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**Lease**

**Premises: 241 Station Road, Melton, Victoria 3337**

**Melton City Council**  
and

**Djerriwarrh Employment & Education Services Incorporated**  
Registration Number A0019742L

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## Schedule

<b>Item 1. Council:</b> (Clause 1)	Melton City Council of 232 High Street, Melton 3337
<b>Item 2. Tenant:</b> (Clause 1)	Djerriwarrh Employment and Education Services Incorporated (Registration Number A0019742L) of 239 Station Road, Melton 3334
<b>Item 3. Land:</b> (Clause 1)	The land contained in certificate of title volume 10093 folio 510
<b>Item 4. Premises:</b> (Clause 1)	The whole of the Land and building known as 241 Station Road, Melton, as shown on the plan attached to this Lease as Attachment 2
<b>Item 5. Commencement Date:</b> (Clause 1)	1 January 2021
<b>Item 6. Expiry Date:</b> (Clause 1)	31 December 2030
<b>Item 7. Term:</b> (Clauses 1 & 4.1)	10 years
<b>Item 8. Further Term(s):</b> (Clause 1)	Not applicable
<b>Item 9. Rent :</b> (Clause 1 & 5)	\$1.00 (if demanded), subject to clause 5 and Special Condition 1
<b>Item 10. Percentage Rent Increase Dates:</b> (Clauses 1 & 8)	The Rent shall be increased by 3% on each anniversary of the Commencement Date during the Term, subject to clause 5 and Special Condition 1
<b>Item 11. Permitted Use:</b> (Clauses 1 & 17.1)	Provision of employment and education services



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**Lease**

Council leases the Premises to the Tenant subject to the terms contained in this Lease.

This Lease is executed as a deed on the \_\_\_\_\_ day of \_\_\_\_\_

**The Common Seal of the Melton City Council** was )  
hereunto affixed in the presence of: )  
)

..... Councillor

..... Chief Executive Officer

**The Common Seal of Djerriwarrh** )  
**Employment & Education Services** )  
**Incorporated (Registration Number** )  
**A0019742L)** was affixed by authority of the )  
Committee in the presence of:

..... Committee Member

..... Committee Member / Public Officer of the Association

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## 1. Definitions

In this Lease unless expressed or implied to the contrary:

**Act** means the *Retail Leases Act 2003* (Vic).

**Building Act** means the *Building Act 1993* (Vic).

**Building Regulations** means the *Building Regulations 2018* (Vic).

**Commencement Date** means the date specified in Item 5.

**Contamination** includes any solid, liquid, gas, radiation or substance which makes or may make the condition of the Premises or groundwater beneath or part of the surrounding environment:

- (a) unsafe, unfit or harmful for habitation by persons or animals; or
- (b) unfit for any use permitted under any applicable planning scheme as amended from time to time

or which is defined as such in any Environmental Protection Legislation.

**Council** means the Council specified in Item 1 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

**Council's Fixtures** means all fittings, fixtures, and chattels contained in the Premises at the Commencement Date or installed by Council during the Term.

**CPI Adjustment Date** means the date(s) (if any) described in Item 10.

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

**Essential Safety Measure** has the meaning given to that term in the Building Regulations.

**Expiry Date** means the date specified in Item 6.

**Insolvency Event** means in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;

- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (g) the person, being a corporation, is deregistered with the Australian Securities and Investments Commission;
- (h) any step is taken to do anything listed in the above paragraphs; and
- (i) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Item** means an item in the Lease Particulars.

**Land** means the land specified in Item 3.

**Lease** means this lease and includes all attachments and schedules.

**Lease Particulars** means the schedule of Items specified on the page at the front of this Lease.

**Lettable Area(s)** means the lettable area of the Premises or the Land, as applicable, assessed for Rates and Taxes as determined by a surveyor engaged by Council.

**Local Government Act** means the *Local Government Act 1989* (Vic).

**OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).

**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.

**OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

**Owners Corporation** has the meaning given to that term in the *Subdivision Act 1988* (Vic).

**Percentage Rent Increase Date** means the date(s) specified in Item 12.

**Permitted Use** means the use specified in Item 11.

**Premises** means the premises specified in Item 4 and includes Council's Fixtures.

**Rates and Taxes** means the rates, taxes, charges and levies specified in clause 9.1.

**Principal Contractor** means the position of principal contractor referred to in Part 5.1 of the OHS Regulations.

**Rent** means the amount specified in Item 9 as reviewed, adjusted or increased under this Lease.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).



**Small Business Commissioner** means the Small Business Commissioner referred to in the Act.

**Special Conditions** means the conditions set out in Attachment 1 (if any).

**Tenant** means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

**Tenant's Property** means all property in the Premises including all fixtures and fittings owned or leased by the Tenant but excluding Council's Fixtures.

Term means the term specified in Item 7 and includes any period of overholding.

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**2. Local Government Act 1989**

This Lease is entered into pursuant to s 190 of the Local Government Act.

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**3. Negotiation and disclosure requirements**

**3.1 Negotiation for Lease**

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

- 3.1.1 a copy of the proposed Lease; and
- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.

**3.2 Disclosure statement**

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

- 3.2.1 a disclosure statement (in the form prescribed by the Act) attached as Attachment 3; and
- 3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

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**4. Duration of the Lease**

**4.1 Term**

This Lease is for the Term starting on the Commencement Date.

**4.2 Holding Over**

If the Tenant continues to occupy the Premises after the Expiry Date with Council's consent, the following provisions will apply:

- 4.2.1 the Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.2.2 as far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease;
- 4.2.3 the Rent or any part of it for the monthly tenancy may be reviewed whenever Council determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply;
- 4.2.4 either party may terminate the monthly tenancy by giving to the other 1 month's notice to the other party expiring on any date; and
- 4.2.5 if the Tenant defaults in the performance of its obligations under the monthly tenancy, Council may terminate the monthly tenancy by giving the Tenant 24 hours' notice.

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**5. Payment of Rent**

- 5.1 For so long as the Tenant complies with Special Condition 1, the Tenant must pay the Rent in the manner specified by Council from time to time.
- 5.2 If the Rent is to be adjusted to market rent pursuant to Special Condition 1, the Tenant must:
  - 5.2.1 pay the Rent to Council by equal calendar monthly instalments in advance (and pro-rata for any period less than one month) commencing on the Commencement Date and on the following first day of each month; and
  - 5.2.2 pay the Rent in the manner specified by Council from time to time.

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**6. Market rent review**

Not Used.

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**7. CPI adjustment of Rent**

Not Used.

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**8. Percentage Rent increase****8.1 Calculation of adjustments**

If a Percentage Rent Increase Date is specified in Item 10, the Rent on the Percentage Rent Increase Date is increased by the percentage specified in Item 10.

**8.2 Payment of increased Rent**

The Tenant must pay to Council the increased Rent, on and from the Percentage Rent Increase Date regardless of whether Council has given a notice specifying the increased Rent or not.

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**9. Outgoings****9.1 Rates and Taxes**

The Tenant must pay to Council, or the relevant authority:

- 9.1.1 local government rates and charges;
- 9.1.2 water rates and charges, including water usage charges;
- 9.1.3 sewerage and drainage rates and charges;
- 9.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 9.1.5 all other rates, taxes, charges and levies assessed in connection with the Premises.

**9.2 Proportion of Rates and Taxes**

If any Rates and Taxes are not separately assessed in connection with the Premises, the Tenant must pay to Council within 14 days of demand the proportion of the Rates and Taxes that the Lettable Area of the Premises bears to the total Lettable Area assessed.

**9.3 Receipt for payment**

The Tenant must provide to Council:

- 9.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 9.3.2 receipts for any Rates and Taxes paid by the Tenant within 7 days of request by Council.

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**10. Other expenses****10.1 Services**

The Tenant must, within 14 days of demand:

- 10.1.1 pay for all services in connection with the Premises, including electricity, gas, water and telephone services; and
- 10.1.2 where the Premises are not separately metered, pay for the cost of installing separate meters to assess the charges for the services.

**10.2 Costs and duty**

The Tenant must pay to Council within 14 days of demand:

- 10.2.1 the stamp duty payable on this Lease (including penalties and fees);
- 10.2.2 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 10.2.3 the cost of any insurance premium to insure the Premises against damage or destruction;
- 10.2.4 the cost of carrying out any repairs to Council's Fixtures except to the extent that such costs are not recoverable under the Act, the Building Act or the Building Regulations;
- 10.2.5 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure, except to the extent that such costs are not recoverable under the Act, the Building Act or the Building Regulations;
- 10.2.6 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease;
- 10.2.7 Council's architects or contractor's fees payable pursuant to clause 14.4.4; and
- 10.2.8 Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.

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**11. GST****11.1 Definitions**

In this clause:

- 11.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 11.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under s 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those

voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning; and

11.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**11.2 GST exclusive**

Except as otherwise provided by this lease, all consideration payable under this Lease in relation to any supply is exclusive of GST.

**11.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

**11.4 Payment of GST**

Subject to clause 11.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

**11.5 Tax Invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 11.4.

**11.6 Reimbursements**

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

11.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

11.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

**11.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Lease:

11.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

11.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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**12. Bank Guarantee**

Not Used.

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**13. Payment requirements****13.1 No deduction or right of set-off**

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes without deduction or right of set-off.

**13.2 Interest on late payments**

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under s 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

**13.3 Payment after Termination**

The Tenant must:

13.3.1 make all payments due under this Lease; and

13.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

**13.4 Method of payment**

The Tenant must make all payments under this Lease in such manner as Council reasonably requires, which may include by direct debit.

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**14. Repairs, refurbishment and alterations****14.1 Condition report**

The Tenant acknowledges and agrees that the condition report attached to this Lease in Attachment 4 reflects the true condition of the Premises as at the Commencement Date.

**14.2 Repairs and Maintenance**

The Tenant must:

14.2.1 keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;

14.2.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;

14.2.3 paint and where appropriate paper, any parts of the Premises previously painted or papered whenever reasonably required by Council;

14.2.4 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises;

14.2.5 pay the costs (if any) for the removal of waste and sewerage from the Premises;

- 14.2.6 maintain any gardens in the Premises in good condition well watered and free of weeds;
- 14.2.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by Council when reasonably required by Council;
- 14.2.8 repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 14.2.9 make good any damage caused to any adjacent property by the Tenant;
- 14.2.10 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Building, or any person; and
- 14.2.11 give Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises,  
  
except to the extent that the Act, the Building Act or the Building Regulations require the land owner to personally carry out the repair and maintenance obligations in this clause 14.2.

#### **14.3 Equipment in Premises**

The Tenant must:

- 14.3.1 repair and maintain Council's Fixtures including airconditioning and heating equipment exclusively serving the Premises (but excluding expenses of a capital nature) in accordance with Council's reasonable requirements; and
- 14.3.2 comply with Council's reasonable requirements concerning the use of Council's Fixtures, including airconditioning and heating equipment.

#### **14.4 Alterations to Premises**

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or the Tenant's Property are carried out:

- 14.4.1 strictly in accordance with plans and specifications approved by Council;
- 14.4.2 by qualified tradespersons approved by Council;
- 14.4.3 to Council's reasonable satisfaction and in accordance with Council's reasonable requirements (including Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property);
- 14.4.4 under the supervision of Council's architect or consultant (the cost of which must be paid by the Tenant to Council within 14 days of demand); and
- 14.4.5 in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

The Tenant is not required to seek Council's consent to making any alterations to the display of the Tenant's merchandise in the Premises.

**14.5 Occupational health and safety**

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

- 14.5.1 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;
- 14.5.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which an OHS Law applies;
- 14.5.3 the Tenant is must carry out such works in accordance with the requirements of the OHS Law; and
- 14.5.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 14.5.2.

**14.6 Not interfere with services**

The Tenant must not interfere, misuse or overload any services to the Premises, including electricity, gas and water.

**14.7 Defacing Premises**

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by Council in accordance with clause 14.3.

**14.8 Failure to repair and maintain**

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from Council, Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to Council on demand.

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**15. Insurance****15.1 Public liability and glass insurance**

The Tenant must maintain insurance noting Council's interest as landlord, but not as joint insured, with an insurer approved by Council for:

- 15.1.1 public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council); and
- 15.1.2 any windows and any other glass in the Premises for the full replacement value.

**15.2 Tenant's Property**

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value.

**15.3 Condition in policies**

The Tenant must ensure that the insurance policies effected by the Tenant contain a condition that the insurer will notify Council at least 14 days before the policies lapse.



**15.4 Payment and production of policies**

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before the Commencement Date and each anniversary of the Commencement Date.

**15.5 Not invalidate policies**

The Tenant must:

15.5.1 not do anything which may make any insurance effected by Council or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and

15.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

**15.6 Requirements by insurer**

The Tenant must comply with all reasonable requirements of Council's insurer in connection with the Premises.

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**16. Release, indemnity, compensation and liability****16.1 Release**

The Tenant uses and occupies the Premises at its own risk and releases Council from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of Council's negligence.

**16.2 Indemnity**

The Tenant must indemnify and hold harmless Council against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant except to the extent that such claims arise out of Council's negligence.

**16.3 No compensation**

Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

16.3.1 any damage to the Premises;

16.3.2 the failure of Council's Fixtures or any plant and equipment (including air conditioning and escalators) to operate properly;

16.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises;

16.3.4 the overflow or leakage of water in the Premises, or

except to the extent to which Council is liable where the Act applies.

**16.4 No liability**

The Tenant acknowledges and agrees that:

16.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987 (Vic)* or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and

16.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 16.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Premises.

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**17. Use of Premises****17.1 Permitted Use**

The Tenant must use the Premises for the Permitted Use and not use the Premises for any other purpose.

**17.2 No warranty**

The Tenant:

17.2.1 acknowledges that Council does not represent that the Premises are suitable for the Permitted Use; and

17.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

**17.3 Illegal purpose**

The Tenant must not use the Premises for any illegal purpose or carry on any noxious or offensive activity on the Premises.

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**18. Other obligations concerning the Premises****18.1 Compliance with laws**

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out:

18.1.1 any works that Council is personally required to carry out under the Act, the Building Act or the Building Regulations; and

18.1.2 any structural works unless the need for such works arises from:

(a) the negligent act or omission of the Tenant;

(b) the failure by the Tenant to comply with its obligations under this Lease; or

(c) the Tenant's use of the Premises.

**18.2 Licences and permits**

The Tenant must maintain all licences and permits required for the Tenant's use of the Premises and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

**18.3 Nuisance**

The Tenant must not do anything in connection with the Premises which may:

- 18.3.1 cause a nuisance or interfere with any other person; or
- 18.3.2 be dangerous or offensive in Council's reasonable opinion.

**18.4 Security**

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant.

**18.5 Signs**

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

**18.6 No vending machines**

The Tenant must not permit any vending or amusement machines in the Premises.

**18.7 No auctions**

The Tenant must not conduct any auctions or fire sales in the Premises.

**18.8 No smoking**

The Tenant must:

- 18.8.1 not permit any smoking in the Premises; and
- 18.8.2 display 'no smoking' signs in the Premises if requested by Council.

**18.9 Heavy objects and inflammable substances**

The Tenant must not:

- 18.9.1 store any inflammable or explosive substances in the Premises unless required for the Permitted Use; or
- 18.9.2 store any heavy objects in the Premises or anything likely to damage the Premises.

**18.10 Television and radio**

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent of Council.

**18.11 Endanger Premises**

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of Council may endanger the Premises or be a risk to any person or property.

**18.12 Tenant's employees**

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

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**19. Tenant's environmental obligations****19.1 Comply with Environmental Protection Legislation**

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

**19.2 Not permit Contamination**

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises, drainage or surrounding environment.

**19.3 Notify of and clean up Contamination**

If any Contamination is found in or near the Premises, or the existing Contamination is exacerbated during the Term, the Tenant must at its own cost:

19.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;

19.3.2 clean up the Contamination and do everything necessary to minimise harm; and

19.3.3 promptly comply with any notice, order, direction or requirement of Council and of any authority in relation to any such Contamination.

**19.4 Indemnify Council**

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death caused by or arising out of or otherwise in respect of any Contamination being spilled, deposited or otherwise escaping into or on the Premises or a breach of this clause by the Tenant.

**19.5 Obtain reports, surveys or audits**

The Tenant must immediately obtain any reports, surveys or audits which Council may reasonably require to enable Council to determine whether a breach of the terms of this clause has occurred. The Tenant will also pay Council on demand the reasonable costs of any such report, survey or audit which Council may obtain.

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**20. Dealing with interest in the Premises****20.1 No parting with possession**

The Tenant must not give up possession of the Premises including assigning this Lease, sub-lease the Premises or granting to any person a licence or concession in respect of the Premises, subject to clause 20.2.

**20.2 Conditions of assignment**

Where the Act applies to this Lease, Council will not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

- 20.2.1 has complied with clause 20.4 and Council has not accepted the offer;
- 20.2.2 requests Council in writing to consent to the assignment of the Lease to a new tenant;
- 20.2.3 has remedied any breach of this Lease of which the Tenant has received written notice from Council;
- 20.2.4 provides to Council the name and address of the new tenant and proves to Council's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;
- 20.2.5 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases Council from any claims arising under or in connection with the Lease and otherwise in a form approved by Council;
- 20.2.6 procures the new tenant to provide such additional security as Council may reasonably require;
- 20.2.7 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by Council, to execute a guarantee substantially in the form of the guarantee contained in this Lease;
- 20.2.8 pays Council's reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and
- 20.2.9 where the Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by s 61(3) of the Act.

**20.3 No assignment if Act to apply**

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease, Council may withhold its consent to an assignment of this Lease.

**20.4 Right of first refusal**

The Tenant must, prior to applying for Council's consent for an assignment of this Lease, give written notice to Council offering to assign this Lease to Council, or its nominee on the same terms as the proposed assignment. The offer must remain open for acceptance by Council for 14 days.

**20.5 Change in shareholding**

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek Council's prior written consent in accordance with this clause 20.

**20.6 Mortgage of Lease**

The Tenant must not create any security over this Lease or the Tenant's Property.

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**21. Tenant's obligations at the end of this Lease****21.1 Tenant's obligations**

At the end of this Lease, the Tenant must:

- 21.1.1 vacate the Premises and give them back to Council in a condition consistent with the Tenant having complied with its obligations under this Lease;
- 21.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Property (excluding the Works completed in accordance with Special Condition 1) including making good any damage caused by the removal of the Tenant's Property; and
- 21.1.3 give to Council all keys and other security devices for the purposes of obtaining access to the Premises.

**21.2 Tenant's Property left in Premises**

Anything left in the Premises after 7 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of Council and may be removed by Council at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 21.2 is an agreement about the disposal of uncollected goods for the purposes of s 56(6) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

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**22. Council's rights and obligations****22.1 Quiet enjoyment**

As long as the Tenant does not breach this Lease, Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

**22.2 Alterations to the improvements**

Council may carry out any works, alterations, renovation or refurbishment of the Land which may include extending or reducing any buildings on the Land.

**22.3 Dealing with the Land**

Council may:

- 22.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;
- 22.3.2 install, repair and replace pipes, cables and conduits in the Premises; and
- 22.3.3 use the roof and external walls of the Premises for any purposes Council determines.

**22.4 Entry by Council**

Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 22.4.1 inspect the condition of the Premises;
- 22.4.2 rectify any default by the Tenant under this Lease;
- 22.4.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises, including energy and water use;
- 22.4.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which Council decides to or is required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising Council's rights under this clause.

**22.5 Emergency entry**

Council may enter the Premises at any time without giving notice to the Tenant in an emergency.

**22.6 Reletting and sale**

Council may:

- 22.6.1 affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term; and
- 22.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending purchasers of the Premises at any reasonable time upon reasonable notice to the Tenant during the Term.

Any sign erected by Council must not unreasonably interfere with the Tenant's use and occupation of the Premises.

**22.7 Council's consent**

Unless otherwise provided for in this Lease, where Council is required to give its consent under this Lease, Council may give or refuse its consent subject to such conditions as Council may determine in its absolute discretion.

**22.8 Change in landlord**

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 22.8.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 22.8.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease; and
- 22.8.3 the Tenant must provide a Bank Guarantee in favour of the New Landlord, to replace the Tenant's existing Bank Guarantee.

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**23. Termination of Lease****23.1 Re-entry**

Council may re-enter the Premises and terminate this Lease if:

- 23.1.1 any part of the Rent is in arrears for 14 days (whether or not Council has demanded payment); or
- 23.1.2 an Insolvency Event occurs in relation to the Tenant; or
- 23.1.3 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from Council.

**23.2 Damages following determination**

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

**23.3 Essential terms**

The essential terms of this Lease are clauses 5, 9.1, 10.1, 10.2, 11, 14.2, 14.3, 14.4, 15, 17.1, 17.3, 18, 19, 20 and 21 and any Special Conditions. The breach of an essential term is a repudiation of this Lease.

**23.4 No deemed termination**

If the Tenant vacates the Premises, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.



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**24. Destruction or damage of Premises****24.1 Reduction in Rent**

If the Premises, or any part of the Premises is destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or Council's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then Council will reduce the Rent and other amounts due under this Lease by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

**24.2 Reinstatement of Premises**

If the Premises or any part of the Premises are destroyed or damaged, Council may, within 3 months from the date of such damage or destruction, give notice to the Tenant:

- 24.2.1 terminating this Lease, where Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 24.2.2 that Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

Council does not have to reinstate the Premises.

**24.3 Tenant's right of termination**

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to Council terminating this Lease where Council does not:

- 24.3.1 give notice to the Tenant pursuant to clause 24.2; or
- 24.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clauses releases either party from any breach of this Lease arising prior to the date of termination.

**24.4 Dispute resolution**

If a dispute arises under this clause about the amount of the Rent or Outgoings other amounts payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

**24.5 No compensation**

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from Council, except this clause does not apply where the Act applies to this Lease.

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**25. Guarantor**

Not Used.

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**26. Personal Property Securities Act****26.1 Terms used in this clause**

In this clause 26 :

26.1.1 **Council PPS Property** means any item of property:

- (a) in which the Council has an interest; and
- (b) which is situated on the Premises at any time during the term of this Lease;

26.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

26.1.3 **Tenant PPS Property** means any item of property:

- (a) in which the Tenant has rights;
- (b) which is situated on the Premises at any time during the term of this Lease; and
- (c) of which, whether before or after the end of the term of this Lease:
  - (i) the Council may require the Tenant to transfer ownership to the Council; and
  - (ii) the Tenant is obliged to transfer ownership to the Council,

but does not include any Council PPS Property; and

26.1.4 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

**26.2 Tenant's Security Interest in favour of Council**

The Tenant:

26.2.1 charges its right title and interest in all Tenant PPS Property in favour of the Council, as security for the performance of the Tenant's obligations under this Lease, including but not limited to the Tenant's obligations to transfer ownership in the whole or any part of the Tenant PPS Property to the Council at the expiry or termination of the Lease;

26.2.2 acknowledges and agrees that the charge granted by the Tenant under clause 26.2.1 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;

26.2.3 acknowledges and agrees that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Property in favour of the Council, which interest the Council is entitled to register under the PPS Act as a Purchase Money Security Interest; and

26.2.4 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Property and the Council PPS Property so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Property and the Council PPS Property.

**26.3 No other Security Interest**

The Tenant:

26.3.1 warrants that it has not granted a Security Interest in respect of any Council PPS Property on or prior to execution of this Lease that has not been previously disclosed to the Council in writing; and

26.3.2 agrees that it will not grant a Security Interest in respect of any Council PPS Property or Tenant PPS Property in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion and on any conditions that the Council considers necessary or desirable at its absolute discretion.

**26.4 Indemnity**

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Tenant of this clause.

**26.5 Documents under PPS Act**

The Tenant acknowledges and agrees that:

26.5.1 it waives its right under the PPS Act to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPS Act); and

26.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to release any registered Security Interests under the PPS Act in relation to the Tenant PPS Property and the Council PPS Property.

**26.6 Possession of Tenant PPS Property**

If this Lease is terminated by the Council as a consequence of a default by the Tenant under this Lease, without limitation to any other rights of the Council, the Council may take possession of the Tenant PPS Property by way of set off for any loss or damage the Council is entitled to recover in connection with the Tenant's breach of the Lease.

**26.7 Essential term**

This clause is an essential term of this Lease.

**26.8 Inconsistency with other clauses**

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.

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**27. General****27.1 Notices**

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 27.1.1 the Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and
- 27.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

**27.2 Time of service**

A notice or other communication is deemed served:

- 27.2.1 if served personally or left at the person's address, upon service;
- 27.2.2 if posted, 2 business days after posted;
- 27.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 27.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

**27.3 Entire understanding**

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

**27.4 Waiver**

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

**27.5 Special Conditions**

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

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**28. Interpretation****28.1 Governing law and jurisdiction**

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

**28.2 Persons**

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**28.3 Joint and several**

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

**28.4 Legislation**

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**28.5 Clauses and headings**

In this Lease:

28.5.1 a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Lease; and

28.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

**28.6 Severance**

In this Lease:

28.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

28.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

**28.7 Number and gender**

In this Lease, a reference to:

28.7.1 the singular includes the plural and vice versa; and

28.7.2 a gender includes the other genders.

**28.8 No relationship**

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between Council and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with Council.

**28.9 Exclusion of statutory provisions**

The following statutory provisions are excluded from this Lease:

28.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

28.9.2 Division 7 of the *Transfer of Land Act 1958*.

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## Attachment 1

### Special Conditions

#### 1. Tenant Upgrade Works

1.1 In this Special Condition 1:

1.1.1 **Completion Sunset Date** means the date which is 18 months after the Commencement Date or such later date as the parties may agree in writing.

1.1.2 **Plans** means the detailed plans and costs of the Works to be prepared by the Tenant.

1.1.3 **Practical Completion** means the provision by the Tenant to Council of a certificate of practical completion issued by the Tenant's architect or project manager in respect of the Works in accordance with the Plans.

1.1.4 **Substantially Commence** means the Tenant's completion of [##TBC]% of the Works, to be verified by Council inspection to Council's satisfaction.

1.1.5 **Substantial Commencement Date** means the date which is one year [##TBC] after the Commencement Date.

1.1.6 **Works** means the substantial upgrade works to be undertaken at the Premises as set out at Attachment 5.

1.2 The Tenant acknowledges and agrees that Council has agreed to grant this Lease for the Rent (being a nominal amount), on the basis that the Tenant will undertake the Works to the value of \$350,000.00 in accordance with this Special Condition.

1.3 As soon as possible after the Commencement Date, and in any case within 90 days of the Commencement Date, the Tenant must provide Council with the following for Council's approval:

1.3.1 the Plans; and

1.3.2 evidence of the Tenant's ability to pay for the Works (to Council's reasonable satisfaction).

1.4 Within 60 days of receiving the Plans, Council must give the Tenant written notice that:

1.4.1 the Plans are approved; or

1.4.2 amendments are required to be made to the Plans and to be resubmitted for Council's approval.

1.5 Where amendments are required to the Plans, the Tenant must re-submit the amended Plans within a further period of 14 days from the date of Council's requested amendments.

1.6 If Council does not approve the Plans after they are resubmitted in accordance with Special Condition 1.5, at Council's election this Special Condition will be at an end, and the Rent from the Commencement Date shall be the rental determined by Council to be market rental.

1.7 As soon as possible after Council providing its approval to the Plans in accordance with Special Condition 1.4.1, and in any case before the Substantial Commencement Date, the Tenant must Substantially Commence the Works.

- 1.8 The Tenant must undertake the Works:
- 1.8.1 at the Tenant's own cost and risk and in a proper and workmanlike manner;
  - 1.8.2 in accordance with all necessary permits and approvals;
  - 1.8.3 in accordance with clause 14.4 and any other provision of this Lease relating to the carrying out of works; and
  - 1.8.4 to Council's reasonable satisfaction and in accordance with Council's reasonable requirements.
- 1.9 The Tenant must, upon request from Council from time to time, attend meetings with Council and provide a written report detailing (as requested by Council and to Council's reasonable satisfaction) the status of the Works.
- 1.10 The Tenant must ensure that Practical Completion of the Works occurs no later than the Completion Sunset Date.
- 1.11 If the Tenant breaches this Special Condition, the Rent from the Commencement Date shall be the rental determined by Council to be market rental.
- 1.12 The Tenant acknowledges that ownership of the completed Works will vest in Council at the expiry or earlier determination of this Lease, and the Tenant will not be entitled to:
- 1.12.1 remove the Works upon the expiry of this Lease; or
  - 1.12.2 make any claim for compensation in respect of the cost of the Works.
- 2. Tenant's Rules and Constitution**
- The Tenant must not amend its rules of incorporation or its constitution without the prior written consent of the Council.
- 3. Retail Leases Act 2003**
- 3.1 The Tenant acknowledges that the Council has entered into this Lease on the basis that:
- 3.1.1 the annual Rent is less than \$10,000;
  - 3.1.2 the Tenant is a body corporate that exists for the purposes of (and uses the Land for) providing or promoting community or similar facilities or objectives, and applies its profits in promoting its objects and prohibits payment of any dividend or amount to its members; and
  - 3.1.3 accordingly, pursuant to the Determination made by the Minister for Small Business under s 5(1)(e) of the *Retail Leases Act 2003* (Vic) and published in the Victorian Government Gazette No.S362 on 13 October 2014, the *Retail Leases Act 2003* (Vic) does not apply to this Lease.
- 3.2 The Tenant warrants that its constitution or rules of association prohibit payment of any dividend, benefit or other amount to its members.
- 3.3 The Tenant agrees that during the Term:
- 3.3.1 it must apply any profits that it receives in promoting its objects;



- 3.3.2 it must not amend its rules or its constitution without the prior written consent of Council;
- 3.3.3 it must provide a copy of its current constitution or rules to Council within 7 days of being requested to do so; and
- 3.3.4 it must use the Land solely for the Permitted Use.
- 3.4 Notwithstanding the other provisions of this Special Condition 3, the Tenant acknowledges and agrees that:
- 3.4.1 if the Rent is determined by Council to be a market rental pursuant to Special Condition 1.11, Special Conditions 3.1.1 and 3.1.3 may no longer apply; and
- 3.4.2 it has received a disclosure statement (in the form prescribed by the Act) attached as Attachment 3 at least 7 days prior to the Tenant entering into this Lease.
- 4. Tax exempt**
- The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997* (Cth).
- 5. Liquor licence**
- The Tenant must not apply for or hold any licence or permit under the *Liquor Control Reform Act 1998* (Vic).
- 6. Gaming licence**
- The Tenant must not apply for or hold any licence under the *Gambling Regulation Act 2003* (Vic).



Maddocks

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**Attachment 2**

**Plan of Premises**

DRAFT



02/09/2020

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**Leased Area**  
Djerriwarrh Employment and Educational Services 241  
Station Rd





Maddocks

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### Attachment 3

Condition Report

**[#Council to provide]**

DRAFT

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## Attachment 4

### Upgrade Works

**##Council to provide details/plans of proposed upgrade works at Premises]**

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