

**Dated:**

## **Licence Agreement**

**Parties**

**# Council**

**AND**

**[\*]**

**Licensed Area: [\*]**

THIS LICENCE is made the                      day of

20[\*\*]

BETWEEN

COUNCIL of # ("Licensor")

AND

[\*\*] of [\*\*] ("Licensee")

## BACKGROUND [amend as required]

- A. The Licensor holds a lease over the whole of the licenced area and has been granted the power to enter into this Licence by the registered proprietor.
- B. The Licensor has agreed to grant a non-exclusive licence to the Licensee to use the Licensed Area on the terms and conditions set out below.
- C. The Licensor and the Licensee acknowledge and agree that the granting of this Licence does not evidence any intention, commitment or decision by the Licensor to enter into any further contractual or other arrangements (whether by lease, licence or otherwise) with the Licensee in respect to the Licensed Area.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### 1.1. Definitions

In this Licence, unless the context otherwise requires:

**"Building"** means part of the land and buildings at [\*\*] and being the land described in Certificate of Title Volume [\*\*] Folio [\*\*];

**"Commencement Date"** means the date of commencement of the Licence being the date set out in the Schedule;

**"Lease"** means the lease between the Licensor and [\*\*] of the premises [\*\*].

**"Licence"** means the licence granted by the Licensor to the Licensee under the terms of this agreement;

**"Licence Fee"** means the fee payable by the Licensee to the Licensor for the right to use the Licensed Area as specified in the Schedule and as varied from time to time pursuant to this agreement;

**"Licensed Area"** means those areas of the Building described in the schedule and cross hatched on the attached plan and includes all fixtures and fittings belonging to the Licensor.

**"Licensee"** means the Licensee named and described in the Schedule;

**“Licensor”** means the Licensor named and described in the Schedule;

**“Owner”** means the registered or legal owner of the Building;

**“Permitted Use”** means the permitted use described in the Schedule;

**“Schedule”** means the Schedule included in this Licence;

**“Services”** means the water, gas, electricity, lighting, hot water, security, air-conditioning and lift services which service the Licensed Area (if any) and includes all wires, cables, electrical, and mechanical plant and all other parts, fittings and accessories;

**“Term”** means the term of the Licence as set out in the Schedule or otherwise extended under clause 3.2.2.

## **1.2. Interpretation**

In this Licence:

- 1.2.1. the singular includes the plural and vice versa;
- 1.2.2. a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- 1.2.3. a reference to any gender includes all genders;
- 1.2.4. a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
- 1.2.5. a reference to any party to this Licence or any other document or arrangement includes that party's agents, executors, administrators, substitutes, successors and permitted assigns; and
- 1.2.6. where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## **1.3. Headings**

In this Licence, headings are for convenience of reference only and do not affect interpretation.

## **2. GRANT OF LICENCE**

- 2.1. In consideration of the Licensee agreeing to pay the Licence Fee and to perform its obligations pursuant to this Licence, the Licensor grants to the Licensee for the Term a non-exclusive licence to use the Licensed Area for the Permitted Use and any other purpose as may be agreed from time to time between the parties.
- 2.2. The Licensee acknowledges and agrees that the Licensor or its agent have the right to enter the Licensed Area at any time to inspect, carry out works, access and service its own equipment and do any other thing which the Licensor requires.

## **3. NATURE AND DURATION OF LICENCE**

### 3.1. Nature of Licence

- 3.1.1. This Licence is personal to the Licensee.
- 3.1.2. The agreements in this Licence are in contract only and are not capable of assignment by the Licensee.
- 3.1.3. The Licensee obtains no leasehold interest in the Licensed Area or any part of it.
- 3.1.4. Without limiting clause 3.1.3 this Licence must not be construed as conferring on the Licensee any exclusive right of possession of the Licensed Area or any part of it.
- 3.1.5. [\*] The Licensors agree not to grant any third party a right to use or occupy the Licensed Area during the Term.
- 3.1.6. The *Retail Leases Act* (Vic) 2003 does not **apply** because this is not a lease.
- 3.1.7. This Licence is subject to any encumbrances affecting the land described in the certificate of title for the Building and the rights of the Licensors and the Owner, its employees, agents, servants or other invitees who have priority over the rights of the Licensee under this Licence.

### 3.2. Duration of Licence

- 3.2.1. Subject to any other provision in this Licence, this Licence commences on the Commencement Date and continues for the Term set out in the Schedule.
- 3.2.2. [\*] Unless terminated earlier, the Term of this Licence is automatically extended on a month to month basis provided that the Licensee is not in breach of this Licence or the Lease.
- 3.2.3. Either party may terminate this Licence at any time for no reason by giving to the other party one month's notice in writing, such notice to take effect from the date specified in the Notice.
- 3.2.4. [\*] Despite any other clause in this Licence, this Licence automatically ends at the same time as the Lease ends (whether by expiry, termination or otherwise).

### 3.3. Overholding

The Licensee shall not be entitled to occupy the Licensed Area or any other part of the building after the expiration of the Term.

### 3.4. Liability on Termination

Any termination of this Licence by the Licensors shall not relieve the licensee from any liability for any previous breach of its covenants and obligations under this Licence. The Licensors shall be entitled to sue the Licensee for damages for any loss arising from such breach including the loss of payment of the Licence Fee from the date of termination until the date this Licence would otherwise have terminated if it had not been for such breach and subsequent termination by the Licensors.

### **3.5. Breach of Licence**

#### **3.5.1. If the Licensee:**

3.5.1.1. fails to pay any moneys within 7 days of the due date for payment of such moneys; or

3.5.1.2. remains in occupation of the Licensed Area or any other part of the building after the expiration of the Term,

the Licensor may without notice immediately terminate the Licence and re-enter the Licensed Area without affecting any rights the Licensor may have to recover moneys owing under this Licence or to recover damages.

3.5.2. If the Licensee breaches any other covenant or obligation to be performed under the Licence, the Licensor shall upon giving to the Licensee notice specifying the breach and requiring performance or observance of that covenant or obligation or, if that covenant or obligation is not capable of being performed, the payment of satisfactory compensation (as specified in the notice) to the Licensor; the Licensor shall be entitled to terminate the Licence and re-enter the Licensed Area if such notice is not complied with within the time specified in the notice or if no time is specified seven (7) days from the date of service upon the Licensee.

3.5.3. Despite clause 3.5.2, if, in the reasonable opinion of the Licensor, the Licensee:

3.5.3.1. repeatedly breaches one or more covenants or obligations required to be performed under the Licence; or

3.5.3.2. commits a breach that is considered a serious breach of the Licence or Rules;

the Licensor is entitled to terminate the Licence without notice and re-enter the Licensed Area.

3.5.4. If this Licence is terminated under this clause 3.5, the Licensee is not entitled to any compensation whatsoever.

### **4. LICENCE FEE**

On or before the first day of the month the Licensee must pay the Licence Fee to the Licensor at the address specified in the Schedule, or as the Licensor may from time to time direct. The Licensee must pay a proportional instalment for the last month of the Term.

### **5. SECURITY DEPOSIT**

5.1. If the Licensor requires, the Licensee must pay to the Licensor a security deposit as detailed in the Schedule.

5.2. The Licensor may use the security deposit to make good the cost of remedying breaches of the Licensee's obligations under this Licence. If any part of the security deposit is used, the Licensee agrees to immediately pay further money to the

Licensor to ensure that the amount of any security deposit required under the Schedule is maintained.

- 5.3. After this Licence has ended and the Licensee has vacated the building, and if the security deposit has not been used, the Licensor must return the money to Licensee within 21 days of the Licensee's demand.

## **6. LICENSEE'S OBLIGATIONS**

6.1. The Licensee acknowledges and agrees:

- 6.1.1. That it occupies the Licensed Area at its own risk;
- 6.1.2. that it will only use the Licensed Area for the Permitted Use;
- 6.1.3. [\*]to keep any goods being stored in the Licensed Area, within the lines marked on the floor. The Licensee agrees that this is an essential term of this Licence;
- 6.1.4. that it will not do or allow anything to be done in the Licensed Area which will prevent the Licensor from accessing the Licensed Area 24 days a day 7 days a week.

6.2. The Licensee must:

- 6.2.1. unless it has received prior written consent from the Licensor, only use the Licensed Area for the permitted use set out in the Schedule;
- 6.2.2. not install any fixtures or fittings in the Licensed Area without first obtaining the Licensor's consent;
- 6.2.3. not do anything which is or may be a nuisance or annoyance to the Licensor, any other persons allowed by the Licensor to use any part of the building, any owners or occupiers of premises adjacent to the building, or the public;
- 6.2.4. at its own expense in all respects observe and comply with all legislation and all directions, notices and requirements of any government agency relating to the use and occupation of the Licensed Area;
- 6.2.5. not do or allow any unlawful act to be done in or on the Licensed Area;
- 6.2.6. not store chemicals, inflammable liquids, acetylene gas or volatile or explosive oils, compounds or substances upon or about the Licensed Area and not to use any of them in or about the Licensed Area for any purpose;
- 6.2.7. take all reasonable precautions to keep the Licensed Area free of rodents, vermin, insects, pests, birds and animals;
- 6.2.8. keep the Licensed Area free from dirt and rubbish;
- 6.2.9. not store any rubbish in the Licensed Area;
- 6.2.10. store refuse before removal so that it cannot be seen from outside the building;

- 6.2.11. comply with the Licensor's reasonable directions concerning cleaning and disposal of refuse;
- 6.2.12. not damage the Licensee's Building or services including the items referred to in clause 7.1.4;
- 6.2.13. use its best efforts to protect and keep safe the Licensed Area from vandalism. This includes keeping all doors, windows and openings closed and securely fastened when the Licensed Area is not in use and paying for any additional security measures which the Licensor considers are necessary due to the use of the Licensed Area by the Licensee;
- 6.2.14. take out a policy of Public Liability Insurance for \$10,000,000.00 and provide a copy of the policy to the Licensor at its request;
- 6.2.15. indemnify and keep indemnified the Licensor its officers servants or agents from and against all actions suits costs claims and demands or expenses whatsoever that may be instituted or made against the Licensor its officers servants or agents by any person or persons for any damage injury or loss to any person or to any property whatsoever caused by or resulting directly or indirectly from the use by the Licensee of the Licensed Area.

## **7. REPAIR AND MAINTENANCE**

### **7.1. The Licensee must:**

- 7.1.1. keep the Licensed Area in good repair and condition;
- 7.1.2. on the expiration or termination of the Licence leave the Licensed Area in good repair and condition;
- 7.1.3. promptly repair any damage to the Licensed Area or any part of the building caused or contributed to by the Licensee or any of the Licensee's agents;
- 7.1.4. maintain in working order all plumbing, draining, gas, electric, solar and sewerage installations and fire protection apparatus in the Licensed Area;
- 7.1.5. comply with all reasonable requests or directions given by the Licensor which the Licensor considers necessary or desirable for the safety, care or cleanliness of the building or the Licensed Area.

### **7.2. The Licensee is not obliged:**

- 7.2.1. to repair damage for which the Licensee is not responsible, unless the Licensor loses the benefit of any insurance for that damage because of any act or omission by the Licensee or any of the Licensee's agents;
- 7.2.2. to carry out structural repairs or make payments of a capital nature unless they are necessary due to the negligence of the Licensee or the Licensee's agents, any breach of this Licence, or as a result of the use of the building by the Licensee.

## **8. LICENSEE'S FIXTURES AND FITTINGS**

- 8.1. At or prior to the expiration or earlier termination of this Licence, the Licensee must remove from the Licensed Area all fixtures, fittings, plant and equipment or other articles brought into the Licensed Area by the Licensee ("Licensee's Property"). The Licensee must immediately make good any damage caused to the Licensed Area by the removal.
- 8.2. If the Licensee does not remove the Licensee's Property at the expiration or earlier termination of this Licence the Licensor may at the Licensee's expense removed and dispose of the Licensee's Property and any of the Licensee's Property not so removed by the Licensee by that date will become the property of the Licensor and may be dealt with the Licensor as it sees fit and without obligation to account to the Licensee.

## **9. RELEASE AND INDEMNITY**

The Licensee releases and indemnifies the Licensor and its officers, servants, agents and contractors from all legal liability arising from the use or occupation of the Licensed Area including

- 9.1. Damage to the Building;
- 9.2. Any claim made by any person for injury, loss or damage arising in any manner;
- 9.3. Any loss or damage to any property belonging to the Licensee or other persons located on or outside the Building caused by the Licensee or the Licensee's agents; and
- 9.4. Any loss damage, injury or illness sustained or incurred by the Licensee or any of the Licensee's agents.

The Licensee's obligations to release and indemnify the Licensor and its officers, servants, agents and contractors is reduced proportionately to the extent that any act or omission of the Licensor, its officers, servants, agents or contractors contributed to the liability.

## **10. NOTICES**

### **10.1. Method of Giving Notices**

A notice, consent approval or other communication (each a "Notice") under this Licence must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- 10.1.1. if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- 10.1.2. if sent by pre-paid mail, on the second Business Day after posting;
- 10.1.3. if sent by email, at the time of receipt as provided for in section 13A of the *Electronic Transactions (Victoria) Act 2000*; or
- 10.1.4. if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.



## **11. GENERAL**

### **11.1. Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### **11.2. Amendment**

This Licence may only be amended or supplemented in writing, signed by the parties.

### **11.3. Severability**

Any provision in this Licence which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Licence or affecting the validity or enforceability of that provision in any other jurisdiction.

### **11.4. Payments**

11.4.1. The Licensee must make payments under this Licence punctually without set-off, counterclaim or deduction; and

11.4.2. Unless this Licence provides otherwise, the Licensor need not demand any amount payable by the Licensee under this Licence.

### **11.5. Prior Breaches and Obligations**

The ending of this Licence does not affect:

11.5.1. the Licensor's rights in respect of a breach of the Licence before the end of this Licence; or

11.5.2. the Licensee's obligation to make any payment under this Licence before the expiry or termination of this Licence.

### **11.6. Counterparts**

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

### **11.7. Liability of Parties**

If two or more parties are included within the same defined term in this Licence:

11.7.1. a liability of those parties under this Licence is a joint liability of all of them and a several liability of each of them;

11.7.2. a right given to those parties under this Licence is a right given severally to each of them; and

11.7.3. a representation, warranty or undertaking made by those parties is made by each of them.

**11.8. Remedies Cumulative**

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

**11.9. Further Assurance**

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments, and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Licence and the rights and obligation of the parties under it.

**12. LAW AND JURISDICTION**

This Licence is governed by the law of Victoria.

**13. ENTIRE AGREEMENT**

The Licensee acknowledges that:

- 13.1. no information, representation or warranty by or on behalf of the Licensor was supplied or made concerning this Licence with the intention or knowledge that it would be relied upon by the Licensee;
- 13.2. no information, representation or warranty has been relied upon; and
- 13.3. this Licence constitutes the entire agreement between the parties concerning the Licensed Area and supersedes all previous negotiations and agreements.

**14. GOODS AND SERVICES TAX**

- 14.1. Any consideration or amount that is provided for or is payable in connection with or in respect to this Licence to the Licensor is exclusive of GST. To the extent that any such consideration or amounts are subject to GST, the Licensor is entitled to recover the GST from the Licensee in addition to any such consideration or amounts.
- 14.2. Should the Licensor become liable to pay any amount to the Licensee in terms of or in connection with this Licence, such amount is exclusive of GST. To the extent that any such amount is subject to GST, the Licensee is entitled to recover the GST from the Licensor in addition to such amount.
- 14.3. The Licensor will give the Licensee a tax invoice before the Licensor requires payment of GST in respect of the Licence Fee and any other money or consideration due under this Licence.
- 14.4. A reference to GST has the same meaning as defined in *A New Tax System (Goods and Services) Tax Act 1999*.

**EXECUTED as an agreement.**

Executed by [redacted] by its authorised officer in the  
presence of:

)  
)  
)  
)

.....  
[redacted]

.....  
Witness signature

.....  
Witness name (print)

## SCHEDULE

<b>1.LICENSOR:</b>		[*] Council
<b>2.LICENSEE:</b>		[*]
<b>3.LICENCED AREA:</b>		[*] and identified on the attached plan
<b>4.COMMENCEMENT DATE:</b>		[*]
<b>5.TERM:</b>		[*] unless extended by clause 3.2.2
<b>6.EXPIRY DATE:</b>		[*]
<b>7.ACCESS HOURS:</b>		24 hours 7 days a week
<b>8.LICENCE FEE:</b>		\$[*] per calendar month plus GST inclusive of outgoings on the 1 <sup>st</sup> day of each month in advance
<b>9.SECURITY DEPOSIT:</b>		\$[*]
<b>10.PERMITTED USE</b>		[*]

## PLAN OF LICENCED AREA