellbeing of the community.
- C The Landlord has agreed to lease the Premises to the Tenant on the terms and conditions set out in this lease and so as to achieve the objectives referred to above.

## THE PARTIES AGREE THAT:

### 1 DEFINITIONS

In this lease, unless the contrary intention appears:

- 1.1 "**Authorised Officer**" in the case of either party means a person appointed by that party to act on its behalf under this lease.
- 1.2 "**Building**" means the building described in item 6.1 of Schedule 1.
- 1.3 "**Commencement Date**" means the date set out in item 2 of Schedule 1.
- 1.4 "**Common Areas**" means those parts of the Building which are made available by the Landlord for the common use of all occupiers of the Building, including the Landlord, as marked on the plan in Schedule 2 (if any).
- 1.5 "**CPI**" means:
- 1.5.1 the Consumer Price Index (All Groups) Melbourne; or
  - 1.5.2 if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
  - 1.5.3 if there is no index under the preceding paragraph, the general inflation rate in Victoria as used by the Victorian treasury for the relevant period.
- 1.6 "**Default Event**" has the meaning given to it in clause 20.1.

- 1.7 **"Essential Safety Measures"** means essential safety measures as defined in the Regulations and that are within the Premises or Building.
- 1.8 **"Expiry Date"** means the last day of the Term and is the date set out in item 3 of Schedule 1.
- 1.9 **"GST"** means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.
- 1.10 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.11 **"Input Tax Credit"**, in relation to a Taxable Supply, means a credit under the GST Act for the GST payable by the recipient in respect of the Taxable Supply.
- 1.12 **"Land"** means the land described in item 6.2 of Schedule 1.
- 1.13 **"Landlord's Property"** means anything in the Premises at any time during the Term which is not the Tenant's Property.
- 1.14 **"Lettable Area"** means the area calculated in accordance with the appropriate method of measurement published as at the Commencement Date by the Property Council of Australia for that type of premises.
- 1.15 **"Maintenance Schedule"** means the maintenance schedule set out in Schedule 4.
- 1.16 **"Permitted Use"** means the use described in item 5 of Schedule 1.
- 1.17 **"Personal Information"** means personal information as defined in the *Information Privacy Act 2000* (Vic).
- 1.18 **"Premises"** means the premises described in item 7 of Schedule 1 and includes the Landlord's Property within the Premises.
- 1.19 **"Rates and Taxes"** means all rates, assessments, levies and other charges payable in connection with the Premises, Building and Land, and all taxes (including land tax on the basis that the Land is the only land owned by the Landlord) but excluding the Landlord's income tax and capital gains tax.
- 1.20 **"Regulations"** means the *Building Regulations 2006* (Vic) and any amendment to or replacement of those regulations.
- 1.21 **"Rent"** means the amount specified in item 8 of Schedule 1, and as revised in accordance with this lease.
- 1.22 **"Rent Review Date"** means each of the dates specified in item 10 of Schedule 1.
- 1.23 **"Review Period"** means the review period following each Rent Review Date until the next Rent Review Date or until the end of this lease.
- 1.24 **"Start Of The Lease"** means the first day of the Term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
- 1.25 **"Tax Invoice"**, in relation to a Taxable Supply, means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.
- 1.26 **"Taxable Supply"** means a taxable supply within the meaning of the GST Act.

- 1.27 **"Tenant"** means the person or persons set out in item 1 of Schedule 1 and includes the Tenant's personal representatives, successors and permitted assignees.
- 1.28 **"Tenant's Agents"** means the members, employees, agents, contractors, customers, invitees and tenants of the Tenant.
- 1.29 **"Tenant's Property"** means everything on the Premises at any time during the Term belonging to the Tenant, including the items listed in Schedule 3.
- 1.30 **"Tenant's Proportion"** means the Tenant's share of the Rates and Taxes which is calculated in accordance with item 11 of Schedule 1.
- 1.31 **"Term"** means the duration of this lease as set out in item 4 of Schedule 1.

## **2 LEASE**

### **2.1 Lease of Premises**

The Landlord leases the Premises to the Tenant. This lease is subject to:

- 2.1.1 the terms contained in this lease;
- 2.1.2 the Landlord giving notice of its intention to grant this lease pursuant to section 190 of the *Local Government Act 1989* and resolving to enter into the lease pursuant to section 223 of that Act (if applicable);
- 2.1.3 any special conditions in item 16 of Schedule 1;
- 2.1.4 all encumbrances affecting the Premises; and
- 2.1.5 the right of the Landlord to:
  - (a) run water, air, electricity, sewage, gas and other substances through the Premises;
  - (b) install, maintain, use, repair, alter and replace the pipes, wires, ducts and cables leading through or around the Premises; and
  - (c) determine all areas of access to and from the Premises.

### **2.2 Term of lease**

The Term of this lease begins on the Commencement Date and ends on the Expiry Date.

## **3 USE OF BUILDING**

The Landlord grants the Tenant a licence to use the Common Areas together with the Landlord, other occupants of the Building and any other persons permitted by the Landlord to use the Building throughout the Term

## **4 PAYMENTS BY TENANT**

### **4.1 Rent**

- 4.1.1 The Tenant must pay the Rent without any deduction, counterclaim or set-off:
  - (a) to the Landlord at the Landlord's address specified in this lease, or as the Landlord directs; and

(b) in the manner set out in item 9 of Schedule 1.

- 4.1.2 In the event that the Tenant requests, and the Landlord agrees (at its absolute discretion) to a change in the Permitted Use, the Landlord reserves the right to require that the Rent or any other term of this lease be varied.

## 4.2 Rates and Taxes

The Tenant must:

- 4.2.1 pay direct to the relevant authority (as and when they fall due for payment) or reimburse the Landlord (within 7 days of demand) the Tenant's Proportion of all Rates and Taxes.

## 4.3 Services

- 4.3.1 The Tenant must pay all assessments, levies, charges and consumption costs for electricity, gas, water and telecommunications services, air conditioning and ventilation systems and security services supplied to the Premises as and when they fall due.
- 4.3.2 If required by the Landlord, the Tenant must install and pay for a separate meter for recording or measuring any of the services referred to in clause 4.3.1.
- 4.3.3 If any of the services referred to in clause 4.3.1 cannot be directly assessed on the Premises, the Tenant must pay the proportion that the Lettable Area of the Premises bears to the Lettable Area of the land or the building upon which the services are assessed.

## 5 RENT REVIEW

### 5.1 Market Review

If item 10 of Schedule 1 provides for a market review of Rent on any Rent Review Date, the following provisions will apply:

- 5.1.1 The Landlord may initiate a review of Rent by giving the Tenant a written notice stating the rent which it considers to be the current open market rent for the Premises ("**Landlord's notice**").
- 5.1.2 If the Tenant disagrees with the proposed rent, the Tenant must give the Landlord a written notice ("**Tenant's notice**") objecting to the proposed rent within 21 days of the date of the Landlord's notice. Time will be of the essence for the delivery of the Tenant's notice.
- 5.1.3 If the Tenant does not serve the Tenant's notice on the Landlord, the proposed rent as set out in the Landlord's notice will be the Rent for the next Review Period.
- 5.1.4 If the Tenant serves the Tenant's notice within the prescribed time and the parties cannot agree on the rent for the next Review Period, it shall be determined by a valuer who:
- (a) is a full member of not less than 5 years' standing of the Australian Property Institute - Victorian Division ("**API**"); and
  - (b) is qualified as a valuer of premises similar to the Premises.



- 5.1.5 If the parties cannot agree upon a valuer within 21 days after the date of the Tenant's notice either party may request the President of the Australian Property Institute, Victorian Division, to appoint a valuer who meets the criteria in clause 5.1.4 to determine the current open market rent of the Premises.
- 5.1.6 Until the rent is determined by the valuer, the Tenant must continue to pay the Rent payable just before the relevant Rent Review Date.
- 5.1.7 In determining the current open market rent of the Premises, the valuer must:
- (a) act as an expert and not as an arbitrator;
  - (b) assume the parties have acted knowledgeably, prudently and without compulsion;
  - (c) assume there is a willing landlord and a willing tenant in an arm's length transaction;
  - (d) consider all submissions made by the parties provided the submissions are made within 21 days of the valuer being appointed;
  - (e) assume that the parties have complied with their respective obligations under this lease;
  - (f) assume that the Premises are fit for immediate occupation and use;
  - (g) assume that the Premises are vacant and available to be leased on the same conditions as this lease;
  - (h) ignore the Tenant's Property and installations and all improvements made without obligation by the Tenant to the Premises;
  - (i) ignore any poor condition of the Premises which has resulted from a breach of this lease by the Tenant;
  - (j) determine the current open market rent of the Premises and give reasons for it in writing as soon as possible after the end of the 24 days allowed for submissions by the parties; and
  - (k) take into account, all other relevant factors, matters or variables used in proper land valuation practices.
- 5.1.8 If for any reason no determination has been made by the valuer within 45 days of the valuer being appointed, then either party may immediately request the Small Business Commissioner to appoint a replacement valuer who meets the criteria in clause 5.1.4. The provisions of this clause will then apply to the determination by the replacement valuer.
- 5.1.9 The valuer's decision is final and binds the parties.
- 5.1.10 Within 7 days of being informed of the valuer's determination, the parties must make any necessary adjustments to the Rent.
- 5.1.11 The valuer's costs and disbursements must be borne by the parties equally.



## 5.2 Percentage Increase

If item 10 of Schedule 1 provides for a percentage increase of Rent on any Rent Review Date, then the Rent (being the amount of Rent payable by the Tenant immediately before the Rent Review Date) shall be increased on the relevant Rent Review Date by the percentage specified in item 10.

## 5.3 CPI Review

If item 10 of Schedule 1 provides for a CPI review the Rent for the next Review Period will be calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where: A is the Rent for the next Review Period;

B is the annual Rent paid by the Tenant just prior to the relevant Rent Review Date;

C is the CPI last published before the relevant Rent Review Date; and

D is the CPI last published at least 12 months before the relevant Rent Review Date.

## 5.4 Time of Review

Any delay in making a rent review does not prevent the review from taking place and being effective from the relevant Rent Review Date.

# 6 GST

## 6.1 Interpretation

The consideration payable by any party under this lease is the GST exclusive amount of the Taxable Supply for which payment is to be made.

## 6.2 GST exclusive amounts

Subject to clause 6.4, if a party makes a Taxable Supply in connection with this lease for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

## 6.3 Maximum amount to be paid

Where this lease requires a party (the “**first party**”) to pay, reimburse or contribute to an amount paid or payable by the other party (the “**other party**”) in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party’s recovery from the first party.

## 6.4 Tax invoice to be given

A party’s right to payment under clause 6.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

## **7 LEGAL AND OTHER COSTS**

### **7.1 Costs incurred by Landlord**

The Tenant must pay or reimburse the Landlord on request all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with:

- 7.1.1 any assignment (or proposed assignment) of this lease, or any subletting or licence (or any proposed subletting or licence) of the Premises;
- 7.1.2 any approval, variation, mortgage, charge or surrender concerning this lease including costs payable to a person appointed to evaluate or supervise any matter;
- 7.1.3 any breach of this lease by the Tenant; and
- 7.1.4 the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Landlord of any rights or remedies under this lease.

### **7.2 Other costs**

Anything the Tenant is required to do under this lease must be done at the Tenant's cost.

## **8 INTEREST ON OVERDUE MONEY**

If the Tenant is late in paying the Landlord any money payable by it under this lease, the Tenant must pay interest on that money from the due date for payment until the money is paid in full. The rate of interest is 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*.

## **9 USE OF PREMISES**

The Tenant must:

- 9.1 use the Premises for the Permitted Use (and for no other use);
- 9.2 not use the Premises for any illegal purpose or activity;
- 9.3 not use the Premises as a residence or allow anyone to sleep in the Premises;
- 9.4 not conduct any auction sale or public meeting in or around the Premises;
- 9.5 not sell or distribute any tobacco products from the Premises;
- 9.6 must not apply for a liquor licence without first obtaining the Landlord's consent, and must not permit the sale of any intoxicating liquor at the Premises unless the Tenant holds a liquor licence;
- 9.7 not install or operate vending or amusement machines in the Premises;
- 9.8 not allow gambling of any kind at the Premises;
- 9.9 not prepare or cook food in the Premises other than in the areas which have been provided or approved by the Landlord for that purpose;
- 9.10 not burn rubbish in the Premises or Building;
- 9.11 not use any lavatories, grease traps, drains or other sanitary facilities for any purpose other than that for which they were designed;

- 9.12 not bring, allow or permit any animal or pet on the Premises other than guide dogs, except if the Landlord gives prior consent;
- 9.13 not do anything which is or may be a nuisance or annoyance to the Landlord, any occupants of the Building, any owners or occupants of premises adjacent to the Premises or the Building, or members of the public;
- 9.14 not obstruct or interfere with the Landlord's or any other occupier's use of the Common Areas;
- 9.15 at its own expense, apply for and keep in force all licences and permits necessary for the Tenant to use the Premises for the Permitted Use;
- 9.16 take all precautions required by law against fire and comply with all regulations and directions of any authority in relation to fire prevention;
- 9.17 not without the Landlord's prior written consent, store or use any dangerous, toxic, explosive or inflammable substances in the Premises or Building;
- 9.18 at its own expense, comply on time with all laws, legal requirements and requirements of any authority concerning the Premises and the use and occupation of the Premises. Without limiting this clause, an authority includes any person, body or corporation (whether government, statutory or non-statutory) that has authority over the Premises or the Tenant's use of the Premises;
- 9.19 not install or use any form of heating, cooling, ventilation or air-conditioning in the Premises which is not approved beforehand by the Landlord in writing;
- 9.20 not, without the Landlord's prior written approval, bring onto or remove from the Premises any object or equipment which is likely, in the opinion of the Landlord, to cause damage to the Premises, the Landlord's Property or any services or Essential Safety Measures. The Tenant must comply with any instructions given by the Landlord with respect to the installation, use or removal of any object or equipment for which the Landlord has given the Tenant approval to bring onto or remove from the Premises under this clause;
- 9.21 comply with the following requirements in relation to any outdoor area (including any outdoor playing area) which forms part of the Premises:
  - 9.21.1 not bring any soil, sand, or tan bark or similar product onto the Premises unless approved in advance by the Landlord in writing;
  - 9.21.2 not plant any vegetable gardens at the Premises other than in separate planter boxes or pots; and
  - 9.21.3 not allow any digging at the Premises without the Landlord's written approval;
- 9.22 comply with any Building rules in force from time to time that are notified in writing by the Landlord to the Tenant; and
- 9.23 comply with all reasonable requests or directions given by any Authorised Officer of the Landlord that the Authorised Officer considers necessary or desirable for the safety, care or cleanliness of the Premises, Building or areas near the Premises.

## **10 SECURITY**

### **10.1 Tenant to protect Premises**

- 10.1.1 The Tenant must use its best efforts to protect and keep safe the Premises and the Landlord's Property from theft and vandalism. This includes keeping all fences,



gates, doors, windows and openings closed and securely fastened when the Premises are not in use.

- 10.1.2 The Tenant must, at its own cost, install and maintain a security alarm for the Building. The Tenant must provide the Landlord with all relevant codes for the security alarm upon installation, and whenever the codes are updated.

## 10.2 **Keys and Security**

The Landlord will allocate keys and/or security cards to the Tenant to allow access to the Building. The Tenant must maintain a current list of those persons retaining keys or security cards for the Building and provide the Landlord with this list at the commencement of the lease and whenever the list is amended.

## 11 **LICENCES**

- 11.1 The Tenant must obtain the prior written consent of the Landlord before applying for any licence, permit or consent for the Premises or the Tenant's use of the Premises.
- 11.2 If the Tenant obtains any licence, permit or consent pursuant to clause 11.1, the Tenant must immediately provide a copy of such licence, permit or consent to the Landlord.

## 12 **TENANT'S OBLIGATIONS CONCERNING INSURANCE**

### 12.1 **Tenant to maintain insurance**

The Tenant must take out and maintain insurance for:

- 12.1.1 public liability for an amount of not less than the amount set out in item 12 of Schedule 1 in respect of any single occurrence. This policy must indemnify the Landlord against all claims of any kind arising from any act, omission or neglect by the Tenant or any of the Tenant's agents;
- 12.1.2 the Tenant's Property, contents and any fitout of the Premises against loss, damage or destruction by any cause;
- 12.1.3 employers' liability, workers' compensation and/or Workcover which covers any damage, loss or liability suffered or incurred by any person engaged by the Tenant arising by virtue of any statute relating to workers' or accident compensation or employers' liability or at common law; and
- 12.1.4 any other insurances in connection with the Premises which the Landlord may reasonably require

AND the Tenant must produce to the Landlord copies of all these insurance policies and evidence that they are in force at any time upon request by the Landlord.

### 12.2 **Policy requirements**

The insurance policies under clause 12.1 must contain terms and conditions approved by the Landlord and be taken out with an insurer approved by the Landlord (which approval may not be unreasonably withheld).

### 12.3 **Tenant not to prejudice insurance**

The Tenant must not do anything on the Premises or otherwise which:

- 12.3.1 may cause any insurance policy (taken out under this lease or otherwise) to become void or voidable; or
- 12.3.2 may cause any claim on any insurance policy (taken out under this lease or otherwise) being rejected or a premium to be increased.

#### **12.4 Compliance with insurer's requirements**

The Tenant must comply with the requirements of any insurer under any insurance policy for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise).

#### **12.5 Where premium increased**

If the Tenant causes an increase in any premium payable by the Landlord for any insurance effected by the Landlord for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise), the Tenant must pay the Landlord, on request, the increase in the premium.

### **13 MAINTENANCE OF PREMISES AND ALTERATIONS**

#### **13.1 Tenant to maintain**

Except for fair wear and tear and subject to clause 13.2 and clause 13.5, the Tenant must keep the Premises and the Landlord's Property in the same condition as at the Start Of The Lease and in good working order, properly cleaned, repaired and maintained.

#### **13.2 Maintenance Schedule**

- 13.2.1 If a Maintenance Schedule is attached to this lease then, subject to clause 13.5, the Tenant and the Landlord must comply with their respective obligations set out in the Maintenance Schedule at their own cost using registered and qualified tradespeople.
- 13.2.2 Despite any other provision of this lease, the Tenant is responsible for and must promptly carry out any repairs and maintenance required to the Premises or Building because of damage caused by the act, omission or default of the Tenant or the Tenant's Agents (except for fair wear and tear).
- 13.2.3 All repair or maintenance requests by the Tenant need to be sent in writing to the Landlord (unless the matter is urgent or in an emergency) detailing:
  - (a) the type of repair or maintenance required;
  - (b) who is making the request (including the name of the person and contact details); and
  - (c) where the damage is located.
- 13.2.4 In the case of an emergency, if reasonably practicable, the Tenant must contact one of the Landlord's nominated contractors directly and must then notify the Landlord as soon as practicable.

#### **13.3 Landlord may carry out maintenance**

The Tenant must carry out repairs or maintenance within 14 days of being served with a written notice of any defect or lack of repair or maintenance which the Tenant is obliged to fix under

this Lease. If the Tenant does not comply with the notice within 14 days, the Landlord may carry out the repairs and the Tenant must pay the cost to the Landlord on demand.

#### **13.4 Tenant to report damage**

The Tenant must:

- 13.4.1 promptly report to the Landlord any damage to or defect in the Premises or Building, or any defective windows, lights, doors, locks and fastenings; and
- 13.4.2 promptly give written notice to the Landlord of any hazards within the Premises or the Building or the service by any authority of a notice or order affecting the Premises.

#### **13.5 Limitations on obligations**

Despite any term of this Lease, the Tenant is not obliged to:

- 13.5.1 carry out structural or capital repairs or alterations to the Premises or the Building other than where such repairs or alterations are required:
  - (a) pursuant to the Maintenance Schedule (if any);
  - (b) because of the Tenant's specific use of the Premises, or the nature, location or use of the Tenant's Property; or
  - (c) because of damage caused by the act, omission or default of the Tenant or the Tenant's Agents,in which cases such repairs or alterations will be the responsibility of, and at the cost of, the Tenant; or
- 13.5.2 repair damage for which the Tenant is not responsible under this Lease, unless the Landlord loses the benefit of any insurance for that damage because of any act or omission by the Tenant or any of the Tenant's Agents.

#### **13.6 Essential Safety Measures - Tenant's obligations**

The Tenant must:

- 13.6.1 not interfere with, alter or limit the operation or effectiveness of any Essential Safety Measure;
- 13.6.2 immediately advise the Landlord and confirm in writing any alteration, breakdown or theft of or damage to any Essential Safety Measure;
- 13.6.3 allow the Landlord or its appointed agent to enter the Premises at any reasonable time on the provision of reasonable notice (except in the case of an emergency when the requirement for notice shall be waived) to inspect and maintain any Essential Safety Measure;
- 13.6.4 ensure that display of the annual essential safety measures report prepared in accordance with the Regulations, and any determination and record of maintenance checks, service and repair work which are kept on the Premises pursuant to the Regulations, are retained on display at the Premises;



- 13.6.5 provide to the Landlord all documentation required in order to establish and maintain records of maintenance checks, services and repair work for any Essential Safety Measure; and
- 13.6.6 advise the Landlord immediately if the Tenant receives notice (whether written or oral) of any proposed inspection of the Premises by a municipal building inspector or chief officer pursuant to the Regulations.

### 13.7 Alterations to Premises

- 13.7.1 The Tenant must not, without first obtaining the written approval of the Landlord (which may be given or withheld at the Landlord's discretion and given or withheld with conditions):
  - (a) make any alterations, additions or improvements (whether structural or otherwise);
  - (b) install any equipment or exterior fixtures or fittings (including blinds or awnings) to or on the Premises;
  - (c) carry out any demolition, landscaping or earthworks on the Premises;
  - (d) fix or place signs, notices or advertisements which are visible from outside the Premises in any place in or near the Premises; or
  - (e) interfere with or alter any Essential Safety Measure, ("Works").
- 13.7.2 In considering whether or not to approve any Works under clause 13.7.1:
  - (a) The Landlord may employ external consultants for the purpose of considering any proposed Works and supervising the Works, and the Tenant must cooperate with and allow the Landlord's consultants access to the Premises for these purpose;
  - (b) The Landlord may require the Tenant to:
    - (1) deliver three copies of all drawings and specifications and a program of Works to the Landlord in such format, including electronic format, as the Landlord may require;
    - (2) make all variations to the drawings, specifications and program of Works reasonably required by the Landlord and deliver further copies to the Landlord in such format, including electronic format, as the Landlord may require;
    - (3) deliver a detailed quote for the cost of completing the Works (including the cost of all materials to be used) certified by a qualified consultant to be a bona fide estimate of the cost of completing the Works;
    - (4) obtain all approvals and permits necessary for the Works;
    - (5) deliver one copy of those approvals and permits to the Landlord;
    - (6) give the Landlord the name of:



- (A) each contractor and tradesman the Tenant intends to employ to carry out the Works; and
- (B) the person who will supervise the Works; and
- (7) reimburse the Landlord the cost of effecting and maintaining the appropriate insurances in respect of the Works unless the Landlord agrees for the Tenant to effect and maintain that insurance.

13.7.3 The Tenant must:

- (a) carry out and complete all Works within the Premises promptly and in a proper and workmanlike manner at the Tenant's cost and:
  - (1) in accordance with the drawings, specifications and program of Works approved by the Landlord;
  - (2) in compliance with any conditions imposed by the Landlord;
  - (3) using qualified tradespersons; and
  - (4) in compliance with all laws and all requirements of authorities;
- (b) obey and cause its contractors and tradesmen to obey the Landlord's reasonable directions concerning the Works;
- (c) if the Works affect the electrical, water or gas supplies, or the switchboard capacity, ensure that these supplies are adequately maintained, and restore them to proper working order;
- (d) immediately give the Landlord a copy of any notice received from any party in relation to the Works; and
- (e) not interfere and ensure that the Tenant's contractors and tradesmen do not interfere with other occupiers or users of the Building.

13.7.4 On completion of the Works, the Tenant must promptly:

- (a) remove from the Premises all unused building materials, equipment and debris as directed by the Landlord;
- (b) if required, obtain an occupancy permit or compliance from the relevant authority for the Works and deliver a copy to the Landlord; and
- (c) in the case of alterations or additions, deliver to the Landlord a complete set of drawings and specifications showing the alterations or additions as built, in such format, including electronic format, as the Landlord may require.

13.7.5 The Tenant must promptly pay when requested all reasonable costs incurred by:

- (a) the Landlord in employing external consultants pursuant to clause 13.7.2(a); and
- (b) the Landlord in remedying any breach by the Tenant of its obligations under this clause 13.6.

## **14 ASSIGNMENT AND SUBLETTING**

### **14.1 Consent of Landlord**

The Tenant must not:

- 14.1.1 assign its rights or powers as tenant under this lease without the Landlord's prior written consent which consent may be given, given subject to conditions, or withheld at the Landlord's absolute discretion;
- 14.1.2 sub-let, licence or part with possession or share the Premises without the Landlord's prior written consent which consent may be:
  - (a) given;
  - (b) given subject to conditions, including the right of the Landlord to:
    - (1) amend the rent;
    - (2) amend any other term of this lease; and
    - (3) require the parties to the transaction to enter into a written sublease or licence agreement in the form required by the Landlord; or
  - (c) withheld at the Landlord's absolute discretion; or
- 14.1.3 create or allow any mortgage, interest, easement or other encumbrance which would affect the Tenant's interest in the Premises or its rights as tenant under this lease.

### **14.2 Deemed assignment**

Where the Tenant is a corporation, any circumstances which result in any person or group of persons who:

- 14.2.1 control the composition of the board of directors; or
- 14.2.2 beneficially hold more than one half of the issued share capital,

being different from the person or persons who were in that position at the Commencement Date, will be deemed to be an assignment of this lease which will require the prior written consent of the Landlord.

## **15 DISCRIMINATION**

The Tenant must comply with any responsibilities and obligations under the *Disability Discrimination Act 1992* (Cth) and the *Equal Opportunity Act 2010* (Vic) and any other relevant legislation pertaining to people with a disability with respect to the use of the Premises, and ensure that it uses the Premises so as not to be inconsistent with the Landlord's disability action plan, as notified to the Tenant from time to time.

## **16 OCCUPATIONAL HEALTH AND SAFETY**

### **16.1 The Tenant must:**

- 16.1.1 conduct the Tenant's operations from the Premises in a safe and healthy manner so as to ensure that there is minimal exposure to hazards at the Premises;

- 16.1.2 comply with the *Occupational Health and Safety Act 2004* and all regulations and codes of practice made under that Act as well as any other relevant Australian standards in relation to the Tenant's operations at the Premises;
- 16.1.3 remedy any hazards or risks identified as a result of the risk assessment conducted by the Tenant or as otherwise required by the Landlord in writing; and
- 16.1.4 allow the Landlord access to the Premises at any time upon reasonable notice to conduct safety audits of the Premises.

## **17 TENANT'S OBLIGATIONS AT END OF LEASE**

### **17.1 Vacating the Premises**

At the end of this lease, the Tenant must:

- 17.1.1 vacate the Premises and leave the Premises in the condition in which the Tenant must keep them under this lease;
- 17.1.2 if required by the Landlord and to the extent required by the Landlord (at its sole discretion), remove any fixtures or improvements to the Premises (including any Works carried out under clause 13.7.1, and any signs, notices or advertisements placed in or near the Premises). If the Landlord does not require the Tenant to remove any fixtures or improvements under this clause, such fixtures and improvements will become the property of the Landlord at the end of this lease;
- 17.1.3 remove all of the Tenant's Property from the Premises (except any fixtures or improvements, the removal of which is to be dealt with under clause 17.1.2);
- 17.1.4 repair any damage caused by the Tenant complying with its obligations under this clause (including any necessary repainting of walls); and
- 17.1.5 deliver to the Landlord all keys and passes giving access to the Premises which are held by the Tenant or any of the Tenant's Agents, whether or not they were supplied by the Landlord.

### **17.2 Tenant's Property left on Premises**

Any of the Tenant's Property left on the Premises 14 days after the early determination or expiry of this lease may be dealt with or disposed of by the Landlord as the Landlord deems appropriate. Any costs the Landlord incurs in removing any of the Tenant's Property must be reimbursed by the Tenant to the Landlord on demand. The parties intend that this clause operates in relation to the Tenant's Property in place of any legislation that might otherwise apply to goods remaining on the Premises

## **18 LANDLORD'S OBLIGATIONS**

Provided the Tenant complies with the terms of this lease, and subject to the terms of this lease, the Tenant may peacefully enjoy the Premises during the Term without interruption by the Landlord.

## **19 LANDLORD'S RIGHTS**

### **19.1 Right to enter**

The Landlord or any person authorised by the Landlord may enter the Premises at reasonable times:

- 19.1.1 to inspect, maintain, repair or alter the Premises, subject to reasonable notice; and
- 19.1.2 to carry out any building works required by the Landlord or any relevant authority, subject to 1 months' prior written notice being given to the Tenant.

If there is an emergency, the Landlord and any person authorised by the Landlord may enter the Premises at any time without notice.

## **20 DEFAULT BY TENANT**

### **20.1 Default Event**

A Default Event occurs if:

- 20.1.1 the Tenant does not pay any money as required under this lease whether or not demand has been made;
- 20.1.2 the Tenant does not comply with any other obligation under this lease;
- 20.1.3 a judgement or order for \$10,000.00 or more is enforced or becomes enforceable against the Tenant's interest in this lease or the Tenant's Property;
- 20.1.4 the Tenant is a corporate body other than a public company listed on Australian Stock Exchange Limited and:
  - (a) an order is made or resolution is passed to wind up the Tenant except for reconstruction or amalgamation;
  - (b) the Tenant goes into liquidation;
  - (c) the Tenant has a receiver (including a provisional receiver) or a receiver and manager of any of its assets, or an administrator appointed; or
  - (d) the Tenant proposes a re-organisation, moratorium or other administration involving all or any class of its creditors except for reconstruction or amalgamation;
- 20.1.5 the Tenant being an individual:
  - (a) becomes bankrupt; or
  - (b) takes, or tries to take advantage of, Part X of the *Bankruptcy Act 1966* (Cth); or
- 20.1.6 the Tenant enters into a scheme of arrangement or composition with, or assignment for the benefit of, any of the Tenant's creditors.

### **20.2 Landlord's right to end lease**

If a Default Event occurs, the Landlord may:

- 20.2.1 end this lease by re-entering the Premises without notice or, if required by law, with notice; or
- 20.2.2 end this lease by notice to the Tenant.



### 20.3 **Notice under Property Law Act**

For any breach of this lease to which section 146(1) of the *Property Law Act 1958* applies, 14 days after service of a notice under the section is fixed as the time within which:

- 20.3.1 the Tenant must remedy the breach if it is capable of remedy; and
- 20.3.2 make reasonable compensation in money to the Landlord's satisfaction for the breach.

### 20.4 **Rights retained**

If this lease is ended by the Landlord, the Landlord retains the right to sue the Tenant for all unpaid moneys or for damages for breaches of the Tenant's obligations under this lease. For the purpose of assessing damages to the Landlord, the benefit of the Tenant's performance of this lease to the Landlord must be calculated on the basis that this lease continues in force until the Expiry Date.

## 21 **ESSENTIAL TERMS**

### 21.1 **Essential terms**

The following Tenant's obligations are essential terms of this lease:

- 21.1.1 the obligation to pay money; and
- 21.1.2 without limitation, the obligations under clause 4 (Payments), 6 (Goods and Services Tax), 9 (Use of Premises), 10 (Security), 11 (Licences), 12 (Tenant's obligations concerning insurance), 13 (Maintenance of Premises and Alterations), 20 (Assignment and subletting) and 22 (Occupational Health and Safety).

However, this clause does not prevent any other obligation under this lease being an essential term.

### 21.2 **Breach is repudiation**

A breach by the Tenant of an essential term is taken to be a repudiation by the Tenant of all its obligations under this lease.

## 22 **MITIGATION OF DAMAGES**

### 22.1 **Landlord must mitigate damages**

If the Tenant vacates the Premises whether with or without the Landlord's consent, the Landlord must take reasonable steps to mitigate its loss and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms.

### 22.2 **Assessment of damages**

The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages. The Landlord's conduct taken in exercising this duty to mitigate damages will not of itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

## **23 DAMAGE TO PREMISES**

### **23.1 Rights of Landlord**

If the Premises are damaged so that they cannot be used for the Permitted Use, the Landlord may, on written notice to the Tenant to be served within 30 days from the date of the destruction or damage, choose to either end this lease or reinstate the Premises.

### **23.2 Where Landlord's notice not given**

If the Landlord does not serve any notice under clause 23.1 within the required time:

23.2.1 if the Premises are partly, but not substantially destroyed, then subject to clause 23.5 the Landlord must reinstate the Premises as soon as reasonably practicable; and

23.2.2 if the Premises are wholly or substantially destroyed, the Landlord is not obliged to reinstate the Premises, but (subject to clause 23.5) the Tenant may end this lease by written notice to the Landlord. However, if before the Tenant serves any such notice the Landlord gives the Tenant notice of its decision to reinstate the Premises, the Tenant will no longer have this right.

### **23.3 Delay in reinstatement**

If the Landlord is obliged to or chooses to reinstate the Premises, and the reinstatement does not start within 3 months or is not completed within 18 months of the date of the destruction or damage, then either the Landlord or the Tenant (subject to clause 23.5) may end this lease by giving the other written notice at any time before the reinstatement is completed.

### **23.4 Abatement of Rent**

Subject to clause 23.5, from the date of the destruction or damage until the Premises are again completely fit for the Permitted Use, a fair portion of the Rent as determined by the Landlord having regard to the nature and extent of the damage, will abate.

### **23.5 Refusal of insurance claim due to Tenant's conduct**

If payment of an insurance claim in respect of any damage or destruction is refused because of an act or omission by the Tenant or any of the Tenant's Agents:

23.5.1 the Tenant is not entitled to any suspension of Rent under clause 23.4 or to end this lease under clause 23.2.2 or clause 23.3; and

23.5.2 the Landlord is not obliged to reinstate the Premises under clause 23.2.1.

### **23.6 No compensation to Tenant**

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is destroyed or damaged or if this lease is ended under this clause.

## **24 RESUMPTION OF PREMISES**

If any part of the Premises is resumed by any authority and the Premises becomes unfit for the Permitted Use, then either the Landlord or the Tenant may end this lease by written notice to the other. The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is resumed by any authority.

## **25 HOLDING OVER**

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

- 25.1 the Tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy;
- 25.2 either party may end the tenancy by giving one month's written notice to the other at any time;
- 25.3 the monthly rent starts at an amount equal to the annual Rent which the Tenant was paying immediately before the Term ended divided by 12 unless a different rent has been agreed upon; and
- 25.4 the Landlord may increase the monthly rent at any time by giving the Tenant one month's written notice.

## **26 OPTION FOR FURTHER TERM**

### **26.1 Conditions for exercise of option**

The Landlord must renew this lease, for the further term or terms stated in item 13 of Schedule 1 if:

- 26.1.1 there is no unremedied breach of this lease by the Tenant of which the Landlord has given the Tenant written notice;
- 26.1.2 the Tenant has not persistently committed breaches of this lease of which the Landlord has given notice during the Term; and
- 26.1.3 the Tenant has requested the renewal in writing not more than 6 months nor less than 3 months before the end of the Term. The latest date for exercising the option is stated in item 14 of Schedule 1.

### **26.2 Conditions for renewed lease**

The renewed lease:

- 26.2.1 starts on the day after this lease ends;
- 26.2.2 has a starting rent as set out in item 10 of Schedule 1; and
- 26.2.3 must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in item 13 of Schedule 1 has been exercised.

## **27 RELEASE AND INDEMNITY**

### **27.1 Tenant's risk**

The Tenant occupies and uses the Premises, Building and Land at the Tenant's own risk.

### **27.2 Release and indemnity**

The Tenant releases and indemnifies the Landlord and its employees, agents and contractors from all legal liability arising from the use or occupation of the Premises, Building and Land by the Tenant or any of the Tenant's Agents, including:

- 27.2.1 any claim made by any person for injury, loss or damage arising in any manner;



27.2.2 any loss or damage to any property belonging to the Tenant or other persons located on or outside the Premises caused by the Tenant or the Tenant's Agents; and

27.2.3 any loss, damage, injury or illness sustained or incurred by the Tenant or any of the Tenant's Agents.

### 27.3 **Restrictions on release and indemnity**

The releases and indemnities in clause 27.2 do not apply to:

27.3.1 any legal liability of the Landlord that arises from any unlawful act or omission of or any misconduct by the Landlord or its employees, officers, agents or contractors; or

27.3.2 any breach of this lease by the Landlord.

### 27.4 **No claim for compensation**

The Tenant and any other person claiming rights under this lease releases the Landlord from any claim for compensation for:

27.4.1 the failure of any equipment or machinery in the Premises; and

27.4.2 any damage or loss caused or arising out of the interruption of any services supplied to the Premises including but not limited to the supply of gas, electricity or water.

## 28 **LANDLORD'S EXERCISE OF RIGHTS**

### 28.1 **Landlord has discretion**

The Landlord may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.

### 28.2 **Partial exercise**

A single or partial exercise of a right, power or remedy by the Landlord does not prevent a further exercise of that right or an exercise of any other right, power or remedy.

### 28.3 **Right not prejudiced by delay etc**

Failure by the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## 29 **DISPUTES**

### 29.1 **Application**

29.1.1 This clause 29 applies to all disputes under this lease except disputes:

- (a) about unpaid rent and interest charged on it;
- (b) about review of rent; or
- (c) to be resolved in another way prescribed by any other provision of this lease.

## 29.2 **Dispute**

If a dispute arises out of or relates to this lease (including any dispute as to breach or termination of this lease), a party may not commence any court proceedings relating to the dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

## 29.3 **Mediation procedure**

If a dispute or disagreement arises in relation to any matter under this lease, the parties must endeavour to resolve the matter in accordance with the following mediation procedure:

- 29.3.1 a party may start mediation by serving notice on the other party;
- 29.3.2 the notice must state that a dispute has arisen and identify what the dispute is;
- 29.3.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 5 Business Days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
- 29.3.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
- 29.3.5 if the dispute is not resolved within 28 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

A party is not bound to follow the procedures set out in this clause 29 where to do so means that a limitation period for a cause of action relevant to the issues in dispute will expire.

## 29.4 **Charges**

The mediator may fix the charges for the mediation which must be paid equally by the parties.

## 29.5 **Settlement of dispute**

If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.

## 29.6 **Confidential**

The mediation is confidential and:

- 29.6.1 statements made by the mediator or the parties; and
  - 29.6.2 discussions between the participants to the mediation,
- before, after or during the mediation, cannot be used in any legal proceedings.

## 29.7 **Mediator to be released**

It must be a term of the engagement of the mediator that the parties release the mediator from any claim of any nature relating to this lease.

## 29.8 **Rules of natural justice do not apply**

The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

## 29.9 Legal representation

Each party may be represented at the mediation by a legal practitioner or legal practitioners of its choice.

## 30 APPROVALS AND CONSENTS

30.1 Unless this lease provides otherwise, any consent or approval to be given by the Landlord may be given by the Landlord conditionally or unconditionally or withheld at the Landlord's absolute discretion. If conditions are imposed by the Landlord, the Tenant must comply with each condition imposed by the Landlord as if it were a provision of this lease.

30.2 Where under this lease the consent of the Landlord is required to be given, the consent can only be given by the Landlord acting in its capacity as a council under the *Local Government Act 1989* and the Tenant acknowledges that the consent is not given or deemed to be given by the Landlord acting as the responsible planning authority under the *Planning and Environment Act 1987* or by the issue of any building permit by the municipal building surveyor.

## 31 WAIVER AND VARIATION

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

## 32 REMEDIES CUMULATIVE

The rights, powers and remedies provided in this lease are in addition to the rights, powers or remedies provided by law independently of this lease.

## 33 INDEMNITIES

Each indemnity in this lease is a continuing obligation, independent from the other obligations of the Tenant and survives the end of this lease.

## 34 EXCLUSION OF STATUTORY PROVISIONS

The covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958*, and section 144 of the *Property Law Act 1958*, do not apply to this lease.

## 35 PAYMENTS

### 35.1 No set-off

The Tenant must make payments under this lease punctually without set-off, counterclaim or deduction.

### 35.2 No demand required

Unless this lease provides otherwise, the Landlord need not demand any amount payable by the Tenant under this lease.

## 36 FURTHER ASSURANCES

If the Landlord requests, the Tenant must:

36.1 execute, and cause its successors to execute, documents and do everything else necessary or appropriate to bind the Tenant and its successors under this lease; and

- 36.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this lease.

### **37 PRIOR BREACHES AND OBLIGATIONS**

The ending of this lease does not affect:

- 37.1 the Landlord's rights in respect of a breach of this lease by the Tenant before the end of this lease; or
- 37.2 the Tenant's obligation to make any payment under this lease before the expiry or termination.

### **38 GOVERNING LAW**

This lease is governed by the laws of Victoria.

### **39 WAIVER AND VARIATION**

#### **39.1 Writing required**

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

#### **39.2 Limit of waiver**

If the Landlord waives a provision of or a right created under or implied in this lease, that waiver does not extend to:

- 39.2.1 a breach by the Tenant of the same or any other provision; or
- 39.2.2 the future exercise by the Landlord of that right.

#### **39.3 No deemed waiver**

The acceptance of a payment under this lease will not be taken to constitute a waiver of any provision of or a right created under or implied in this lease, except the right to demand the payment of that amount of money.

### **40 NOTICES**

#### **40.1 Giving notice**

Subject to clause 40.4, any notice (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this lease) given under this lease must be:

- 40.1.1 in writing and signed by or on behalf of the party giving it;
- 40.1.2 directed to the recipient's address, facsimile number or email address specified in item 15 of Schedule 1, as varied by any notice; and
- 40.1.3 hand delivered or sent by prepaid post to that address, sent by facsimile transmission to that number, or sent by email to that email address.

#### **40.2 Receipt of notice**

A notice given in accordance with clause 40.1 is taken to be received by the recipient:



- 40.2.1 if hand delivered, on delivery;
- 40.2.2 if sent by prepaid post, 3 Business Days after the date of posting;
- 40.2.3 if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 8 business hours after that transmission, the recipient informs the sender that it has not received the entire notice; or
- 40.2.4 if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient on the next Business Day.

### 40.3 **Signing of notice**

A notice given under this lease is sufficiently signed if:

- 40.3.1 in the case of a body corporate, it is signed by an Authorised Officer, director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or
- 40.3.2 in the case of an individual, it is signed by the individual.

### 40.4 **Other modes of service permitted**

The provisions of this clause are in addition to any other mode of service permitted by law.

## 41 **SEVERANCE**

### 41.1 **Preferred construction**

The parties agree that a construction of this lease that results in all provisions being enforceable is to be preferred to any other construction.

### 41.2 **Severance**

If, despite the application of clause 41.1, a provision of this lease is illegal or unenforceable:

- 41.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and
  - 41.2.2 in any other case, the whole provision is omitted,
- and the remainder of this lease continues in force.

## 42 **ACTS OF TENANT'S AGENTS**

If this lease:

- 42.1 prohibits the Tenant from doing a thing, the Tenant must ensure that the Tenant's Agents do not do that thing, and not allow or cause any person to do that thing; or
- 42.2 requires the Tenant to do a thing, the Tenant must ensure that the Tenant's Agents do that thing.

### **43 ENTIRE AGREEMENT**

The Tenant acknowledges that:

- 43.1 no information, representation or warranty by or on behalf of the Landlord was supplied or made concerning this lease with the intention or knowledge that it would be relied upon by the Tenant;
- 43.2 no information, representation or warranty has been relied upon; and
- 43.3 this lease constitutes the entire agreement between the parties concerning the Premises and supersedes all previous negotiations and agreements.

### **44 INTERPRETATION**

In this lease, unless the contrary intention appears:

- 44.1 if there is an inconsistency between a special condition in item 16 of Schedule 1 and another provision of this lease, the special condition prevails;
- 44.2 the singular includes the plural and vice versa;
- 44.3 a reference to a document or instrument, including this lease, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 44.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 44.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 44.6 words importing one gender include other genders;
- 44.7 other grammatical forms of defined words or expressions have corresponding meanings;
- 44.8 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
  - 44.8.1 two or more parties; or
  - 44.8.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 44.9 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 44.10 a recital, schedule, annexure or description of the parties forms part of this lease;
- 44.11 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 44.12 if an act required to be done under this lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 44.13 all monetary amounts are in Australian dollars;
- 44.14 a party that is a trustee is bound both personally and in its capacity as trustee;

- 44.15 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- 44.16 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this lease.

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**SCHEDULE 1**

Item			
1	<b>TENANT:</b> (Clause 1.27)	Rupanyup Recreation Reserve Inc A0035484F Gibson Street Rupanyup	
2	<b>COMMENCEMENT DATE:</b> (Clause 1.2)	25 January 2023	
3	<b>EXPIRY DATE:</b> (Clause 1.7)	25 January 2028	
4	<b>TERM:</b> (Clause 1.31)	5 Years	
5	<b>PERMITTED USE:</b> (Clause 1.15)	Community Use, Recreation	
6	<b>BUILDING AND LAND:</b> (Clause 1.2)	6.1 Building: Community Centre, Sheds and outbuildings  6.2 Land:  VOLUME 9302 FOLIO 541 VOLUME 7343 FOLIO 506, VOLUME 5201 FOLIO 022; VOLUME 9197 FOLIO 090 VOLUME 9189 FOLIO 765 VOLUME 11192 FOLIO 081	
7	<b>PREMISES:</b> (Clause 1.18)	Community Centre and outbuildings, tennis/netball courts and oval .	
8	<b>RENT:</b> (Clause 1.21)	\$1.00 per annum plus GST	
9	<b>FREQUENCY OF PAYMENT OF RENT:</b> (Clause 4.1.1(b))	The Rent is payable annually in advance on or before the Commencement Date and thereafter on each anniversary of the Commencement Date.  The Committee can select to have the \$1.00 deducted from their annual contribution payment.	
10	<b>RENT REVIEW:</b> (Clauses 1.22 and 5 and clause 26.2.2)	<b>Rent Review Date</b> On each anniversary of the Commencement Date	<b>Method of Review</b> Not applicable

Item	
<b>11 TENANT'S PROPORTION OF RATES AND TAXES:</b> (Clause 1.30)	<p>11.1 In relation to Rates and Taxes relating to the Premises only and capable of separate assessment: 100%</p> <p>11.2 In relation to all other Rates and Taxes not referred to in 11.1 the proportion that the Lettable Area of the Premises bears to the Lettable Area of the land or the building upon which the Rates and Taxes are assessed.</p>
<b>12 AMOUNT OF PUBLIC LIABILITY INSURANCE:</b> (Clause 12.1.1)	\$20 million
<b>13 OPTIONS:</b> (Clause 26.1)	2 option(s) for a further term of 5 years
<b>14 LAST DATE FOR EXERCISE OF OPTION:</b> (Clause 26.1.3)	6 months prior to the Expiry Date, being 25 July 2027
<b>15 ADDRESSES OF FAX NOS. AND PARTIES:</b> (Clause 40.1)	<p><b>Landlord's address:</b>            34 Lyle Street Warracknabeal 3393</p> <p><b>Email address for Landlord:</b>            info@yarriambiack.vic.gov.au</p>
	<p><b>Tenant's address:</b> Rupanyup Recreation Reserve, Gibson Street Rupanyup</p> <p><b>Email address for Tenant:</b>            [REDACTED]</p>
<b>16 SPECIAL CONDITIONS:</b> (Clause 2.1.3)	
	<p><b>1. Retail Leases Act</b></p> <p>The parties acknowledge and agree that the Retail Leases Act 2003 does not apply to this lease for the following reason:</p> <p><i>The lease to a community organisation will be exempt from the operation of the Retail Leases Act 2003.</i></p>

Item	
	<p><b>2. Annual Reporting Guidelines</b></p> <p>The Tenant must give to the Landlord, within 4 weeks of the Tenant's annual general meeting, a report containing such information as the Landlord may require, including but not limited to the information set out in Schedule 5.</p>
	<p><b>3. Hours of Operation</b></p> <p>The Tenant must not conduct the Permitted Use from or use the Premises outside of the following hours:</p> <p>7am – 10pm with occasional special community events authorised till 1pm.</p>
	<p><b>4. Non-Compliant Shed – Netball</b></p> <p>The “former netball shed” (refer to schedule 2 - Plan and building identified) has many compliance issues to the lack of run-off zones and circulation spaces, which poses safety concerns for participants.</p> <p>To alleviate the risks and address the concerns raised by Netball Victoria, Council secured significant investment from the State and Federal Government to upgrade the facilities at the Rupanyup Recreation Reserve, Gibson Street Rupanyup.</p> <p>As a result, the reserve now has two compliant outdoor netball courts, with lighting and supporting amenities. The “former netball shed” is closed and any form of netball training and/or competition is <b>prohibited</b> from this facility.</p> <p>The Rupanyup Recreation Reserve Inc is responsible for ensuring compliance to section 16 – item 4.</p>
	<p><b>5. Working with Children</b></p> <p>(a) Without limiting clause 9.18, if the Tenant's activities at the Premises involve persons engaged in “child related work” within the meaning of the <i>Working with Children Act 2005 (WWC Act)</i>:</p> <p>(i) The Tenant must, and must ensure that all of the Tenant's employees and volunteers, hold a current and valid “Working with Children Check” as referred to in the WWC Act (or any such certificate or check which replaces the Working with Children check in the future) (<b>WCC</b>), before working with children at the Premises.</p> <p>(ii) The Tenant must ensure that no employee nor volunteer with a negative notice under the WWC Act works with children at the Premises.</p>

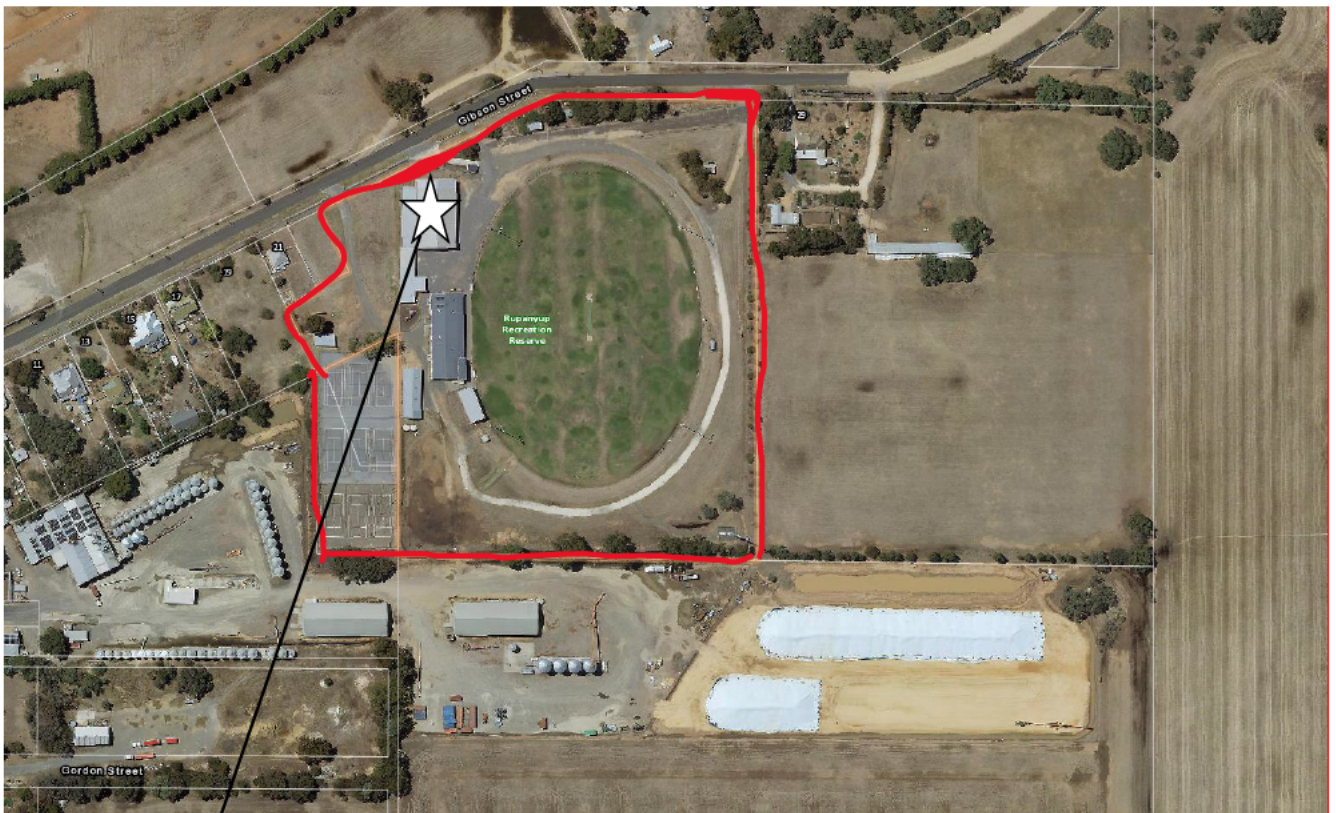
Item	
	<p>(iii) A copy of the WCC of each of the Tenant's employees and volunteers must be provided to the Landlord upon request.</p> <p>(b) Without limiting clause 9.18, the Tenant must, and must ensure that the Tenant's Agents, comply with and implement the Victorian State Government Child Safe Standards, as amended from time to time. Upon request, the Tenant must provide the Landlord with information regarding how the Tenant has adopted and applied the Child Safe Standards in the form requested by the Landlord.</p>

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## SCHEDULE 2

## PLAN



Shed marked with Star is the non-compliant shed, prohibited for netball training and/or competition.

**SCHEDULE 3**  
**TENANT'S PROPERTY**

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## SCHEDULE 4

### MAINTENANCE SCHEDULE

All building maintenance works are to be reported in a timely manner (within 48 hours) utilising Council's Customer Request Management System (CRM). The CRM system can be accessed by:

- Reporting the matter directly, calling Council's Customer Service number on 03 53 98 0100; or
- Lodging the request online via Council's Website – Report an Issue; or
- Via Snap Send Solve Application.

Day to Day maintenance on the reserve grounds is the responsibility of the Recreation Reserve Inc. Committee, and/or their delegated user groups.

The annual allocation provided by Council will cover costs of day-to-day maintenance. The allocation is determined by Council's Sport and Recreation Strategy and may change during the life of this lease agreement.

All capital improvements and major maintenance works must be endorsed by Council prior to being undertaken. The works must align with Council's applicable strategies, plans and master plans relevant to the Rupanyup Recreation Reserve.

Item – Servicing and Maintenance	Responsibility
Air conditioning system	Council
Alarm system	Council
Ceiling walls and skylights	Council
Cooking and refrigeration equipment (if Council owned)	Council. Refrigeration is the responsibility of the Recreation Reserve Inc.
Curtains, drapes and blinds	Council
Doors, including cupboards and hardware	Council
External walls (shell of building)	Council
Electrical wiring, switchboard, power points, switches and light fittings	Council
Essential Services <ul style="list-style-type: none"> <li>• Fire alarms</li> <li>• Fire blankets</li> <li>• Fire extinguishers</li> <li>• Lighting for emergency exit</li> <li>• Smoke alarms and detectors</li> <li>• Fire sprinkler systems</li> </ul>	Council
Evacuation plans	Council



Item – Servicing and Maintenance	Responsibility
External furniture	Recreation Reserve Committee
External security and lighting	Council
Fences	Council
Floor surfaces and coverings	Council
Flyscreens	Council
Food handling and storage areas	Recreation Reserve Committee
Glass and windows	Council
Gutter cleaning	Council
Grounds including landscaping	Recreation Reserve Committee
Hard waste	Recreation Reserve Committee
Keys and locks	Council

**SCHEDULE 5****ANNUAL REPORTING GUIDELINES**

Minutes of the Recreation Reserve Inc. Annual General Meeting, including Treasurer's Report and list of all User Groups and associated sub-leases, user agreements and/or licences is to be forwarded to the Chief Executive Officer within four weeks of the meeting.

A Copy of Public Liability Insurance is to be forwarded to the Chief Executive Officer on signing of the lease and annually on renewal of insurance.

As at December 2022:

Rupanyup Recreation Reserve Inc Committee of Management holds the lease, and may sub-lease or licence the following groups to utilise the grounds and/or buildings:

- Rupanyup Sporting Clubs trading as Rupanyup Community Centre
- Rupanyup/Dunmunkle Cricket Club
- Rupanyup Tennis Club
- Rupanyup Football Netball Club

**EXECUTED** as a deed

**THE COMMON SEAL** of )  
**YARRIAMBIACK SHIRE COUNCIL** was )  
hereunto affixed on the ..... day of )  
..... 2023 )  
in the presence of: )

..... Chief Executive Officer

..... Full name

..... Authorised Officer

..... Full name

**THE COMMON SEAL** of Rupanyup )  
Recreation Reserve Inc was affixed in )  
accordance with its rules in the presence of: )  
)

\_\_\_\_\_  
Committee member

\_\_\_\_\_  
Committee member