

**YARRIAMBIACK SHIRE COUNCIL**

and

**WARRACKNABEAL AERO CLUB INC.**  
(Registration number: A0029026M)

**GROUND LEASE (LAND ONLY)**

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Premises: Part of Warracknabeal Aerodrome,  
4936 Henty Highway, Kellalac, Victoria 3393

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## PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**  
of 34 Lyle Street, Warracknabeal VIC 3393  
(Landlord)
- 2 **WARRACKNABEAL AERO CLUB INC.**  
(Registration number A0029026M  
of PO Box 172 Warracknabeal VIC 3393  
(Tenant)

## RECITALS

- A The Landlord is the registered proprietor of the Land of which the Premises form part.
- 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 parties acknowledge and recognise that, as at the Commencement Date, the Tenant is a not-for-profit community organisation whose primary interest is the promotion of aviation and aviation fellowship throughout the Warracknabeal District.
- D The Landlord has agreed to grant a lease of 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 **Area of the Premises** means the area of the Land which the Premises forms part as set out in Schedule 1 or as determined by the Landlord's surveyor.
- 1.2 **Authorised Officer** in the case of either party means a person appointed by that party to act on its behalf under this lease.
- 1.3 **Authority** means any government department, local council, government or statutory authority, public or private utility or other private or public body, that has a right to impose a requirement (including the requirement that consent be obtained) or charge a fee in connection with the Premises or a Service.
- 1.4 **Bank** means an authorised deposit taking institution as defined by the *Banking Act 1959* (Cth).
- 1.5 **Bank Guarantee** means an unconditional and irrevocable undertaking by a Bank that is:
  - 1.5.1 for the amount specified in Item 14 (or any replacement or addition to that undertaking under clause 12);

- 1.5.2 without an expiry date; and
- 1.5.3 on such other terms as the Landlord may reasonably require.
- 1.6 **Business Day** means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Victoria.
- 1.7 **Business Hours** means the hours between 9.00am and 5.00pm on a Business Day.
- 1.8 **Building Regulations** means the *Building Regulations 2018* (Vic) and any amendment to or replacement of those regulations.
- 1.9 **Claim** includes:
  - 1.9.1 any claim, objection, requisition, notice, demand, action, proceeding, litigation, investigation or judgment, whether based in contract, tort, statute or otherwise; and
  - 1.9.2 any rescission or termination of this Lease or attempt to do so.
- 1.10 **Commencement Date** means the date set out in Item 8.
- 1.11 **Common Areas** means all those parts of the Land not leased to the Tenant or to any other tenant and which are made available by the Landlord for the common use by the tenants and their respective employees, licensees, invitees and customers in common with each other and with the Landlord.
- 1.12 **Contaminant** includes all materials, pollutants, contaminants and substances that make or may make any land:
  - 1.12.1 contaminated land as defined in the *Environment Protection Act 2017* (Vic);
  - 1.12.2 poisonous, noxious, offensive, harmful or potentially harmful to human beings, animals, birds or wildlife, plants or vegetation;
  - 1.12.3 degraded in any way; or
  - 1.12.4 not comply with any Law including any Environmental Law.
- 1.13 **Contamination** means the presence in, on or under any land, including the groundwater under that land, of any substance (including a Contaminant, any chemical, any mineral or any human made substance or naturally occurring substance concentrated or changed by human activity) at a concentration above the concentration at which the substance is naturally present in, on or under that land.
- 1.14 **CPI** means:
  - 1.14.1 the Consumer Price Index All Groups Melbourne;
  - 1.14.2 if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
  - 1.14.3 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.
- 1.15 **Default Event** has the meaning given to it in clause 28.1.

- 1.16 **Environmental Authorisation** means in relation to any aspect of environment or human health any notice, consent, authorisation, registration, agreement, relevant certificate, permission, licence, approval, authority or exemption from, by or with an Authority.
- 1.17 **Environmental Law** means a Law, ordinance, regulation or the like which relates to an aspect of the environment or human health.
- 1.18 **Essential Safety Measures** means essential safety measures as defined in the Building Regulations that are within the Premises or the Tenant's Property.
- 1.19 **Expiry Date** means the last day of the Term and is the date set out in Item 9.
- 1.20 **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.
- 1.21 **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.
- 1.22 **Item** means an item in the reference table in Schedule 1.
- 1.23 **Land** means the land described in Item 4 of which the Premises is comprised or of which the Premises forms part.
- 1.24 **Landlord's Property** means anything in the Premises and on the Land at any time that is not the Tenant's Property or the property of any other occupier of the Land, including the items listed in Schedule 5.
- 1.25 **Law** means any law, rule, act, ordinance, regulation, by-law, local law, order, statutory instrument, Australian Standard, control, restriction, direction, notice or proclamation and includes the requirements of any Authorities (including the Civil Aviation Safety Authority (**CASA**)) or any permit, planning scheme or approval affecting the Premises or the Land.
- 1.26 **Loss** means any liability, charge, Claim, loss, damage, destruction, injury, expense or cost including any legal costs on a solicitor/client basis.
- 1.27 **New Tenant** means a proposed assignee under clause 20.
- 1.28 **OHS Act** means the *Occupational Health Safety Act 2004* (Vic).
- 1.29 **OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety Law, regulation or by-law that applies to work being carried out on the Premises.
- 1.30 **OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).
- 1.31 **Permitted Use** means the use described in Item 7 and excludes any use which would result in the *Retail Leases Act 2003* (Vic) applying to this lease.
- 1.32 **Plan** means the plan attached in Schedule 2.
- 1.33 **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.34 **Premises** means the land described in Item 5 and shown on the Plan and includes any Landlord's Property within the Premises.
- 1.35 **Principal Contractor** means the position of Principal Contractor referred to in Chapter 5 of the OHS Regulations.
- 1.36 **Prohibited Person** has the meaning given in the *Environment Protection Act 2017* (Vic).

- 1.37 **Publicly Listed Company** means a company the voting shares of which are listed on Australian Stock Exchange Limited or a stock exchange outside Australia.
- 1.38 **Rent** means the amount specified in Item 10, and as revised in accordance with this lease.
- 1.39 **Rent Review Date** means each of the dates specified in Item 12.
- 1.40 **Review Period** means the period following each Rent Review Date until the next Rent Review Date or until the end of this lease.
- 1.41 **Rules** means the rules set out in Schedule 4, if any, or any additional or replacement rules and regulations prescribed from time to time by the Landlord in relation to the operation, use and occupation of the Premises and the Land.
- 1.42 **Schedule** means a schedule to this lease.
- 1.43 **Security Deposit** means a cash payment in the amount, if any, described in Item 14 (or any addition to that payment under clause 11).
- 1.44 **Services** includes all:
- 1.44.1 electricity, water, sewerage, and telephone services;
- installed in or connected or supplied to the Premises or the Land.
- 1.45 **Special Conditions** means the special conditions, if any, set out in Schedule 2.
- 1.46 **Start of the Lease** means the commencement date of the first lease of the Premises by the Tenant.
- 1.47 **Tenant's Agents** means the members, employees, agents, contractors, and invitees of the Tenant and includes any spectators of events conducted at the Premises and patrons of facilities at the Premises.
- 1.48 **Tenant's Business** means the business operated by the Tenant from or at the Premises in accordance with the Permitted Use.
- 1.49 **Tenant's Property** means everything on the Premises or Land at any time belonging to the Tenant as further described in clause 2.3, and including the items listed in Schedule 6.
- 1.50 **Tenant's Works** means any Works the Tenant carries out to or in the Premises, including any Works permitted by the Landlord.
- 1.51 **Term** means the term of this lease as set out in clause 2.2.
- 1.52 **Works** means any improvement, alteration (whether structural or otherwise), or addition to the Premises, including any:
- 1.52.1 construction of any improvements or buildings;
  - 1.52.2 demolition of any part of any improvements or buildings;
  - 1.52.3 installation of any equipment (including air conditioning or sprinkler systems);
  - 1.52.4 installation of exterior fixtures or fittings (including blinds or awnings);
  - 1.52.5 landscaping or earthworks; and/or

- 1.52.6 fixing or placement of signs, notices or advertisements which are visible from outside the Premises in any place in or near the Premises.

## **2 LEASE, TERM AND LICENCE**

### **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 any Special Conditions;
- 2.1.3 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), or giving notice under section 115 of the *Local Government Act 2020* (Vic) and subsequently resolving to enter into this lease, as the case may be;
- 2.1.4 all encumbrances affecting the Land; and
- 2.1.5 the right of the Landlord to:
  - (a) install maintain, use, repair, alter and replace the pipes, wires, ducts and cables leading through or around the Premises or the Land;
  - (b) run water, air, electricity, sewage, gas and other substances through the Premises or the Land;
  - (c) determine all areas of access to and from the Land and the Premises; and
  - (d) restrict the rights of the public and any other occupiers of the Land in relation to the Common Areas.

### **2.2 Term of lease**

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

### **2.3 Improvements**

The parties acknowledge and agree that:

- 2.3.1 any improvements and buildings on the Land that are Tenant's Property do not form part of the Landlord's Property or the Premises leased by the Landlord to the Tenant under this lease;
- 2.3.2 despite clause 2.3.1, the Tenant must comply with clause 16.5 in relation to any improvements and buildings constructed on the Land and use of the Premises for any improvements and buildings built by the Tenant will be subject to the Tenant complying with the terms of this lease in relation to those improvements and buildings; and
- 2.3.3 subject to clause 21.1.2, all such improvements and buildings shall be and remain the property of the Tenant at all times.

## 2.4 **Licence of Common Areas**

- 2.4.1 The Landlord grants the Tenant and the Tenant's Agents the right during the Term to use the Common Areas (by way of a non-exclusive licence) together with the Landlord and other persons permitted by the Landlord.
- 2.4.2 The Tenant agrees that the licence of the Common Areas referred to in clause 2.4.1 takes effect as if the lease terms and conditions had been repeated here in full and with such modifications only as are necessary to make them applicable to the licence and the Common Areas.

## 3 **PAYMENTS BY TENANT**

### 3.1 **Rent**

The Tenant must pay the Rent without any deduction, counterclaim or set off:

- 3.1.1 to the Landlord at the Landlord's address specified in this lease, or as the Landlord directs; and
- 3.1.2 by 1 (one) annual payment in advance on or before 31 July each year (**Payment Due Date**). The first payment must be paid on the Commencement Date. If the Commencement Date is not the Payment Due Date of the first year of the Term, the Tenant must pay a pro rata amount for the period prior to the Payment Due Date, and then annual payments thereafter.

### 3.2 **Fire Services Levy**

The Tenant is not responsible for any fire services levy imposed directly on or in respect of the Premises and Land.

### 3.3 **Services**

- 3.3.1 The Landlord is responsible for all assessments, rates, levies or charges for Services supplied to or for the Premises.
- 3.3.2 The Tenant must install and pay for any separate meter for recording or measuring any Services required by the Landlord or necessary as part of the Tenant's Works as agreed by both parties. This clause does not apply to buildings and structures on the Land as at the Commencement Date, and is only applicable to any future works carried out after the Commencement Date.
- 3.3.3 The Tenant acknowledges and agrees that the Landlord will utilise power at the hangars for the weather station.

## 4 **PAYMENT REQUIREMENTS**

### 4.1 **Method of payment**

The Tenant must make payments under this lease to the Landlord (or to a person nominated by the Landlord in a notice to the Tenant) by way of payment to the account nominated in writing by the Landlord.

### 4.2 **No set off**

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

#### 4.3 **No demand required**

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

#### 4.4 **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 the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

### 5 **RENT REVIEW**

#### 5.1 **Landlord may review**

The Rent may be reviewed by the Landlord on each Rent Review Date in accordance with clause 6, 7 or 8 as specified in Item 12. A review of Rent may be initiated only by the Landlord.

#### 5.2 **Time of review**

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

### 6 **MARKET REVIEW AND VALUATION**

If Item 12 provides for a market review of Rent on any Rent Review Date, then the Rent for the next Review Period will be the market rent as at the Rent Review Date as determined by the valuer appointed by the Landlord.

### 7 **CPI REVIEW**

If Item 12 provides for a CPI review of Rent on any Rent Review Date, then the Rent for the next Review Period must 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.

The Tenant must pay that reviewed Rent from that CPI Review Date.

### 8 **FIXED OR PERCENTAGE INCREASE**

If Item 12 provides for either an increase of the Rent to a fixed amount or a percentage increase of Rent on any Rent Review Date, then the Rent must be increased by either:

- 8.1 in the case of a fixed amount increase in the Rent, increasing the Rent to that fixed amount specified in Item 12; or

- 8.2 in the case of a percentage increase, multiplying the percentage specified in Item 12 with the amount of Rent payable by the Tenant immediately before the Rent Review Date.

## **9 GST**

### **9.1 Interpretation**

Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

### **9.2 GST exclusive amounts**

Except where this lease states otherwise, each amount payable by a party under this lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

### **9.3 Maximum amount to be paid**

An amount payable by the Tenant in respect of a creditable acquisition by the Landlord from a third party must not exceed the sum of the value of the Landlord's acquisition and the additional amount payable by the Tenant under clause 9.2 on account of the Landlord's GST liability.

### **9.4 Tax invoice to be given**

A party is not obliged under this clause 9 to pay the GST on a taxable supply to it under this lease, until given a valid tax invoice for the supply.

## **10 LEGAL AND OTHER COSTS**

### **10.1 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:

- 10.1.1 the negotiation, preparation, settling and execution of this lease;
- 10.1.2 any assignment of this lease, or proposed assignment of this lease (whether or not the assignment occurs);
- 10.1.3 any mortgage, charge or surrender concerning this lease including costs payable to a person appointed to evaluate or supervise any matter;
- 10.1.4 any breach of this lease by the Tenant; and
- 10.1.5 the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Landlord of any rights or remedies under this lease.

### **10.2 Other costs**

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

**11 SECURITY DEPOSIT***Clause not used***12 BANK GUARANTEE***Clause not used***13 USE OF PREMISES****13.1 Tenant's obligations**

The Tenant must:

- 13.1.1 use the Premises for the Permitted Use only;
- 13.1.2 not use the Premises as a residence;
- 13.1.3 not use the Premises for any illegal purpose or activity;
- 13.1.4 not conduct any public auction or public meeting (excluding a meeting of the Tenant's members) in or around the Premises without the approval of the Landlord;
- 13.1.5 not burn rubbish in the Premises or on the Land;
- 13.1.6 at its own expense comply on time with all Laws concerning the Premises, the use and occupation of the Premises and the Tenant's Property and the Tenants Business, and provide evidence of such compliance to the Landlord upon request;
- 13.1.7 not do anything or permit the Tenant's Agents to do anything which is or may be a nuisance or annoyance to the Landlord, any other persons allowed by the Landlord to use any other part of the Land, any owners or occupants of premises adjacent to the Land, or the public;
- 13.1.8 conduct the Tenant's Business diligently and efficiently and in a proper reputable and businesslike manner befitting a high quality business, and ensure that all persons using the Premises and Common Areas are suitably experienced and skilled to carry out the Permitted Use;
- 13.1.9 not do anything or permit the Tenant's Agents to do anything which in the opinion of the Landlord may harm or may tend to harm the business or reputation of the Landlord or reflect unfavourably on the Landlord or other tenants or occupants of the Land;
- 13.1.10 apply for and keep in force all statutory approvals, licences and permits necessary for the Tenant to conduct the Tenant's Business and to use the Premises for the Permitted Use;
- 13.1.11 unless the Landlord gives prior written consent:
  - (a) not interfere with or obstruct the Common Areas (for example and without limitation, by affixing any signage or advertising to any part of the Common Areas or leaving any Tenant's Property or other items belonging to or within the control of the Tenant in the Common Areas);
  - (b) not bring, allow or permit any animal or pet on the **airside** (except for guide dogs or other assistance animals); and

- (c) not store on the Premises any goods which are not required for the purposes of the Tenant's Business; and

13.1.12 not without the Landlord's prior written consent and the consent of all relevant Authorities, use or permit the Tenant's Agents to use any musical instrument, radio, television or other equipment so that it is capable of being heard or seen from outside the Premises.

## 13.2 **No warranty**

The Landlord does not warrant that the Premises are suitable for the Permitted Use or the Tenant's Business.

## 14 **SECURITY**

### 14.1 **Tenant to protect Premises**

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

### 14.2 **Locks**

The Tenant will provide access to Hanger 2 to the Landlord, for the purposes of accessing plant that is stored in the hanger.

### 14.3 **Landlord's Property**

The Tenant must not remove any of the Landlord's Property from the Premises.

## 15 **TENANT'S INSURANCE OBLIGATIONS**

### 15.1 **Tenant to maintain insurance**

The Tenant must take out and maintain insurance for:

- 15.1.1 public liability in the name of the Tenant for the amount set out in Item 15 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;
- 15.1.2 the Tenant's Property (including full replacement building insurance for any buildings, fixtures or improvements and any plate glass windows, that form part of the Tenant's Property), contents and any fit out of the Premises against Loss by any cause; and
- 15.1.3 such other insurances that are required by Law or are required by the Landlord,

and the Tenant must produce to the Landlord copies of all these insurance policies and evidence that they are in force on the execution of this lease by the Tenant, and evidence that these insurance policies have been renewed and will be in force after their expiry date, at least 30 days prior to the expiry date of the relevant policy.

## 15.2 **Policy requirements**

All insurance policies under clause 15.1 must:

- 15.2.1 be taken out with an insurer approved by the Landlord (which approval may not be unreasonably withheld); and
- 15.2.2 have noted on them the respective interests of the Landlord and the Tenant, and if required by the Landlord, any mortgagee of the Land.

## 15.3 **Tenant not to prejudice insurance**

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

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

## 15.4 **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 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.

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

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

## 15.6 **Group insurance policy**

If the Landlord holds a policy for group public liability insurance, on request by the Landlord, the Tenant must reimburse the Landlord on demand for the Tenant's proportion of the premium payable in respect of the policy, including any increase in premium by virtue of the Tenant's inclusion on the policy.

## 15.7 **Accident Compensation**

The Tenant must:

- 15.7.1 take out and maintain insurance in respect of the business which the Tenant operates from or at the Premises and each person employed by the Tenant in that business, for the full amount of the Tenant's liability under any applicable workers' compensation legislation and for the full amount of the Tenant's potential legal liability independently of any such legislation; or
- 15.7.2 obtain and maintain approval as a self-insurer under any applicable workers' compensation legislation; and
- 15.7.3 provide evidence to the Landlord of such a policy or approval on demand.

## **16 MAINTENANCE OF PREMISES AND LANDLORD'S PROPERTY**

### **16.1 Tenant to maintain**

Except for fair wear and tear, the Tenant must keep the Premises and the Tenant's Property:

- 16.1.1 in good repair and well-maintained condition (and where Works are completed by the Tenant, the Tenant must maintain those Works in good and well-maintained condition), including all capital and structural repairs;
- 16.1.2 properly cleaned, repaired and maintained, using good quality materials, and in compliance with all laws and requirements of Authorities.

### **16.2 Compliance with notices**

The Tenant must comply with all notices or orders affecting the Premises or Land that are issued during the Term, and any period of holding over, except for any notices or orders that relate to the Land and/or Landlord's Property which applicable legislation makes the responsibility of the Landlord. For the avoidance of doubt, the Tenant will be responsible for any notices or orders which relate to any improvements constructed or installed by the Tenant.

### **16.3 Specific obligations**

In addition to its obligations under clauses 16.1 and 16.2, the Tenant must:

- 16.3.1 not use any lavatories, grease traps, drains or other sanitary facilities for any purpose other than that for which they were designed;
- 16.3.2 not without the written consent of the Landlord store or use any toxic or inflammable substances in the Premises or Tenant's Property (other than as reasonably required for the Permitted Use);
- 16.3.3 promptly repair any damage to the Premises or any part of the Land or buildings or installations on the Land caused or contributed to by the Tenant or any of the Tenant's Agents;
- 16.3.4 maintain in working order all plumbing, draining, gas, electric, solar and sewerage installations and fire protection apparatus in the Premises or the Tenant's Property;
- 16.3.5 promptly give written notice to the Landlord of:
  - (a) any defect in or damage to any of the Services, the Essential Safety Measures, the Premises, or the Landlord's Property;
  - (b) service by any Authority of a notice of order affecting the Premises; or
  - (c) any hazards arising from, threatening or affecting the Premises or Common Areas;
- 16.3.6 carry out repairs within a reasonable time of being served with a written notice of any defect or lack of repair which the Tenant is obliged to fix under this lease. If the Tenant does not comply with the notice, the Landlord may carry out the repairs and the Tenant must pay the cost to the Landlord on demand;
- 16.3.7 properly maintain any garden or lawn that forms part of the Premises to a standard reasonably required by the Landlord;

- 16.3.8 promptly replace any lawn, trees or shrubs on the Premises that perish or are destroyed, damaged or removed;
- 16.3.9 take all precautions required by Law against fire; and
- 16.3.10 comply with all reasonable directions of the Landlord or any insurer of the Premises as to the prevention, detection and limitation of fire.

#### 16.4 **Cleaning of Premises**

The Tenant must at its own cost:

- 16.4.1 cause the Premises and the Tenant's Property (including the interior and exterior surfaces of any windows and doors) to be regularly cleaned;
- 16.4.2 arrange for all refuse to be regularly removed from the Premises;
- 16.4.3 take all proper precautions to keep the Premises free of refuse, rodents and vermin. If required by the Landlord, the Tenant must engage pest exterminators for that purpose;
- 16.4.4 store refuse before removal so that it cannot be seen from outside the Premises; and
- 16.4.5 comply with the Landlord's reasonable directions concerning cleaning and the disposal of refuse, including with regard to the bins that must be used for refuse disposal.

#### 16.5 **Tenant's Works**

- 16.5.1 The Tenant must not carry out any Tenant's Works which involve construction of any improvements or buildings, or demolition of any part of any improvements or buildings, without first:
  - (a) obtaining the written approval of the Landlord, which must not be unreasonably withheld and if the Landlord grants its approval, the Tenant must comply with all the Landlord's reasonable requirements and specifications; and
  - (b) giving to the Landlord all certificates, permits and consents from the relevant Authorities, including any planning permits, building permits.
- 16.5.2 If the Landlord approves Tenant's Works under clause 16.5.1, the Landlord may impose conditions at any time regarding the Tenant's Works. Without limitation, the conditions may specify:
  - (a) which parts of the Premises must or must not be reinstated; and
  - (b) which items of Tenant's Property must or must not be removed,
 when the Tenant vacates the Premises.
- 16.5.3 The Tenant must ensure that any Tenant's **Construction Works, requiring a building permit**, that it undertakes in relation to the Premises are done:
  - (a) by contractors and consultants approved by the Landlord (acting reasonably);

- (b) in a proper workmanlike manner; and
- (c) in accordance with:
  - (1) any plans and specifications approved by the Landlord under clause 16.5.1;
  - (2) all laws and the requirements of all Authorities having jurisdiction over the Premises and the Tenant's Works; and
  - (3) all certificates, permits and consents obtained from the relevant Authorities, including any planning permits, building permits, and give to the Landlord any certificate of occupancy or final inspection required in connection with the Tenant's Works.

## 16.6 Essential Safety Measures

The Tenant must:

- 16.6.1 comply, at its cost, with all Essential Safety Measures requirements in relation to the Tenant's Property;
- 16.6.2 not interfere with, alter or limit the operation or effectiveness of any Essential Safety Measure otherwise part of the Premises and Landlord's Property;
- 16.6.3 immediately advise the Landlord and confirm in writing any alteration, breakdown or theft of or damage to any Essential Safety Measure;
- 16.6.4 allow the Landlord or its appointed agent to enter the Premises or Tenant's Property 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;
- 16.6.5 ensure that display of the annual Essential Safety Measures report prepared in accordance with the Building Regulations, and any determination and record of maintenance checks, service and repair work which are kept on the Premises pursuant to the Building Regulations, are retained on display at the Premises;
- 16.6.6 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
- 16.6.7 advise the Landlord immediately if the Tenant receives notice (whether written or oral) of any proposed inspection of the Premises or the Tenant's Property by a municipal building inspector or chief officer pursuant to the Building Regulations.

## 17 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.

## **18 OCCUPATIONAL HEALTH AND SAFETY**

For the purposes of the OHS Law, the Tenant agrees that:

- 18.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- 18.2 the Landlord appoints the Tenant as Principal Contractor in respect of any Tenant's Works on or in the Premises to which an OHS Law applies;
- 18.3 the Tenant must carry out such Tenant's Works in accordance with the requirements of the OHS Law; and
- 18.4 the Landlord authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 18.2.

## **19 ENVIRONMENTAL LAW**

- 19.1 The Tenant warrants to the Landlord that they are not a Prohibited Person.
- 19.2 The Tenant must:
  - 19.2.1 at all times comply with all Environmental Law when using the Premises and Land;
  - 19.2.2 not cause any Contamination of the Premises or Land and actively manage its use of the Premises and Land to minimise any risk of damage to the environment or human health from any Contaminant;
  - 19.2.3 obtain and keep current, during the Tenant's occupation of the Premises, any Environmental Authorisation required for the Permitted Use and the Tenant's occupation of the Premises, and provide to the Landlord evidence of any Environmental Authorisations obtained to the satisfaction of the Landlord;
  - 19.2.4 pay all levies payable under Environmental Law when they are due and provide satisfactory evidence of payment to the Landlord;
  - 19.2.5 immediately notify all relevant Authorities and the Landlord of any Contamination of the Premises or Land which has occurred during the occupation of the Premises by the Tenant, of which the Tenant is aware or should reasonably be aware;
  - 19.2.6 maintain procedures which, in the opinion of the Landlord are adequate to monitor its compliance with this clause 19.2, Environmental Law and Environmental Authorisations;
  - 19.2.7 immediately rectify any non-compliance with clause 19.2, an Environmental Law or Environmental Authorisation as notified by the Landlord or any Authority or revealed by any site assessment, environmental assessment or procedure carried out or required under this clause;
  - 19.2.8 permit the Landlord or any person authorised by the Landlord, to enter on the Premises at all reasonable times, on not less than one day's notice (except in the case of emergency), to carry out environmental assessments, take any action required by any Authority or to comply with any Environmental Law; and
  - 19.2.9 where the Landlord reasonably considers that the Tenant is not complying with this clause 19.2:

- (a) provide or do everything necessary to facilitate a site assessment of the Premises or the Land, and compliance with any Environmental Law or Environmental Authorisation by a consultant approved by the Landlord; and
- (b) maintain the confidentiality of any site assessments, subject to any notification requirements under Environmental Law.

19.3 The Tenant indemnifies and will keep indemnified the Landlord in relation to any Loss or Claim arising from the Tenant's breach of this clause 19.

## **20 ASSIGNMENT AND SUBLETTING**

### **20.1 Consent of Landlord**

20.1.1 The Tenant must not without the prior written consent of the Landlord:

- (a) assign or deal with any interest in the Premises or the Tenant's Property or its rights or powers as Tenant under this lease;
- (b) sub let or part with possession or share the Premises or the Tenant's Property (provided however that the consent of the Landlord must not be unreasonably withheld); or
- (c) create or allow any mortgage, interest, easement or other encumbrance which would affect the Tenant's interest in the Premises or the Tenant's Property or its rights as tenant under this lease.

20.1.2 For the avoidance of doubt, the Tenant will be in breach of this lease if it transfers, deals, assigns or parts with possession of any building or improvement which is the Tenant's Property on the Premises without also obtaining consent to assignment of this lease in accordance with this clause 20.

### **20.2 Requirements for consent to assignment**

When requesting consent in the case of an assignment, the Tenant must:

- 20.2.1 request an assignment by notice in writing to the Landlord;
- 20.2.2 give the name and address of the New Tenant to the Landlord;
- 20.2.3 remedy any Default Event which exists at the time of the proposed assignment;
- 20.2.4 prove to the satisfaction of the Landlord that the New Tenant is respectable and responsible and has the financial resources and business experience to conduct the Tenant's Business and to comply with all of the Tenant's obligations under this lease;
- 20.2.5 procure the New Tenant to execute a deed with the Landlord, in a form approved by the Landlord, that it will comply with all of the Tenant's obligations under this lease;
- 20.2.6 execute a deed in a form approved by the Landlord that releases the Landlord from all Claims by the Tenant or the Guarantor (if any) arising out of this lease, but which does not release the Tenant from any of its obligations under this lease;
- 20.2.7 ensure that the New Tenant does not propose using the Premises in a way which is not permitted under this lease;

- 20.2.8 pay the Landlord's reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with the proposed assignment including all enquiries made by the Landlord relating to the New Tenant; and
- 20.2.9 if the New Tenant is a corporation, arrange for its directors and principal shareholders have if required by the Landlord guaranteed to the Landlord the compliance by the New Tenant of its obligations under this lease.

### 20.3 **Landlord may refuse consent**

The Landlord may withhold its consent to a transaction referred to in clause 20.1.1(a) at the Landlord's discretion, including if an assignment of this lease would result in the *Retail Leases Act 2003* (Vic) applying to this lease, or, if this lease is subsequently renewed for a further term, the renewed lease.

### 20.4 **Deemed assignment**

Subject to clause 20.5, where the Tenant is a corporation, any circumstances that result in any person or group of persons who:

- 20.4.1 control the composition of the board of directors; or
- 20.4.2 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 that will require the prior written consent of the Landlord in accordance with clause 20.1.1(a) and 20.2.

### 20.5 **Listed corporation**

Clause 20.1 does not apply where the Tenant is a Publicly Listed Company or a wholly owned subsidiary of a Publicly Listed Company, and where a change of control is caused only by a transfer of shares in the Publicly Listed Company.

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

### 21.1 **Vacating the Premises**

By the end of this lease, the Tenant must:

- 21.1.1 vacate the Premises and Land and leave the Premises and Land in the condition in which the Tenant must keep them under this lease;
- 21.1.2 if required by the Landlord and to the extent required by the Landlord (at its sole discretion):
- (a) remove any buildings, fixtures, or improvements to the Premises that form part of the Tenant's Property or Tenant's Works carried out under clause 16.5;
  - (b) remove any signs, notices or advertisements placed in or near the Premises and any below ground and above ground electricity equipment and other installations; and
  - (c) restore the Land (both at a surface level and below ground) to the state prior to the installation of any Tenant's Property (whether such installation occurred during the term of this Lease or under any earlier agreement

relating to the Tenant's occupation of the Land), including the remediation of any Contamination of the Land to the reasonable satisfaction of the Landlord;

- 21.1.3 remove any Tenant's Property from the Premises and Land (except any buildings, fixtures, improvements or other items, the removal of which is to be dealt with under clause 21.1.2);
- 21.1.4 repair any damage caused by the Tenant complying with its obligations under this clause; and
- 21.1.5 deliver to the Landlord all keys, passes and other security devices giving access to any parts of the Premises or the Common Areas which are held by the Tenant or any of the Tenant's Agents, whether or not they were supplied by the Landlord.

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

If the Tenant leaves any Tenant's Property on the Premises after the end of this Lease, unless the Landlord and the Tenant agree otherwise:

- 21.2.1 all items of Tenant's Property will be considered abandoned and will become the Landlord's Property, but the Landlord may remove any of the Tenant's Property or any other goods or property of the Tenant and recover the costs of removal and making good as a liquidated debt payable on demand; and
- 21.2.2 the parties intend that clause 21.2.1 operates in relation to the Tenant's Property and any other Tenant's goods in place of any legislation that might otherwise apply to goods remaining on the Premises.

## **22 HOLDING OVER**

- 22.1 If the Tenant remains in possession of the Premises without objection by the Landlord after the end of the Term:
  - 22.1.1 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;
  - 22.1.2 either party may end the tenancy by giving 1 month's written notice to the other at any time; and
  - 22.1.3 the monthly rent starts at one twelfth of the annual Rent which the Tenant was paying immediately before the Term ended unless a different rent has been agreed on.

## **23 LANDLORD'S SIGNS – NOT USED**

## **24 LANDLORD'S OBLIGATIONS**

### **24.1 Quiet enjoyment**

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

## **25 LANDLORD'S RIGHTS**

### **25.1 Right to enter**

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

- 25.1.1 to inspect, maintain, repair or alter the Premises or the Services, subject to reasonable notice being given to the Tenant; and
- 25.1.2 to carry out any building works required by the Landlord or any relevant Authority, subject to at least 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 and remain there and use the Premises for as long as necessary in the circumstances.

### **25.2 Other rights**

The Landlord may:

- 25.2.1 subdivide the Land and grant easements or other rights over the Land or the Premises to any person, on any terms and for any purpose, provided that this does not unduly interfere with the Permitted Use;
- 25.2.2 use any part of the Land not being the Premises for such purposes as the Landlord considers appropriate in its absolute discretion (including without limitation to erect advertising and signage);
- 25.2.3 exercise the Landlord's rights over the Tenant even though the Landlord may not exercise its rights over other tenants.

### **25.3 Change of Landlord**

If a person other than the Landlord named in this lease becomes the owner, then the Landlord is released from all obligations under this lease arising after the other person becomes owner.

## **26 MANAGEMENT OF PREMISES**

### **26.1 Rules**

- 26.1.1 The Tenant must comply with the Rules including with respect to the hours of use for the Common Areas. This lease overrides the Rules if there is any inconsistency between them.
- 26.1.2 The Landlord may vary the Rules, however prior to making the variation, the Landlord must:
  - (a) give written notice of the proposed variation to the Tenant;
  - (b) consult with the Tenant and give the Tenant reasonable time to consider the variation (taking into consideration the timing of the Tenant's committee meetings);
  - (c) consider any concerns raised by the Tenant and act reasonably when deciding whether or not to address these concerns within the Rules;
  - (d) apply the Rules to other users of the Land equally.

## 26.2 **Landlord's directions**

The Tenant must 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 or areas near the Premises.

## 26.3 **Access to the Premises**

26.3.1 If to gain access to the Premises the Tenant or the Tenant's Agents must cross other land under the control of the Landlord, then:

- (a) the Tenant must comply with the directions of the Landlord in relation to using that land; and
- (b) the Tenant must ensure there is no interference by the Tenant or the Tenant's Agents with any other person using that land.

26.3.2 The Landlord must use its best endeavours to ensure that no person charges a fee for access to the Premises (except with the Tenant's approval).

## 27 **COMMON AREAS**

27.1 The Tenant acknowledges that the Common Areas at all times remain subject to the control of the Landlord, and the Tenant must comply with the Landlord's directions in relation to the use of the Common Areas and must cooperate with other persons using the Common Areas.

27.2 The Landlord may:

- 27.2.1 restrict access to the Common Areas;
- 27.2.2 change the direction of pedestrian or vehicular traffic to, from or through the Common Areas;
- 27.2.3 grant a lease or licence over or allow any person to hold a function or exhibition or to display goods in the Common Areas on terms the Landlord sees fit in its absolute discretion (and in that case the relevant area is temporarily excluded from the Common Areas);
- 27.2.4 provide and use a public address system in the Common Areas;
- 27.2.5 change the size and configuration of the Common Areas;
- 27.2.6 carry out any works in the Common Areas; and
- 27.2.7 regulate the use and operation of any car parks in the Common Areas.

27.3 Where any changes to the Common Areas are proposed under clause 27.2 that may impact on the Tenant's operations (as determined by the Landlord acting reasonably):

- 27.3.1 the Landlord must give at least 90 days' written notice to the Tenant; and
- 27.3.2 the Landlord must consult with the Tenant and consider any remedial actions proposed by the Tenant to minimise any disruption to the Tenant's operations,

except in the case of an emergency or where urgent works or repairs are required to be carried out.

## 28 DEFAULT BY TENANT

### 28.1 Default Event

A Default Event occurs if:

- 28.1.1 the Tenant does not pay any money as required under this lease whether or not demand has been made;
- 28.1.2 the Tenant does not comply with any other obligation under this lease;
- 28.1.3 a judgment 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;
- 28.1.4 the Tenant is a corporate body other than a public company listed on ASX 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;
- 28.1.5 the Tenant enters into a scheme of arrangement or composition with, or assignment for the benefit of, any of the Tenant's creditors;
- 28.1.6 the Tenant becomes a Prohibited Person;
- 28.1.7 the Tenant, without the Landlord's written consent:
  - (a) discontinues the Tenant's Business;
  - (b) leaves the Premises unoccupied for 60 consecutive days;
- 28.1.8 any Guarantor is a corporate body and any of the events referred to in clause 28.1.4 occurs in relation to that Guarantor; or
- 28.1.9 any Guarantor is an individual and any of the events referred to in clause **Error! Reference source not found.** occurs in relation to that Guarantor.

### 28.2 Landlord's right to end lease

If a Default Event occurs, the Landlord may:

- 28.2.1 end this lease by re entering the Premises without notice or, if required by Law, with notice; or
- 28.2.2 end this lease by notice to the Tenant.

### 28.3 **Notice period where required**

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

28.3.1 remedy the breach if it is capable of remedy; and

28.3.2 make reasonable compensation in money to the Landlord's satisfaction for the breach.

### 28.4 **Rights retained**

If this lease is ended by the Landlord, the Landlord retains the right to sue the Tenant for all unpaid money 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.

## 29 **ESSENTIAL TERMS**

### 29.1 **Essential terms**

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

29.1.1 the obligation to pay money; and

29.1.2 the obligations under clauses 3.1 (Rent), 3.3 (Services) 4.4 (Interest on overdue money), 9 (GST), 13.1 (Tenant's obligations), 13.1 (Equipment etc), 14 (Security), 15 (Tenant's insurance obligations), 15 (Maintenance of Premises and Landlord's Property), 16.4 (Cleaning of Premises), 16.5 (Tenant's Works), 19 (Environmental Law), 20 (Assignment and subletting), 21.2 (Tenant's Property left on Premises), 26 (Management of Premises), 27.1 (Common Areas).

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

### 29.2 **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.

## 30 **MITIGATION OF DAMAGES**

### 30.1 **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.

### 30.2 **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.

### 30.3 **No deemed acceptance or surrender**

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.

## 31 **DAMAGE TO PREMISES**

### 31.1 **Tenant to give Notice of Intention**

If the improvements which are Tenant's Property on the Premises are substantially damaged or destroyed or are damaged so that they cannot be used for the Permitted Use, then the Tenant must reinstate the improvements and/or construct new improvements as soon as reasonably practicable after the date of the damage or destruction.

### 31.2 **Delay in reinstatement**

If the Tenant does not start the reinstatement within 3 months of the date of the destruction or damage, the Landlord may end this lease by giving the Tenant written notice at any time before the reinstatement is complete. The Tenant must at all times comply with its obligation to pay Rent and any other monies payable under this lease notwithstanding the damage or destruction of the improvements.

### 31.3 **No compensation to Tenant**

The Landlord is not required to reinstate improvements or construct new improvements, nor is the Landlord 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.

## 32 **RESUMPTION OF PREMISES**

### 32.1 **Either party may end lease**

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.

### 32.2 **No compensation to Tenant**

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is resumed by any Authority.

## 33 **RENEWAL OF LEASE**

### 33.1 **Conditions for exercise of option**

The Landlord must renew this lease for the further term or terms stated in Item 16 if:

33.1.1 there is no unremedied breach of this lease by the Tenant of which the Landlord has given the Tenant written notice;

33.1.2 the Tenant has not persistently committed breaches of this lease of which the Landlord has given notice during the Term; and

33.1.3 The Landlord shall give to the Tenant at least 6 months, but not more than 9 months written notice of the Tenant's option to renew this lease, The lease shall continue on the same terms and conditions until such notice is given, unless the parties agree to a different period of notice. The latest date for exercising the option is stated in Item 17.

### 33.2 **Conditions of renewed lease**

#### 33.2.1 The renewed lease:

- (a) starts on the day after this lease ends;
- (b) has a starting rent as determined by the Landlord's valuer; and
- (c) must contain the same terms as this lease but with:
  - (1) one less option for renewal than the number stated in Item 16; or
  - (2) no option for renewal after the last option for a further term stated in Item 16 has been exercised,
 and may include such other variations to the lease as may be agreed by the parties.

### 33.3 **Guarantee for renewed lease**

If any person has guaranteed the Tenant's obligations under this lease the Tenant must have that person, or another person acceptable to the Landlord, execute and deliver to the Landlord a guarantee and indemnity in relation to the Tenant's obligations under the new lease. The guarantee must be in a form satisfactory to the Landlord.

## 34 **RELEASE AND INDEMNITY**

### 34.1 **Tenant's risk**

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

### 34.2 **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 or the conduct of the Tenant's Business by the Tenant or any of the Tenant's Agents, including:

- 34.2.1 any claim made by any person for Loss arising in any manner;
- 34.2.2 any Loss 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
- 34.2.3 any Loss or illness sustained or incurred by the Tenant or any of the Tenant's Agents.

### 34.3 **Restrictions on release and indemnity**

The releases and indemnities in clause 34.2 do not apply to:

- 34.3.1 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
- 34.3.2 any breach of this lease by the Landlord.

#### 34.4 **No claim for compensation**

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

- 34.4.1 the failure of any equipment or machinery in the Premises or on the Land; and
- 34.4.2 any Loss caused or arising out of the interruption of any Services including but not limited to the supply of gas, electricity or water.

#### 35 **GUARANTEE AND INDEMNITY**

Not used

#### 36 **PPSA**

36.1 Expressions used in this clause that are defined in the PPSA have the meanings given to them in the PPSA.

36.2 The Landlord may, at any time, register a financing statement for any security interest arising out of or evidenced by this lease over any or all of:

- 36.2.1 the Landlord's Property;
- 36.2.2 if Item 14 provides for a Security Deposit, the Security Deposit; and
- 36.2.3 the Tenant's Property left on the Premises after the end of this lease,

that are personal property, and must identify the property affected by the financing statement in the free text field of the statement. The Tenant waives the right to receive notice under section 157(1) of the PPSA.

36.3 When this lease:

- 36.3.1 ends and the Tenant has vacated the Premises and performed all of its obligations under it; or
- 36.3.2 is transferred,

the Landlord must register a financing change statement with respect to any security interest for which the Landlord has registered a financing statement other than those to which clause 36.2.3 relates.

36.4 The Tenant must sign any documents and do anything necessary to enable the Landlord to register the statements referred to in clause 36.3 and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, 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 other evidence acceptable to the Landlord) to confirm the Tenant's date of birth. The Landlord must keep the Tenant's date of birth and any evidence provided to confirm it secure and confidential.

36.5 The Tenant must not register, or permit to be registered, a financing statement in favour of any person other than the Landlord, for any Security Deposit (if provided by the Tenant) or any of the Landlord's Property.

36.6 The Tenant must pay the Landlord's reasonable costs in respect of anything done or attempted by the Landlord in the exercise of its rights or performance of its obligations under this clause 36 or the PPSA.

36.7 In accordance with section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).

36.8 Subject to any requirement to the contrary in the PPSA, notices under this clause or the PPSA may be served in accordance with clause 52 of this lease.

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

#### **37.1 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.

#### **37.2 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.

#### **37.3 Rights not prejudiced**

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

### **38 LIMITATION OF LIABILITY**

*Not used*

### **39 DISPUTES**

#### **39.1 Application**

This clause 39 applies to all disputes under this lease except disputes:

39.1.1 under clause 6 (Market Review and Valuation) or clause 7 (CPI review);

39.1.2 because the Tenant has not paid money it owes under this lease;

39.1.3 to be resolved in another way prescribed by any other provision of this lease; or

39.1.4 because the Landlord wants possession of the Premises before or after the Expiry Date.

#### **39.2 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.

#### **39.3 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:

39.3.1 a party may start mediation by serving notice on the other party;

39.3.2 the notice must state that a dispute has arisen and identify what the dispute is;

- 39.3.3 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;
- 39.3.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
- 39.3.5 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 39 where to do so means that a limitation period for a cause of action relevant to the issues in dispute will expire.

#### 39.4 **Charges**

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

#### 39.5 **Settlement of dispute**

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

#### 39.6 **Confidential**

The mediation is confidential and:

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

#### 39.7 **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.

#### 39.8 **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.

#### 39.9 **Legal representation**

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

### 39.10 **Disputes between users of the Land**

Where a dispute arises between the Tenant and another user of the Land, the Landlord must use all reasonable efforts to act as an intermediary between the Tenant and that other user and attempt to resolve the dispute.

## 40 **NO CAVEAT OR PRIORITY NOTICE**

40.1.1 The Tenant must not lodge a caveat or priority notice on any title to the Land or allow a caveat or priority notice by a person claiming through the Tenant to be lodged against or to remain on any title to the Land.

40.1.2 This clause 40 will survive completion or termination of this Deed.

## 41 **POWER OF ATTORNEY**

41.1 The Tenant irrevocably appoints the Landlord, and its nominee or nominees, jointly and severally to be the true and lawful attorney or attorneys of the Tenant to act at any time after the power to re-enter contained in this lease has become exercisable or has been exercised (a sufficient proof of which is the statutory declaration of any officer of the Landlord duly authorised by the Landlord in that behalf):

41.1.1 to execute and sign any documentation required to arrange a withdrawal of caveat or priority notice if the Tenant or a person claiming through the Tenant lodges a caveat or priority notice in breach of clause 40;

41.1.2 to execute a surrender of this lease and for this purpose to use the name of the Tenant; and

41.1.3 generally to do, execute and perform any act, matter or thing relating to the Premises as fully and effectually as the Tenant could do.

41.2 The Tenant covenants to ratify and confirm all things lawfully done or caused to be done by its attorney or attorneys in or about the Premises.

## 42 **APPROVALS AND CONSENTS**

### 42.1 **Landlord's consent**

42.1.1 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.

42.1.2 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 2020* 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.

### 42.2 **Mortgagee consent**

If the Land is subject to a mortgage, then provided the Tenant requests the Landlord to do so in writing, the Landlord must use its reasonable endeavours to obtain the mortgagees consent to this lease.

#### **43 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.

#### **44 FURTHER ASSURANCES**

44.1 If the Landlord requests, the Tenant must:

- 44.1.1 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
- 44.1.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this lease.

#### **45 STATUTORY PROVISIONS**

45.1 The following provisions do not apply to this lease:

- 45.1.1 the covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958* (Vic); and
- 45.1.2 section 144 of the *Property Law Act 1958* (Vic).

#### **46 RIGHTS AND REMEDIES**

##### **46.1 Prior breaches and obligations**

The ending of this lease, however occurring, does not affect:

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

##### **46.2 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.

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

47.1 If this lease:

- 47.1.1 prohibits the Tenant from doing a thing, the Tenant must:
  - (a) ensure that the Tenant's Agents do not do that thing; and
  - (b) not allow or cause any person to do that thing.
- 47.1.2 requires the Tenant to do a thing, the Tenant must ensure that the Tenant's Agents do that thing.

#### **48 NOT USED**

## **49 ACKNOWLEDGEMENTS**

Each party acknowledges that it:

- 49.1 enters into this lease voluntarily and on the basis of its own investigations;
- 49.2 has fully read and agrees with the terms of this lease;
- 49.3 has obtained, or has had the opportunity to obtain, independent legal and financial advice on the nature and effect of this lease; and
- 49.4 fully understands the nature and effect of this lease.

## **50 ENTIRE AGREEMENT**

50.1 The Tenant acknowledges that:

- 50.1.1 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 on by the Tenant;
- 50.1.2 no information, representation or warranty has been relied on; and

**50.1.3** this lease constitutes the entire agreement between the parties concerning the Premises and supersedes all previous negotiations and agreements. Unless, the agreement between the Commonwealth Government and the Tenant is identified then this will supersede all agreements.

## **51 WAIVER AND VARIATION**

### **51.1 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.

### **51.2 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:

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

### **51.3 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.

## **52 NOTICES**

### **52.1 Giving notice**

Any notice given under this lease (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this lease) must be in writing, signed and:

52.1.1 delivered by hand or courier; or

52.1.2 sent by prepaid post or email,

to the address specified in Item 18 (as varied by any written notice given by the recipient to the sender from time to time).

## 52.2 **Receipt of notice**

52.2.1 A notice given in accordance with clause 52.1 is taken to be received by the recipient:

(a) if delivered by hand or courier, on delivery;

(b) if sent within Australia to an Australian address:

(1) by regular post, 6 Business Days after the date of posting;

(2) by express post, 2 Business Days after the date of posting;

(3) by priority post, 4 Business Days after the date of posting;

(4) by registered post, on proof of receipt by signature; or

(c) if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000* (Vic).

52.2.2 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 at 9.00am on the next Business Day.

## 52.3 **Proof of receipt of notice by email**

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

## 52.4 **Signing of notice**

A notice given under this lease is sufficiently signed if:

52.4.1 in the case of a body corporate, it is signed by a director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or

52.4.2 in the case of an individual, it is signed by the individual.

## 52.5 **Other modes of service permitted**

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

# 53 **SEVERANCE**

## 53.1 **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.

## 53.2 Severance

If, despite the application of clause 53.1, a provision of this lease is illegal or unenforceable:

53.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

53.2.2 in any other case, the whole provision is omitted,

and the remainder of this lease continues in force.

## 54 GENERAL

### 54.1 Execution and counterparts

54.1.1 The parties consent to execution of this lease by electronic means, in paper format or a combination of both.

54.1.2 This lease:

(a) may be executed and exchanged in any number of counterparts, whether in electronic or paper format or a combination of both, and all the counterparts together constitute one and the same instrument; and

(b) is binding on the parties on the exchange of executed counterparts.

54.1.3 If this lease is executed and exchanged by electronic means or witnessed by audio visual means, the relevant party, signatory and/or witness does so in accordance with:

(a) the *Electronic Transactions (Victoria) Act 2000* (Vic); or

(b) in relation to a corporation, the *Corporations Act 2001* (Cth).

54.1.4 If the signatures on behalf of one party are on different counterparts, this will be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this lease.

### 54.2 Alteration

This lease may only be altered in writing signed by the parties.

### 54.3 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this lease.

### 54.4 Further acts

Each party must, without further consideration, sign, execute and deliver any document and perform any other act that is necessary or desirable to give full effect to this lease.

### 54.5 Power of attorney

If this lease is executed under power of attorney, each attorney executing this lease warrants that, at the time of executing this lease, he or she has no notice of revocation of the power of attorney under the authority of which this lease is executed.

#### 54.6 **Party preparing document not to be disadvantaged**

No rule of contract interpretation must be applied in the interpretation of this lease to the disadvantage of one party on the basis that it prepared or put forward this lease or any document comprising part of this lease.

#### 54.7 **Governing Law**

This lease is governed by the Laws of Victoria.

### 55 **INTERPRETATION**

#### 55.1 In this lease, unless the contrary intention appears:

- 55.1.1 if there is an inconsistency between a Special Condition and another provision of this lease, the Special Condition prevails;
- 55.1.2 the singular includes the plural and vice versa;
- 55.1.3 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;
- 55.1.4 a reference to an individual or person includes a partnership, body corporate, government Authority or agency and vice versa;
- 55.1.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 55.1.6 words importing one gender include other genders;
- 55.1.7 other grammatical forms of defined words or expressions have corresponding meanings;
- 55.1.8 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
  - (a) two or more parties; or
  - (b) a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 55.1.9 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;
- 55.1.10 a recital, schedule, annexure or description of the parties forms part of this lease;
- 55.1.11 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;
- 55.1.12 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;
- 55.1.13 all monetary amounts are in Australian dollars;

- 55.1.14 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
- 55.1.15 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this lease.

**SCHEDULE 1**  
**REFERENCE TABLE**

Item 1	<b>Landlord</b>	<b>YARRIAMBIACK SHIRE COUNCIL</b> of 34 Lyle Street, Warracknabeal VIC 3393
Item 2	<b>Tenant</b>	<b>WARRACKNABEAL AERO CLUB INC.</b> <b>(Registration number A0029026M)</b> of PO Box 172 Warracknabeal VIC 3393
Item 3	<b>Guarantor</b>	Not applicable
Item 4	<b>Land</b> (Clause 1.23)	<p>The land in certificates of title:</p> <ul style="list-style-type: none"> <li>• volume 8354 folio 859 being lot 1 on title plan 236573V (formerly known as part of Crown Allotment 14 Parish of Kellalac)</li> <li>• volume 8461 folio 815 being lot 1 on title plan 330637V (formerly known as part of Crown Allotment 150 Parish of Kellalac), and</li> <li>• volume 8383 folio 802 being lot 1 on title plan 323960D (formerly known as part of Crown Allotment 150 Parish of Kellalac),</li> </ul> <p>and known as the <b>Warracknabeal Aerodrome</b>, 4936 Henty Highway Kellalac, VIC 3393.</p>
Item 5	<b>Premises</b> (Clause 1.34)	<p>The land shown on the Plan, which forms part of the Land and is comprised of the following areas:</p> <ul style="list-style-type: none"> <li>• land under aero-clubroom and skillion, as outlined in red on the Plan and marked "Aero Club"</li> <li>• land under hangar shed no. 1, as outlined in red on the Plan and marked "Hangar 1"</li> <li>• land under hangar shed no. 2, as outlined in red on the Plan and marked "Hangar 2"</li> <li>• land under the structure marked as "Storage Shed" on the Plan</li> </ul>
Item 6	<b>Area of the Premises</b> (Clause 1.1)	646 m <sup>2</sup>
Item 7	<b>Permitted Use</b> (Clause 1.31)	All activities normally associated with an aerodrome club, including carrying out aircraft flight operations in accordance with all Laws, emergency flights, and associated storage of goods and equipment.

Item 8	<b>Commencement Date</b> (Clause 1.10)	[TBC]	
Item 9	<b>Expiry Date</b> (Clause 1.19)	15 years after the Commencement Date, being [TBC]	
Item 10	<b>Rent</b> (Clause 1.38)	\$1615.00 per annum plus GST	
Item 11	<b>Landlord's bank account details</b> (Clause 4.1)	Not applicable	
Item 12	<b>Rent Review</b> (Clause 1.39)	<b>Method of Review</b>  CPI review  Percentage increase - %  Fixed increase - \$  Market review	<b>Rent Review Dates</b>  On each anniversary of the Commencement Date (save for any Market review date)  Not applicable  Not applicable  1 July 2027 and on 1 July every 3 years thereafter (1 July 2030, 1 July 2033 etc.) during the Term and any further term
Item 13	<b>Tenant's Proportion of Outgoings</b>	Not applicable	
Item 14	<b>Security Deposit or Bank Guarantee</b> (Clause 11 or 12)	Not applicable	
Item 15	<b>Amount of public liability insurance</b> (Clause 15.1)	\$10 million	
Item 16	<b>Options for renewal of term</b> (Clause 33)	One (1) further term of Five (5) years	
Item 17	<b>Last date for exercise of option</b> (Clause 33.1.3)	6 months from when notice is given.	
Item 18	<b>Addresses for service of notices</b> (Clause 52)	Landlord's address: 34 Lyle Street, Warracknabeal, VIC 3393  Landlord's email: info@yarriambiack.vic.gov.au	

Tenant's address: PO Box 172 Warracknabeal,  
VIC 3393

Tenant's email: warracknabealaeroclub@gmail.com

Guarantor's address: Not applicable

Guarantor's email: Not applicable

## SCHEDULE 2

### SPECIAL CONDITIONS

#### 1 Lease costs

Despite clause 10.1.1, each party must pay its own costs (including legal costs) associated with the negotiation, preparation, settling and execution of this lease.

#### 2 Tenant reporting

- a As soon as practicable after each anniversary of the Commencement Date during the Term of the lease, the Tenant must provide the Landlord with a list of all users of the Premises and the runway on the Land, activities carried out from the Premises, and the times of use.
- b In this special condition, “**Event**” means an event to be held at the Premises other than activities associated with aircraft flight operations. The Tenant must use best endeavours to give the Landlord at least 6 weeks’s prior notice of any Event to be held at the Premises.
- c The Tenant must provide a report to the Landlord on or before 31 July of each year during the Term which outlines the Tenant’s financial activities for the most recent financial year, including:
  - i a copy of the minutes of the annual general meeting;
  - ii a current list of office bearers for the Tenant, their duties and length of term of office; and
  - iii a declaration on the income and expenditure received from any cropping of the Land, and how it has been and/or will be used to benefit the municipality of Yarriambiack Shire Council.

#### 3 Repairs and Maintenance

Without limiting any other clause of this Lease:

- a The Landlord agrees to carry out the following repairs and maintenance during the Term:
  - i Maintenance of the main runway (including patching and edge repair), pavement areas and sealed areas on the Land, including line marking and complying with CASA requirements;
  - ii Maintenance of lighting system on the runway and pavement areas;
  - iii Maintenance of all markers at the aerodrome as required;
  - iv Repair and maintenance of wind socks at the aerodrome;
  - v Maintenance of all fire breaks around the aerodrome;
  - vi Maintenance of all Essential Safety Measures;

- vii Maintenance of all signage at the aerodrome as required by Law;
  - viii Sweeping of the main runway, taxi way and apron when required;
  - ix Repair and maintenance of all fencing on the Land;
  - x Trimming and removal of trees, shrubs and bushes at the aerodrome when required;
  - xi Slashing of grass strip and surroundings when required;
  - xii Spraying of weeds around markers, surrounds and strips as required;
  - xiii Disposal of rubbish from the aerodrome.
- b The Tenant agrees to carry out the following repairs and maintenance during the Term:
- i Minor maintenance and cleaning of the aerodrome public toilets, excluding:
    - 1 Works that would normally be undertaken by a skilled or qualified tradesperson;
    - 2 Works that are 2 metres or more above the ground;
    - 3 Cleaning of any biohazard, chemicals or drugs that would normally require specialist cleaning, and cleaning of faeces/vomit not contained within a toilet pan;
    - 4 Cleaning or maintenance of equipment associated with fire brigade, ambulance or paramedical use;
    - 5 Cleaning of excessive rubbish or debris left by other users of the aerodrome;
    - 6 Cleaning of flooring, carpets and curtains beyond light vacuuming and mopping;
    - 7 Pest control;
    - 8 Any act of vandalism.

#### 4 **No exclusive use**

The Tenant acknowledges that the right to conduct flight services on or from the Land is not exclusive to the Tenant and the Landlord may permit other persons to conduct on or from the Land such businesses or operations as it thinks fit, even if any such business is similar in whole or in part to the Tenant's Business.

#### 5 **Other Users**

Without limiting clause 27 of this lease, the Tenant agrees to and acknowledges the following:

##### a **Drag Racing events**

- i The Landlord may permit organisations or persons other than the Tenant to hold drag racing events at the Land. As at the date of this Lease, such events are likely to be held approximately four times per calendar year.

- ii The Landlord will request that the drag racing club/s that are to use the Land provide the Landlord with a calendar of events that includes a 12 month plan, and the Landlord will provide this plan to the Tenant for its future planning and reference.
- iii The Landlord will give 90 days' advance notice to the Tenant of the dates on which the drag racing events are to be held if such dates are not included in the 12 month plan referred to in special condition 5(a)(ii).
- iv The Tenant must not schedule nor operate flights from the Land on any of the dates that the drag racing events are to be held, and must not interfere with the drag racing events, except in the event of and to the extent necessary to deal with:
  - 1 in an aviation or other emergency, including an aircraft in distress; or
  - 2 a serious threat to aviation or public safety, including items left unattended on an active runway with an aircraft approaching; or
  - 3 a threat to aviation or public safety, including items left unattended on an active runway or taxiway and all reasonable efforts have been made to contact the Aerodrome manager and drag racing event manager,.

or if agreed by the Tenant, the Aerodrome manager and drag racing event manager.
- v The Tenant acknowledges that drag racing events are alcohol-free events (to ensure compliance with underage event funding requirements). The Tenant must not and must ensure that the Tenant's Agents do not bring alcohol onto the Premises or Land for the duration of drag racing events.

**b Ambulance station facility**

- i An ambulance station facility is located on the Land, as shown outlined in light blue and labelled "AV Transfer Station & Toilets" on the Plan.
- ii The Tenant must not obstruct or interfere with the use of or operations associated with the ambulance station facility.
 

If at any time such obstruction or interference occurs, the Landlord may carry out any actions that are necessary to remove such obstruction or interference without notice to the Tenant and at the Tenant's cost.
- iii The Landlord must ensure that the Tenant has use of the restrooms and lounge within the ambulance station facility, except when the facility is being used by a medical, ambulance or other emergency service.
- iv The Landlord acknowledges that the furniture contained within the ambulance station facility as at the Commencement Date (except for all medical, ambulance or CFA furniture and equipment) is part of the Tenant's Property and may be removed by the Tenant at any time.
- v The Landlord permits the Tenant to provide tea and coffee and light refreshment making facilities within the ambulance station facility for use by visiting pilots, passengers and other persons permitted to use the facility, provided however that this must not interfere with the operation of the facility as an ambulance station facility.

## 6 Fuel Station

- a The parties acknowledge that all buildings, installations, infrastructure and equipment (whether above or below the land's surface) that are associated with the Fuelling Area marked on the Plan (**Fuel Station Equipment**) form part of the Landlord's Property.
- b The Tenant must ensure that the Fuel Station Equipment is used in accordance with all applicable Laws.
- c The Tenant may operate and manage the Fuel Station Equipment without charge from the Landlord in accordance with the Landlord's reasonable requirements from time to time.

## 7 Storage Shed

The Tenant consents to the use of the Storage Shed (as shown adjacent to Hangar 1 on the Plan) by the Landlord without charge for the storage of emergency lighting flares and other equipment.

## 8 Liquor Licence

The Tenant must:

- a seek the prior written consent of the Landlord before applying for any licence or permit under the *Liquor Control Reform Act 1998* (Vic) (licence or permit), or applying for any variation, removal, transfer, surrender or release of the licence or permit or nominating any person to be a licensee;
- b produce the licence or permit to the Landlord for inspection upon demand, including details of the designated area of the Premises upon which the consumption and service of alcohol is permitted (if any);
- c clearly display the licence or permit at the Premises;
- d comply with all conditions of the licence or permit and all Laws relating to the licence or permit;
- e not allow the licence or permit to be cancelled or suspended;
- f promptly notify the Landlord in writing if the licence or permit is cancelled or suspended or if the Tenant receives any notice, summons or fine in relation to the licence or permit;
- g indemnify the Landlord for any damages or costs incurred in relation to the licence or permit or a breach of this special condition 8 by the Tenant;
- h surrender the licence or permit within 21 days of receiving a written notice from the Landlord, which the Landlord may give to the Tenant if the Tenant's use of the Premises or Land is causing or likely to cause a nuisance to local residents or other users of the Land.

## 9 Cropping of Land

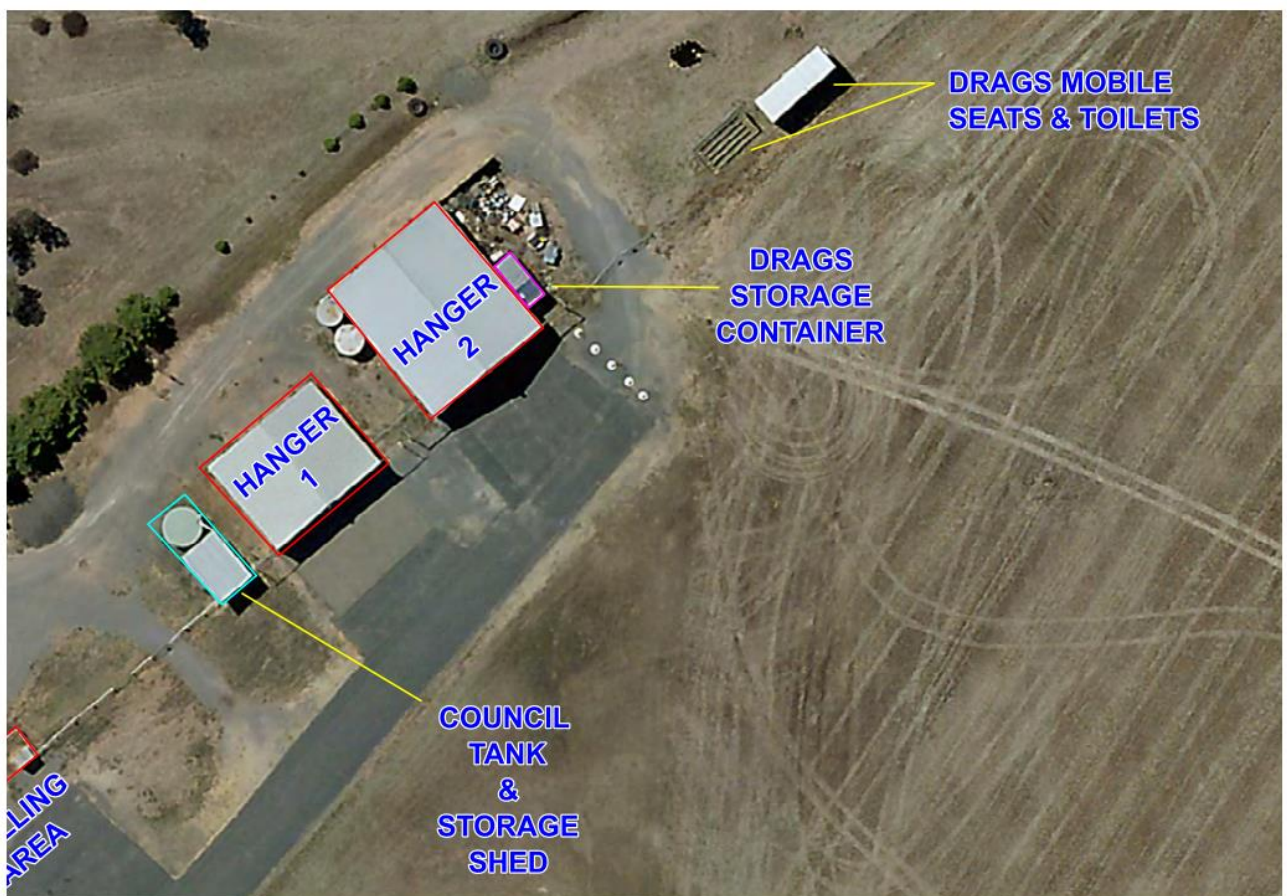
- a Subject to special condition 9(b), the Tenant is permitted to crop parts of the Land as marked on the plan attached to this Lease in order to maintain the Land and prevent weeds spreading across the site.

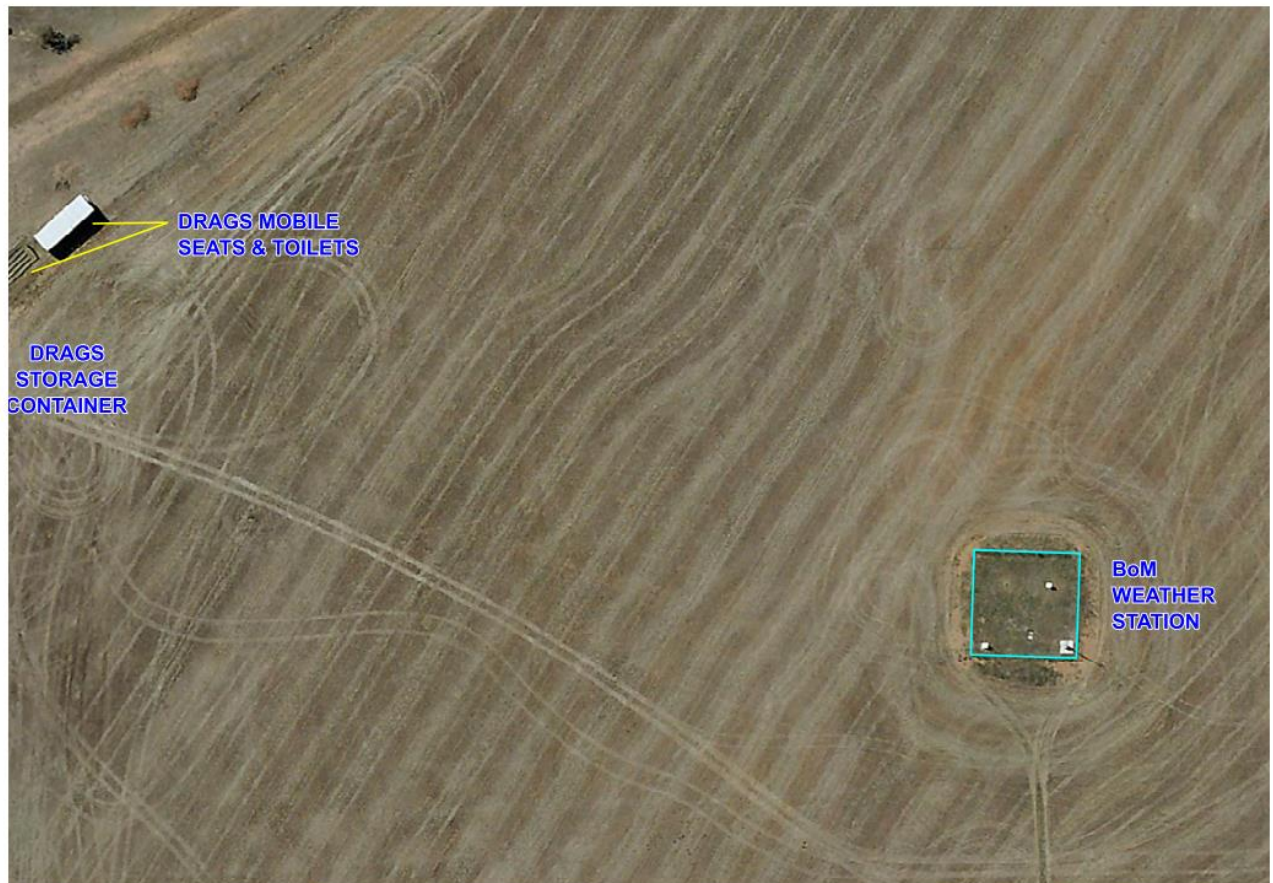
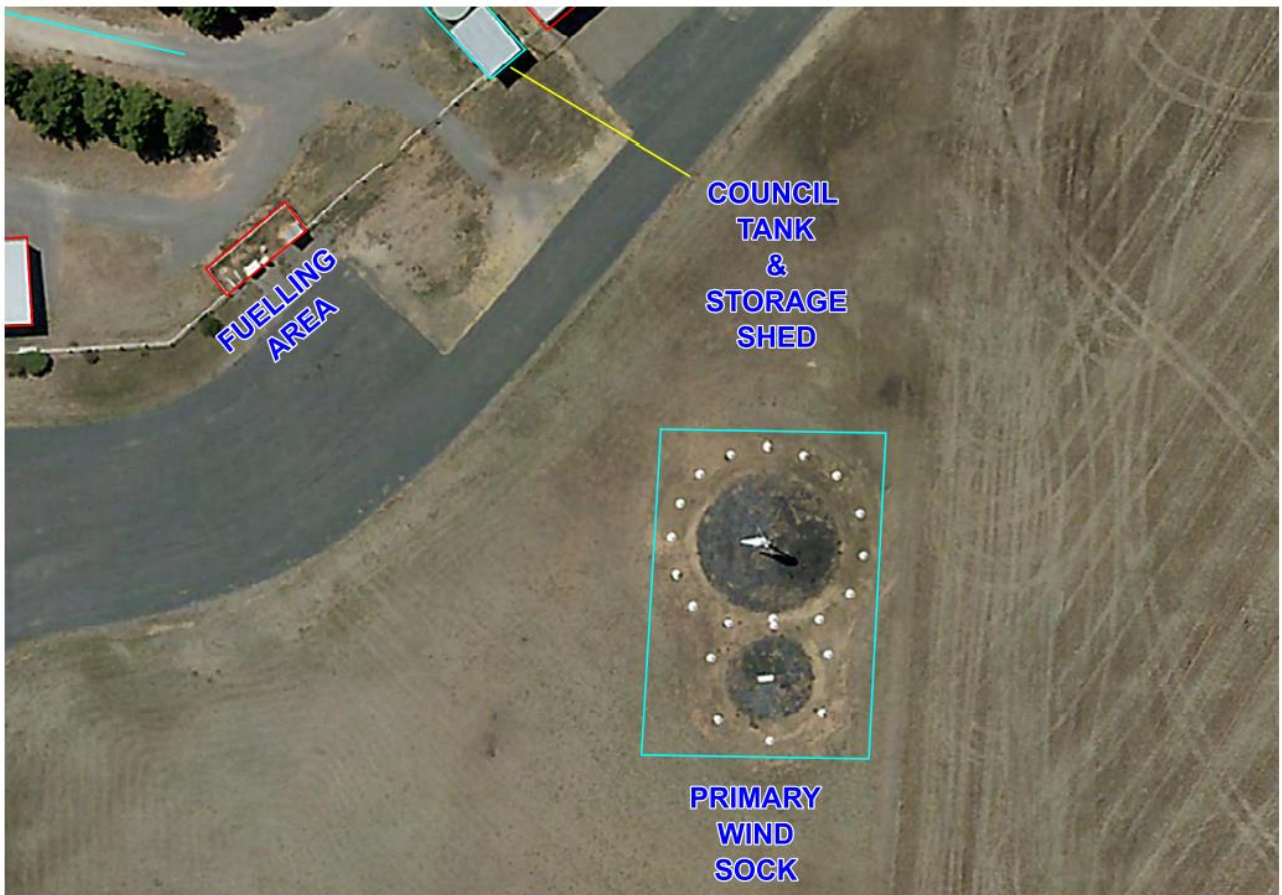
- b        The Tenant must ensure that:
- i        in carrying out the cropping, all occupational health and safety and other applicable legislation requirements are complied with; and
  - ii       any income generated from the cropping of the Land must be invested back into the activities of the Warracknabeal Aeroclub and provide an overarching benefit to the municipality of the Yarriambiack Shire Council, and is not to provide a direct benefit to any individual or group of persons.

**SCHEDULE 3**

**PLAN**







**SCHEDULE 4****RULES**

These are the Rules as at the Commencement Date of this lease. They may change under clause 26.1.2. The Rules are part of this lease.

*There are no Rules as at the Commencement Date, however the Landlord reserves the right to establish Rules during the Term of the Lease, and the Landlord will notify the Tenant if any such Rules are established.*

**SCHEDULE 5****LANDLORD'S PROPERTY**

- 1 All buildings and infrastructure on the Land, other than the Tenant's Property
- 2 Runways and all sealed areas on the Land
- 3 Aerodrome signage and fencing
- 4 Fuel Station Equipment

**SCHEDULE 6**

**TENANT'S PROPERTY**

- 1 All buildings and infrastructure that comprise the aero-clubroom, the 1 and 2 hangars marked on the Plan (excluding cement slabs) and Storage Shed marked on the Plan (excluding cement slab). .

**EXECUTED** as a deed.

**THE COMMON SEAL** of )  
**YARRIAMBIACK SHIRE COUNCIL** was )  
 hereunto affixed on the ..... day of )  
 ..... 2017 )  
 in the presence of: )

..... Chief Executive Officer

..... Full name

..... Authorised Officer

..... Full name

**THE COMMON SEAL** of )  
**WARRACKNABEAL AERO CLUB INC.** )  
**(Registration number A0029026M)** was )  
 affixed in accordance with its rules in the  
 presence of:

.....  
 Committee member

.....  
 Committee member