LEASE AGREEMENT

1 ABERFELDY AVENUE, EDWARDSTOWN

The Corporation of the City of Marion

Meals on Wheels (SA) Incorporated

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LAWYERS

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DATE

PARTIES

THE CORPORATION OF THE CITY OF MARION of 245 Sturt Road, Sturt SA 5047 (**Council**)

MEALS ON WHEELS (SA) INCORPORATED (**Lessee**)

BACKGROUND

A. The Council is the registered proprietor, or has the care, control and management, of the Land.

B. The Lessee has requested a lease to use the Premises for the Permitted Use.

C. The Council has agreed to grant the Lessee a lease of the Premises.

D. The Council and Lessee wish to record the terms of their agreement.

AGREED TERMS

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this lease:

Act means the *Retail and Commercial Leases Act 1995* (SA).

Actuaries Institute means the Actuaries Institute being the peak body for Actuaries in Australia.

Agreed Consideration means the Rent, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Council under this lease (other than tax payable under clause 24).

Business Day means a day which is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the commencement date described in Item 3 of Schedule 1.

Common Areas means all areas of the Land which are not leased or tenanted and which are for common use by tenants and lessees of the Land and their invitees and customers including driveways, car parks, walkways, washrooms, toilets and stairways.

Council means the party described as 'Council' in this lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Council's Equipment means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Premises and available for use by the Lessee.

CPI means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide) or the index which replaces it under clause 5.3.

Current Market Rent means the best rent that can be obtained for the Premises in an open market by a willing but not anxious lessor with or without vacant possession and on the following conditions:

(a) on the terms of this lease for the whole of the Term (and not just the balance of the Term);

(b) on the basis that the Lessee has complied with all its obligations under this lease;

(c) not taking into account any damage or destruction to the Council's Improvements and Equipment or the Premises and not taking into account any resulting suspension or abatement of the Rent;

(d) not taking into account any disturbance or nuisance to the Lessee's use of the Premises caused by any act or neglect of the Council or any adjoining owner or occupier;

(e) taking into account any improvements or fixtures erected or installed at the Lessee's expense, unless the Council has required in writing the Lessee to remove any improvements or fixtures at the end of the lease;

(f) taking into account any increase in value of the Premises arising from any permanent improvements on the Land at the expense of either the Lessee or the Council and which the Council has not required the Lessee in writing to remove at the end of the lease;

(g) not taking into account any goodwill attributable to the Premises by reason of any trade, business or actions carried on by the Lessee; and

(h) not taking into account any cash, premium, payment, abatement, allowance or other incentive paid, offered or allowed in respect of this lease or being offered or given in respect of comparable premises to induce lease to take a lease of or remain in such comparable premises.

Default Rate means the rate which is two per centum (2%) per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than $100,000.00 and if there is more than one rate published the highest of those rates.

Fees and Charges Schedule means the Fees and Charges Schedule as amended from time to time available on the Council's website.

Gaming Machine means a gaming machine as defined by the *Gaming Machines Act 1992* (SA).

GST has the meaning given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any ancillary or similar legislation.

GST Rate means 10% or the rate of GST imposed from time to time under the GST Legislation.

Improvements means the interior and exterior of all present and future improvements on the Land and includes all Services and Common Areas and all other conveniences, services, amenities and appurtenances of in or to the Improvements.

Institute means the South Australian Division of the Australian Property Institute.

Initial Term means the initial term of this lease commencing on the Commencement Date and described in Item 3 of Schedule 1.

Land means the land described in Item 2 of Schedule 1 and includes any part of the Land.

Legislation includes any relevant Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

Lessee means the party described as 'Lessee' in this lease and where the context permits includes the employees, contractors, agents, customers and other invitees of the Lessee.

Lessee's Equipment means any and all fixtures and fittings and other equipment installed in or brought on to or kept in the Premises by the Lessee.

Lessee's Share means the proportion the lettable area of the Premises bears from time to time to the total lettable area of the Land as measured in accordance with the method of measurement recommended for such Premises by the Institute's guidelines current as at the Commencement Date or such other Institute method of measurement as the Council notifies the Lessee.

Liquor Act means the *Liquor Licensing Act 1997 (SA).*

Liquor Licence Applications Policy means Council's policy which provides a framework for the exercise of the Council's powers pursuant to the Liquor Act as amended from time to time.

Market Review means a review of Rent to Current Market Rent as set out in clause 5.5.

Outgoings means the outgoings described in Item 7 of Schedule 1.

Payment Date means the Commencement Date and each anniversary of the Commencement Date during the Term unless otherwise agreed between the parties.

Permitted Use means the use described in Item 8 of Schedule 1.

Premises means the premises described in Item 1 of Schedule 1 including all Improvements thereon and the Council's Equipment.

Rates and Taxes means all present and future rates, charges, levies, assessments, duty and charges of any Statutory Authority, department or authority having the power to raise or levy any such amounts in respect of the use, ownership or occupation of the Land or Premises and includes water and sewer charges, council rates, emergency services levy and, subject to the Act, land tax (on a single holding basis).

Renewal Term means the term (if any) of renewal or extension granted under this lease.

Rent means the amount described in Item 4 of Schedule 1.

Rent Subsidy Criteria means the list of considerations to be assessed by the Council in granting a rent subsidy under this lease as listed in Schedule 2.

Rent Subsidy Percentage means the percentage reduction of Rent granted to the Lessee for compliance with the Rent Subsidy Criteria as listed in Schedule 2.

Rent Subsidy Criteria Questionnaire means the questionnaire provided to the Lessee which contains questions and requires the provision of information relevant to the Lessee satisfying the Council that it has satisfied each of the Rent Subsidy Criteria.

Review Date means each date described in Item 6 of Schedule 1.

Review Method means the relevant method of rent review in Item 6 of Schedule 1 for any Review Date.

Services includes all services (including gas, electricity, water, sewerage, lifts, escalators, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them) to or of the Improvements or any premises in or on the Land supplied by any authority, the Council or any person the Council authorises.

Special Conditions means the special conditions in Schedule 3.

Statutory Authorities means any government or authorities created by or under any relevant Legislation (including the Council in its separate capacity as local government authority).

Statutory Requirements means all relevant Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authorities.

Term means the Initial Term and any period during which the Lessee holds over or remains in occupation of the Premises.

Valuer means a qualified valuer appointed to make a determination under this lease:

(i) who is appointed by agreement of the Council and the Lessee or, failing agreement within fourteen (14) days of either notifying the other of the requirement for such appointment, at the request of either the Council or the Lessee, by the President or acting President of the Institute;

(j) who has practised as a valuer with a minimum of five years relevant experience; and

(k) who acts as an expert and not as an arbitrator.

Yearly Amounts means the aggregate of the Rent, Outgoings and any other moneys payable by the Lessee during the Term.

1.2 **Interpretation**

In this lease, unless the context otherwise requires:

1.2.1 headings do not affect interpretation;

1.2.2 singular includes plural and plural includes singular;

1.2.3 words of one gender include any gender;

1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;

1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;

1.2.6 a reference to this lease includes any schedules and annexures to this lease;

1.2.7 a reference to any document (including this lease) is to that document as varied, novated, ratified or replaced from time to time;

1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.2.11 a provision is not construed against a party only because that party drafted it;

1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this lease continues in force;

1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and

1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that act at the date of this lease.

1.3 **Retail and Commercial Leases Act**

If the Act applies to this lease:

1.3.1 this lease must be interpreted subject to the Act;

1.3.2 any right, power or remedy of the Council or obligation or liability of the Lessee that is affected by the Act is unenforceable or void but only to the extent that it is expressly made unenforceable or void by the Act.

1.4 **Background**

The Background forms part of this lease and is correct.

2. **GRANT OF LEASE**

The Council grants and the Lessee accepts a lease of the Premises for the Term as set out in this lease.

3. **RENT**

3.1 **Payment of Rent**

The Lessee must pay the Rent by equal instalments in advance on each Payment Date.

3.2 **Instalment**

If a rent instalment period is less than any one quarter of a financial year, then the instalment for that period is calculated at a daily rate based on the number of days in the quarter in which that period begins and the quarterly instalment which would have been payable for a full quarter.

3.3 **Rent Subsidy**

3.3.1 The parties acknowledge that the Rent includes a discount equivalent to the Rent Subsidy Percentage for each Rent Subsidy Criteria which the parties acknowledge the Lessee complies with in Schedule 2.

3.3.2 Prior to 1 September in each year of the Term the Lessee must complete and return a completed Rent Subsidy Criteria Questionnaire with copies of documentation supporting the Lessee's responses to the Rent Subsidy Criteria Questionnaire to Council.

3.3.3 The Lessee's failure to provide a completed Rent Subsidy Criteria Questionnaire to the Council by 1 September in each year of the Term will constitute a failure by the Lessee to evidence compliance with the Rent Subsidy Criteria in Schedule 2.

3.3.4 If applicable, after the Rent has been reviewed to Current Market Rent in accordance a Market Review, a rental discount equivalent to the Rent Subsidy Percentage for each Rent Subsidy Criteria will be applied to the Rent as determined by the Market Review.

3.3.5 A failure by the Lessee to comply with any Rent Subsidy Criteria in relation to which a discount has been applied during the Term will be a breach of an essential term of the lease.

3.3.6 The Council may review the Rent Subsidy Criteria on an annual basis.

3.3.7 The Council must notify the Lessee in writing of any changes to the Rent Subsidy Criteria within a reasonable time after the Council has made any such changes to the Rent Subsidy Criteria.

4. TERM LESS THAN FIVE YEARS

4.1 This clause only has effect where:

4.1.1 the Act applies to this lease; and

4.1.2 the Term is less than five (5) years.

4.2 The Council and the Lessee acknowledge and agree that:

4.2.1 the Term is less than five (5) years; and

4.2.2 section 20B of the Act does not apply to this lease for the Term (including any holding over period which exceeds six (6) months).

4.3 The Lessee acknowledges that:

4.3.1 the Lessee has received independent legal advice explaining the effect of section 20B of the Act and how it would apply if this lease did not contain this clause;

4.3.2 the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause; and

4.3.3 the Lessee has given assurances to the Lessee's lawyer that the Lessee was not acting under coercion or undue influence in requesting or consenting to this clause.

5. RENT REVIEWS

5.1 Rent to be reviewed

The Rent will be reviewed on each Review Date during the Term by the relevant Review Method for the Review Date in accordance with clause 5.

5.2 CPI review

5.2.1 In this clause:

5.2.1.1 **Current CPI** means for a CPI Review Date, the CPI number for the quarter ending immediately before that Review Date; and

5.2.1.2 **Previous CPI** means, for a CPI Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been a review, the Commencement Date).

5.2.2 Where the Review Method for any Review Date is CPI, the Rent on and from that Review Date is calculated as follows:

$$R_2 = R_1 \text{ x } \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

R_2 is the Rent on and from the Review Date; and

R_1 is the Rent immediately before the Review Date (disregarding any abatements incentives or reductions).

5.3 Change to CPI

If the CPI is no longer published, either party may ask the President of the Actuaries Institute to nominate an index which reflects the rate of price change in the area and group for the CPI and 'CPI' then means that index. Each party must pay one half of the President's costs for nominating an index.

5.4 Market Review

Where the Review Method for any Review Date is a Market Review, then the Rent must be reviewed to the Current Market Rent.

5.5 Current Market Rent

5.5.1 The Council will appoint an independent valuer to assess the Current Market Rent for the Premises (**Council's Rent Assessment**).

5.5.2 The Council may at any time give the Lessee written notice stating the Council's Rent Assessment.

5.5.3 The Rent from and including the relevant Review Date is the amount stated in the Council's notice under clause 5.5.2 unless the Lessee gives the Council written notice disagreeing with that amount (**Objection**) within fourteen (14) days after the Council's notice.

5.5.4 If the Lessee gives the Council an Objection, then the Rent must be determined by a Valuer.

5.5.5 The Valuer must determine the Current Market Rent under this clause.

5.5.6 The Council and the Lessee may make written submissions to the Valuer within fourteen (14) days after the Valuer is appointed.

5.5.7 Each party must forward to the other a copy of all written material provided to the Valuer when it is provided to the Valuer.

5.5.8 Within fourteen (14) days after receiving those written materials, a party may give written comments to the Valuer on the other party's written submissions.

5.5.9 The Valuer must make the determination in writing within sixty (60) days after appointment, giving detailed reasons and specifying the matters required to be taken into account under this lease. The determination is final and binding.

5.5.10 If the Valuer's determination is more than the Council's assessment of the Current Market Rent, the Lessee must pay all the costs of the valuation. In all other cases, the costs of the valuation must be shared equally between the Council and Lessee.

5.6 **Rent pending determination**

5.6.1 The Rent may be reviewed at any time from a Review Date even if the review is initiated after that Review Date.

5.6.2 If the Rent to apply on and from a Review Date is not agreed or determined by that Review Date, the Lessee must continue to pay instalments of Rent at the rate that applied before the relevant Review Date until the Rent is determined.

5.7 **Adjustment once Rent determined**

Once the Rent to apply on and from a Review Date is agreed or determined, the Lessee must pay any shortfall and the Council must allow any adjustment for overpayment at the next Payment Date.

5.8 **No decrease in Rent**

Subject to the Act, the Rent will not decrease on a Review Date.

5.9 **Other review**

Subject to the Act, the Council and Lessee may negotiate and agree a Rent to apply from a Review Date without following this clause.

6. RATES AND TAXES AND OUTGOINGS

6.1 Liability for Rates and Taxes

The Lessee shall be required to pay or reimburse the Council any Rates and Taxes levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises.

6.2 Payment of Outgoings

The Lessee must pay or reimburse the Council all Outgoings levied, assessed or charged in respect of the Premises or upon the owner or occupier of the Premises within thirty (30) days upon demand by the Council.

6.3 Lessee's Share

If any Rates and Taxes or Outgoings are not separately assessed or charged in respect of the Premises, then the Lessee must pay the Lessee's Share of any such Rates and Taxes or Outgoings assessed or charged in respect of the Land.

6.4 Power and other utilities

6.4.1 The Lessee must pay, when due, all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, and any and all other services and utilities supplied to or used from the Premises.

6.4.2 If there is no separate meter for a service or utility used on or from the Premises and if the Council so requires, then the Lessee will install the meter at its own cost.

6.4.3 The Lessee shall be responsible for all electrical tagging and testing as required of the Lessee's Equipment at the Premises.

6.4.4 Without limiting this subclause, the Lessee must comply with the *Electricity (General) Regulations 2012* (SA) and any other applicable electricity laws.

6.5 Separate air-conditioning plant

6.5.1 If the Premises are served by separate air-conditioning plant or equipment the Lessee must, at its own cost, ensure that the air-conditioning plant or equipment is properly and regularly serviced and maintained. If the Council gives any instructions or directions with regard to the service and maintenance of that air-conditioning plant or equipment, the Lessee must, at its own cost, ensure that the air-conditioning plant and equipment is serviced and maintained in accordance with those instructions or directions.

6.5.2 If the Council chooses to arrange for the service, maintenance and repair of the air-conditioning plant or equipment (and notifies the Lessee accordingly) then the Lessee must permit the Council, and any person authorised by it for that purpose, to enter the Premises and

carry out such service, maintenance and repair at all reasonable times. The Lessee must pay or reimburse to the Council all costs incurred in that regard which the Council may recover from the Lessee as a debt due and payable on demand.

6.5.3 The Lessee must pay or reimburse to the Council the cost of all power consumed by such air-conditioning plant or equipment and the Council may recover any such amounts as a debt due.

7. WATER

7.1 Mains water

The Lessee must pay when due, all costs and outgoings in relation to water usage and water rates of all mains located on the Premises.

7.2 Water efficiency

The Lessee must use its best endeavours to ensure that, at all times, water is used and consumed at the Premises in an efficient and responsible manner.

7.3 Recycled water and bore water access

The Lessee shall be responsible for all costs and outgoings in relation to water usage and rates associated with the use of bore water or recycled water on the Premises and the Council may enter into a separate agreement with the Lessee regarding the costs of bore water and recycled water.

8. USE OF PREMISES

8.1 Permitted Use

The Lessee may use the Premises only for the Permitted Use and must not use or allow the Premises to be used for any other use without the Council's consent.

8.2 Offensive, illegal and restricted activities

The Lessee must:

8.2.1 not carry on any offensive, dangerous or illegal activities on or from the Premises;

8.2.2 not create a nuisance or disturbance for the Council or for the owners or occupiers of any adjoining property;

8.2.3 ensure at all times that activities conducted on or from the Premises do not discredit the Council;

8.2.4 not permit or allow persons to sleep or reside on the Premises; and

8.2.5 not keep animals on the Premises.

8.3 **Use of facilities**

8.3.1 The Lessee must ensure that the Services are used carefully and responsibly and in accordance with any directions given by the Council from time to time.

8.3.2 The Lessee must repair or correct any damage or malfunction which results from any misuse or abuse of the Services by the Lessee.

8.4 **Statutory Requirements**

The Lessee must comply with all Statutory Requirements (including the *Work Health and Safety Act 2012* (SA)) relating to:

8.4.1 the Lessee's use and occupation of the Premises;

8.4.2 the Permitted Use.

8.5 **Signs**

8.5.1 The Lessee must not place any sign or advertisement on the outside or inside (if they can be seen from outside) of the Premises, except a sign or advertisement which:

8.5.1.1 is approved by the Council; and

8.5.1.2 complies with any relevant Statutory Requirements.

8.5.2 Council reserves the right to require the Lessee to place any sign or advertisement on the outside or inside of the Premises in accordance with Council's policy at the time.

8.5.3 The Lessee is prohibited from placing any political sign or advertisement on the outside or the inside of the Premises.

8.6 **Dangerous equipment and installations**

The Lessee may only install or use within the Premises equipment and facilities which are reasonably necessary for and normally used in connection with the Permitted Use and must not install or bring onto the Premises:

8.6.1 any electrical, gas powered or other machinery or equipment that may pose a danger, risk or hazard;

8.6.2 any chemicals or other dangerous substances that may pose a danger, risk or hazard; or

8.6.3 any heavy equipment or items that may damage the Premises or Improvements.

8.7 **Fire precautions**

The Lessee must comply with all Statutory Requirements relating to fire safety and procedures including any structural works or modifications or other building

works which are required as a consequence of the Lessee's use of the Premises.

8.8 **Security**

The Lessee must keep the Premises securely locked at all times when the Premises are not occupied and must provide a key to the Premises to the Council (or if the Council has engaged a manager, then to the manager) to be used only in emergencies.

8.9 **No warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) for the Permitted Use or any other purpose.

9. **LIQUOR LICENCE**

9.1 **Service of alcohol**

The Lessee must not:

9.1.1 serve, sell or provide to persons; or

9.1.2 consume or allow persons to consume;

alcoholic beverages on the Premises except in accordance with a Liquor Licence obtained pursuant to clause 9.2 and otherwise in accordance with this clause.

9.2 **Obtaining Liquor Licence**

9.2.1 The Lessee is responsible for and will take all steps necessary in order to obtain all necessary licences (**Liquor Licence**) under the Liquor Act.

9.2.2 In addition to the requirements of clause 9.2.1, the Lessee must take all steps necessary in order to comply with Council's Liquor Licence Applications Policy.

9.2.3 In addition to the requirements of clause 9.2.1, the Lessee must obtain all other approvals, licences, consents and renewals as may be necessary to serve or sell alcoholic beverages on the Premises.

9.2.4 The Lessee must obtain the Council's consent which may be withheld at the Council's discretion prior to seeking to obtain a Liquor Licence for the Premises and prior to agreeing to any conditions of the Liquor Licence.

9.3 **Maintenance of Liquor Licence**

9.3.1 The Lessee must not do anything or allow anything to be done that would result in the Liquor Licence or any other licence, approval or

consent issued under the Liquor Act relating to the Premises or any business conducted from the Premises:

9.3.1.1 not being renewed or being suspended or forfeited or removed from the Premises;

9.3.1.2 which results in more onerous conditions being imposed on or in respect of such Liquor Licence;

9.3.1.3 which has or may have any prejudicial effect on any such Liquor Licence; or

9.3.1.4 which may constitute or result in the commission of any offence under the Liquor Act.

9.3.2 Without limiting clause 9.3.1, the Lessee must not without the Council's prior written consent apply under the Liquor Act or to any other Statutory Authority to decrease or restrict the hours of trading permitted under the Liquor Licence or the Liquor Act in respect of the Premises.

9.3.3 The Lessee must at its own cost and expense in all things, comply with and observe, and carry out and perform all of the requirements of the Liquor Licence and the Liquor Act and all directions and requirements relating to the Premises and the business conducted on the Premises which may be issued under the Liquor Act or by any person or authority with lawful jurisdiction.

9.3.4 Where the Lessee is required pursuant to the terms of the Liquor Licence or under the Liquor Act or in pursuance of any direction or requirement issued under that Act or by any other person or authority with lawful jurisdiction, to carry out works, then such works must be carried out in a good manner which is consistent with that of one skilled in the works carried out, within the timeframe required and to the satisfaction of the person or authority who required the work to be completed.

9.3.5 The Lessee must renew the Liquor Licence and keep it current at all times during the Term.

9.3.6 On request by the Council, the Lessee must supply the Council with copies of all statutory declarations and other forms, letters, applications and material supplied by the Lessee to the Liquor and Gambling Commissioner and/or any other authorities under the Liquor Act.

9.3.7 If the Lessee or any manager, licensee or employee of the Lessee receives or is served with any summons, complaint or other legal process or any notice, requirement or further communication from any person or authority acting under the Liquor Act or otherwise relating to the Liquor Licence, then the Lessee must immediately inform the Council in writing of the same and provide all particulars requested by the Council.

9.4 **Transfer of Liquor Licence after termination**

Upon the expiration or sooner termination of this lease, the Lessee will, if so requested by the Council, use its best endeavours to transfer to the Council or its nominee, the Liquor Licence and all other licences, approvals and consents at no cost to the Council or its nominee.

10. GAMING MACHINES

10.1 **No new machines**

10.1.1 Subject to clause 10.2, on and from the Commencement Date and for the duration of this lease, the Lessee must not bring onto the Premises or operate any Gaming Machine.

10.1.2 With the Council's consent, the Lessee may retain and operate any pre-existing Gaming Machine that was operated by the Lessee on the Premises prior to the commencement of this lease.

10.2 **Council's consent**

The Council may refuse to provide its consent under 10.1.2 in its absolute discretion.

11. INSURANCE

11.1 **Lessee must insure**

The Lessee must keep current during the Term:

11.1.1 public liability insurance for at least the amount in Item 9 of Schedule 1 (or any other amount the Council reasonably requires) for each claim;

11.1.2 all insurance in respect of the Lessee's Equipment for its full replacement value; and

11.1.3 other insurances required by any Statutory Requirement or which the Council reasonably requires.

11.2 **Requirements for policies**

Each policy must:

11.2.1 be with an insurer and on terms reasonably approved by the Council;

11.2.2 be in the name of the Lessee and note the interest of the Council and any other person the Council requires;

11.2.3 cover events occurring during the policy's currency regardless of when claims are made; and

11.2.4 note that despite any similar policies of the Council, the Lessee's policies will be primary policies.

11.3 **Evidence of insurance**

The Lessee must give the Council certificates evidencing the currency of each policy. During the Term the Lessee must:

11.3.1 pay each premium before it is due for payment;

11.3.2 give the Council certificates of currency each year when the policies are renewed and at other times the Council requests;

11.3.3 not vary, allow to lapse or cancel any insurance policy without the Council's consent;

11.3.4 notify the Council in writing immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy;

11.4 **Insurance affected**

11.4.1 The Lessee must not do anything which may:

11.4.1.1 prejudice any insurance of the Premises or the Improvements; or

11.4.1.2 increase the premium for that insurance.

11.5 **Council's insurance obligations**

The Council must keep current during the Term insurance in respect of the Improvements and the Land.

12. **REPAIR AND MAINTENANCE**

12.1 **Repair**

12.1.1 The Lessee must keep and maintain the Premises, the Lessee's Equipment and any Services situated within the Premises and which exclusively service the Premises in good repair and condition.

12.1.2 The Lessee is responsible for all the day to day repairs and maintenance at the Premises including the repair and maintenance of:

12.1.2.1 all items required to ensure compliance with all Statutory Requirements in relation to emergency and fire and safety procedures including operable hose reels, fire hydrants, fire extinguishers, fire blankets, alarms and emergency and exit lighting;

12.1.2.2 all interior fittings including but not limited to light globes, washers, taps and carpets;

12.1.2.3 signage; and

12.1.2.4 internal paint works.

12.1.3 The Lessee is responsible for the removal of waste at the Premises including the removal of:

12.1.3.1 internal graffiti;

12.1.3.2 weeds; and

12.1.3.3 rubbish.

12.1.4 The Lessee must promptly repair any damage to the Improvements or the Land caused or contributed to by the act, omission, negligence or default of the Lessee and in any event must repair any such damage to the Improvements or the Land within fourteen (14) days of the Lessee being given notice to repair the damage by the Council.

12.1.5 Without limiting the general obligations of the Lessee under this clause, the Lessee must ensure that it keeps and maintains the Premises, the Lessee's Equipment and any Services situated within the Premises so as to comply with its obligations under the Council's guidelines for maintenance, repair and building upgrades for Council owned land in Annexure B of this lease.

12.2 **Maintain and replace**

The Lessee must maintain items in or attached to the Premises, and, if damaged or worn, repair them or replace them with items of quality similar to those in use at the Commencement Date, or, if previously replaced with the Council's approval, when last replaced. Notwithstanding this clause, applications for capital works are to be made by Lessee in accordance with the relevant Council policy at the time.

12.3 **Alterations by Lessee**

12.3.1 The Lessee must not carry out any alterations or additions to the Premises without the Council's prior written consent.

12.3.2 The Lessee must provide full details of the proposed alterations and additions to the Council.

12.3.3 The Council may impose any conditions it considers necessary if it gives its approval, including requiring the Lessee to obtain the Council's consent to any agreements that the Lessee enters into in relation to the alterations or additions.

12.3.4 The Lessee must carry out any approved alterations and additions:

12.3.4.1 in a proper manner which is consistent with that of one skilled in the works carried out;

12.3.4.2 in accordance with the conditions imposed by the Council and with the approvals made by Council in its capacity as lessor under this lease;

12.3.4.3 in accordance with all Statutory Requirements; and

12.3.4.4 in a way to minimise disturbance to others.

12.3.5 Unless otherwise agreed in writing between the parties, all alterations and additions to the Land or the Premises made pursuant to this clause become the property of the Council.

12.3.6 The Lessee must pay all of the Council's costs (including consultant's costs and legal costs) as a result of the Lessee's alterations and additions.

13. CLEANING

The Lessee must:

13.1 keep the Premises clean and tidy;

13.2 keep the Premises free of vermin, insects and other pests;

13.3 promptly remove any internal graffiti on the Premises; and

13.4 not cause the Common Areas to be left untidy or in an unclean state or condition.

14. ASSIGNMENT, SUBLETTING AND CHARGING

14.1 Assignment

14.1.1 The Lessee may assign its interest in this lease provided that the Lessee must first obtain the consent in writing of the Council.

14.1.2 Subject to the Act, the Council may withhold consent to an assignment of the lease if:

14.1.2.1 the proposed assignee proposes to change the Permitted Use;

14.1.2.2 the proposed assignee is unable to meet the financial obligations under this lease;

14.1.2.3 the Council reasonably considers that the assignee's business skills are inferior to those of the assignor;

14.1.2.4 the Lessee makes a profit on the assignment of the lease; or

14.1.2.5 the Lessee has not complied with the Council's procedural requirements for obtaining the Council's consent.

14.2 Subletting

14.2.1 The Lessee must not sublet or license any part of the Premises without the Council's prior written consent and provided that the Lessee does not make a profit as a result of subletting the Premises or any part of the Premises.

14.2.2 The Council may, in considering whether or not to provide its consent under clause 14.2.1, request copies of the terms and conditions on which the Lessee proposes to grant a right of occupancy to a proposed sublessee or licensee.

14.3 **Hiring out Premises**

Subject to clauses 14.4 and 14.5, the Lessee may hire out or otherwise part with possession of the Premises without the Council's consent provided that hiring the Premises is consistent with the Permitted Use.

14.4 **Sublease or hire charges**

14.4.1 Subject to Clause 14.5.2, the Lessee acknowledges and agrees that any rate charged for use of Premises will be no more than the rates stated in the Council's Fees and Charges Schedule.

14.4.2 The Lessee may request the Council's consent to charge rates for use of the Premises in excess of the rates stated in the Council's Fees and Charges Schedule.

14.4.3 The Council may refuse its consent to a request under clause 14.5.2 in its absolute discretion

15. LESSEE GOVERNANCE

15.1 On or before the Commencement Date the Lessee must provide to the Council a copy of the Lessee's constitution and any other documents that regulate its governance and operations.

15.2 The Lessee must provide to the Council any information reasonably required by Council in relation to the Lessee's use and occupation of the Premises, the governance and operations of the Lessee including but not limited to annual general meeting reports and minutes of meeting and finances including but not limited to audited financial statements.

16. COUNCIL'S OBLIGATIONS AND RIGHTS

16.1 **Quiet enjoyment**

Subject to the Council's rights and to the Lessee complying with the Lessee's obligations under this lease, the Lessee may occupy the Premises during the Term without interference from the Council.

16.2 **Right to enter**

The Council may (except in an emergency when no notice is required) enter the Premises after giving the Lessee reasonable notice:

16.2.1 to assess the Lessee's compliance with the terms of this lease;

16.2.2 to do any repairs or maintenance as deemed necessary by the Council to the Premises or the Improvements or other works which cannot reasonably be done unless the Council enters the Premises;

16.2.3 to do anything the Council must or may do under this lease or must do under any Legislation or to satisfy the requirements of any Statutory Authority; and

16.2.4 to show prospective lessees through the Premises.

16.3 **Emergencies**

In an emergency the Council may:

16.3.1 close the Premises or Improvements; and

16.3.2 prevent the Lessee from entering the Premises or Improvements.

16.4 **Works and restrictions**

16.4.1 Upon giving reasonable notice to the Lessee, the Council may:

16.4.1.1 install, use, maintain, repair, alter, and interrupt Services;

16.4.1.2 carry out works on the Improvements (including extensions, renovations and refurbishment); and

16.4.1.3 close (temporarily or permanently) and restrict access to the Common Areas.

16.4.2 The Council must (except in an emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises.

16.5 **Right to rectify**

The Council may at the Lessee's cost do anything which the Lessee should have done under this lease but which the Lessee has not done or which the Council reasonably considers the Lessee has not done properly.

16.6 Maintenance

Without limiting the general obligations of the Council under this lease, the Council must ensure that it complies with its obligations under the guidelines for maintenance, repair and building upgrades for Council owned land contained in Annexure B of this lease.

17. DAMAGE OR DESTRUCTION

17.1 **Termination for destruction or damage**

17.1.1 If the Premises are destroyed or are damaged so that they are unfit for the Lessee's use then, within three (3) months after the damage or destruction occurs, the Council must give the Lessee either:

17.1.1.1 a notice terminating this lease (on a date at least one (1) month after the Council gives notice); or

17.1.1.2 a notice advising the Lessee that the Council intends to repair the Premises and/or the Improvements so that the Premises are accessible and the Lessee can occupy and use the Premises (**Intention to Repair Notice**).

17.1.2 If the Council gives an Intention to Repair Notice but does not carry out the repairs within a reasonable time, the Lessee may give notice to the Council that the Lessee intends to end this lease if the Council does not make the Premises accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work) (**Intention to Terminate Notice**).

17.1.3 If the Council does not give a notice under this subclause or does not take the action specified in the Intention to Terminate Notice, the Lessee may end this lease by giving the Council not less than one (1) month's notice.

17.2 **Reduction or abatement of Rent**

17.2.1 While the Premises are unfit or inaccessible, the Yearly Amounts are reduced unless:

17.2.1.1 the Premises are unfit or inaccessible; or

17.2.1.2 an insurer refuses to pay a claim;

as a result of a deliberate or negligent act or omission of the Lessee.

17.2.2 The level of the reduction (if any) depends on the nature and extent of the damage.

17.2.3 If the level of the reduction (if any) cannot be agreed it must be determined by a Valuer.

18. REDEVELOPMENT AND DEMOLITION

If as part of any redevelopment or other project conducted by the Council that includes the Premises (**Redevelopment**), or for any other reason, the Council wishes to demolish or acquire vacant possession of the Premises or any part of the Premises, then the Council may:

18.1 **Redevelopment and termination**

terminate this lease subject to the following provisions:

18.1.1 at any time after providing the Lessee with those details, the Council may give the Lessee a written notice of termination of this lease (**Termination Notice**) specifying the date on which this lease is to come to an end being a date not less than twelve months after the Termination Notice is given. Unless terminated earlier by the Lessee under clause 18.1.2, this lease comes to an end at midnight on the day specified in the Termination Notice;

18.1.2 at any time after receiving a Termination Notice, the Lessee may terminate this lease by giving not less than seven days' written notice to the Council; and

18.1.3 when either party terminates this lease under this clause, the rights and obligations of the Council and the Lessee under this lease (except with regard to an existing breach) come to an end.

18.2 **Relocation**

propose that the Lessee, upon reasonable notice, vacate the Premises and to occupy an alternative site owned by the Council subject to the following conditions:

18.2.1 the Council may at any time after providing the Lessee with those details, give the Lessee a written notice of relocation of this lease (**Relocation Notice**) specifying the date on which the Lessee must relocate being a date not less than six (6) months after the Relocation Notice is given;

18.2.2 where the Lessee agrees to be relocated, the Lessee must relocate to the alternative site on the date stipulated in the Relocation Notice and must give to the Council all assistance and cooperation necessary to give effect to this clause and to the relocation including the execution of any documents or instruments which the Council reasonably requires;

18.2.3 the alternative site must, in the reasonable opinion of the Council, be of comparable quality and utility to the Premises;

18.2.4 any reasonable costs incurred in relocating the Lessee must be borne by the Council; and

18.2.5 the Lessee's occupation of the alternative site is on the terms in this lease (changed as necessary); or

18.2.6 if the Lessee does not agree to be relocated, the Lessee may terminate the lease.

18.3 **Conditions**

The Council may only exercise its rights under this clause if it has provided the Lessee with details of the proposed Redevelopment sufficient to indicate a genuine proposal to carry out that Redevelopment within a reasonably practicable time after this lease is to be terminated.

19. **RENEWAL**

19.1 If a right of renewal or first right of renewal is specified in Item 5 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than six (6) months and not more than twelve (12) months before the expiry of the Initial Term stating it wishes to renew this lease for the period specified in Item 5 of Schedule 1. If such notice is given, the Council must renew this lease for the first Renewal Term on the

terms in this lease (except this subclause) commencing immediately after the Initial Term expires.

19.2 If a second right of renewal is specified in Item 5 of Schedule 1 and the Lessee wishes to exercise that right of renewal, then the Lessee must give a written notice to the Council not less than six (6) months and not more than twelve (12) months before the expiry of the Renewal Term stating it wishes to renew this lease for the period specified in Item 5 of Schedule 1. If such notice is given, the Council must renew this lease for the second Renewal Term on the terms in this lease (except this subclause and the previous subclause) commencing immediately after the first Renewal Term expires.

19.3 The Lessee is not entitled to renew this lease if:

19.3.1 the Lessee has been in breach of this lease at any time before giving notice of exercise of the right of renewal;

19.3.2 the Lessee is in breach of this lease at the time of giving that notice; or

19.3.3 the Lessee is in breach or commits a breach of this lease after giving that notice but before commencement of the Renewal Term.

20. RIGHTS AND OBLIGATIONS ON EXPIRY

20.1 Expiry

This lease comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under this lease.

20.2 Handover of possession

Before this lease comes to an end, the Lessee must:

20.2.1 if required by Council, remove all of the Lessee's Equipment and repair any damage caused by such removal;

20.2.2 if required by Council, remove and reinstate any alterations or additions made to the Premises by the Lessee; and

20.2.3 complete any repairs which the Lessee is obliged to carry out under this lease.

20.3 Abandoned goods

If, when this lease comes to an end, the Lessee leaves any goods or equipment at the Premises, then the Council may deal with and dispose of those goods in accordance with the Act.

20.4 Holding over

If, with the Council's consent, the Lessee continues to occupy the Premises after the end of this lease, the Lessee does so under a monthly lease which:

20.4.1 either party may terminate on one month's notice given at any time; and

20.4.2 is on the same terms as this lease.

21. BREAK CLAUSE

21.1 The Lessee may terminate this lease by giving at least three (3) months prior written notice to the Council of its intention to terminate the lease.

21.2 If the Lessee terminates this lease pursuant to this clause, the rights and obligations of Council and the Lessee under this lease (except with regard to an existing breach) come to an end on and from, but not before, the date termination of this lease takes effect pursuant to clause 21.1.

21.3 For the avoidance of doubt the provisions of clause 20 apply to a termination of the lease under this clause.

22. BREACH

22.1 Payment obligations

22.1.1 The Lessee must make payments due under this lease:

22.1.1.1 without demand (unless otherwise provided);

22.1.1.2 without set-off, counter-claim, withholding or deduction;

22.1.1.3 to the Council or as the Council directs; and

22.1.1.4 by means directed by the Council.

22.1.2 If a Payment Date does not exist, the Lessee must make any payment due on that Payment Date on demand.

22.2 Set off

The Council may, by notice to the Lessee, set off any amount due by the Lessee to the Council under this lease or any other agreement or otherwise against any amount due by the Council to the Lessee under this lease.

22.3 Council's rights on breach

22.3.1 The Council may come onto the Premises and remedy a breach of this lease without notice:

22.3.1.1 in an emergency; or

22.3.1.2 if the Lessee breaches any provision of this lease and fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so.

22.3.2 The Lessee must pay or reimburse the Council on demand for all costs of remedying the breach.

22.4 **Breach and re-entry**

Subject to clause 29, if:

22.4.1 the Lessee fails to pay a sum of money when due and fails to remedy that failure within seven (7) days after receiving notice requiring it to do so;

22.4.2 the Lessee breaches any other provision of this lease and fails to remedy the breach within fourteen (14) days after receiving notice requiring it to do so;

22.4.3 the Lessee ceases to be able to pay its debts as they become due;

22.4.4 any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;

22.4.5 any step is taken to enter into any arrangement between the Lessee and its creditors;

22.4.6 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Lessee's assets or business;

22.4.7 the Lessee is deregistered or dissolved or any step is taken by any person towards that;

22.4.8 the Lessee is a natural person and commits an act of bankruptcy;

22.4.9 the Lessee is convicted of an indictable offence (other than a traffic offence);

22.4.10 execution is levied against the Lessee and not discharged within fourteen (14) days; or

22.4.11 the Premises are unoccupied for one month or more without the Council's consent;

then despite any other clause of this lease, the Council:

22.4.12 may re-enter and repossess the Premises, without prejudice to its other rights; and

22.4.13 is discharged from any claim by or obligation to the Lessee under this lease.

22.5 **Rights of Council not limited**

A power or right of the Council under this lease or at law resulting from a breach or repudiation of this lease by the Lessee, or the exercise of such power or right, does not limit the Council's powers or rights.

22.6 **Repudiation and damages**

22.6.1 The following provisions are essential terms of this lease:

22.6.1.1 the obligation to pay the Rent;

22.6.1.2 the obligation to comply with the Rent Subsidy Criteria;

22.6.1.3 the obligation to pay Rates and Taxes or Outgoings;

22.6.1.4 the provisions about use of the Premises;

22.6.1.5 the provisions about the repair and maintenance of the Premises;

22.6.1.6 the provisions about additions and alterations to the Premises; and

22.6.1.7 the obligations set out in clause 14.

22.6.2 The Council does not waive the essential nature of an essential term by accepting late payment of Rent or other money or by failing to exercise its rights or by delay in doing so.

22.6.3 Any breach of an essential term by the Lessee is a repudiation of this lease. The Council may at any time accept that repudiation, rescinding this lease.

22.6.4 If:

22.6.4.1 the Council terminates this lease because of a breach of an essential term by the Lessee; or

22.6.4.2 the Lessee repudiates this lease and the Council accepts that repudiation, rescinding this lease;

the Lessee must pay compensation to the Council including the Rent and other money which the Council would otherwise have received under this lease for the balance of the Term. The Council must take reasonable steps to mitigate its losses and to endeavour to lease the Premises at a reasonable fee and on reasonable terms.

22.7 **Interest on overdue amounts**

The Lessee must pay to the Council interest on any overdue amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

22.8 **Landlord and Tenant Act**

A notice under section 10 of the *Landlord and Tenant Act 1936* (SA) must allow fourteen (14) days for the Lessee to remedy a breach of this lease if it is capable of remedy and to make reasonable compensation in money to the

satisfaction of the Council. No period of notice is required in respect of non-payment of the Rent.

23. INDEMNITY AND RELEASE

23.1 Risk

The Lessee occupies and uses the Premises at the Lessee's risk.

23.2 Indemnity

The Lessee is liable for and must indemnify the Council against all actions, liabilities, costs, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly including in connection with:

23.2.1 any act or omission of the Lessee;

23.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;

23.2.3 any fire on or from the Premises;

23.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to the Premises;

23.2.5 a breach of this lease by the Lessee; or

23.2.6 the Lessee's use or occupation of the Premises;

except to the extent that they are caused by the Council's negligence.

23.3 Release

The Lessee releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Premises or the Improvements except to the extent that they are caused by the Council's negligence.

23.4 Indemnities are independent

Each indemnity is independent from the Lessee's other obligations and continues during this lease and after this lease ends.

24. GOODS AND SERVICES TAX

24.1 If the Council is liable to pay GST in connection with a supply under this lease then:

24.1.1 the Agreed Consideration for that supply is exclusive of GST;

24.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by the GST Rate; and

24.1.3 the Lessee must pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

24.2 Where the Agreed Consideration is increased under this clause, the Council must, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

24.3 If the Lessee breaches this clause and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the penalties and interest.

25. RESUMPTION

25.1 The Council may terminate this lease by giving at least three (3) months' written notice to the Lessee if the Council receives notice of resumption or acquisition of the Premises or the Improvements or Land (or any part of the Improvements or Land affecting the Premises) from or by any Statutory Authority governmental or semi-governmental body.

25.2 The Council may terminate this lease immediately by giving written notice to the Lessee if the Premises or the Improvements or Land (or any part of the Improvements or Land affecting the Premises) is Crown land dedicated to a particular purpose and:

25.2.1 it is withdrawn from the Council's care control and management;

25.2.2 the purpose for which it has been dedicated is altered under section 18 of the *Crown Land Management Act 2009* (SA); or

25.2.3 the dedication is revoked under section 19 of the *Crown Land Management Act 2009* (SA) or other legislation.

25.3 Termination of this lease under this clause releases each party from further liability under this lease, but does not affect a party's rights or liabilities for a prior breach.

26. MISCELLANEOUS

26.1 Approvals and consents

Unless otherwise provided, where Council's consent (as lessor) is required under this lease:

26.1.1 the consent will be provided in writing; and

26.1.2 the Council may in its discretion give (conditionally or unconditionally) or withhold any approval or consent.

26.2 Entire agreement

This lease:

26.2.1 constitutes the entire agreement between the parties about the Premises;

26.2.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about the Premises.

26.3 **Waiver**

If the Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this lease.

26.4 **Exercise of power**

26.4.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this lease is not a waiver of that power or right.

26.4.2 An exercise of a power or right under this lease does not preclude a further exercise of it or the exercise of another right or power.

26.5 **Special conditions**

Any Special Conditions will apply to this lease and in the event of any inconsistency with the terms and conditions in the body of this lease, then those Special Conditions will prevail.

27. **NOTICE**

27.1 A notice, demand, consent, approval or communication under this lease (**Notice**) must be in writing, in English and signed by a person authorised by the sender.

27.2 Without excluding any other method, Notice is sufficiently given:

27.2.1 to the Lessee, if left at the Premises or if emailed to the last known email address or posted by pre-paid post to the last known post address of the Lessee;

27.2.2 to the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).

27.3 Notice given by pre-paid post is deemed to have been given three (3) Business Days after posting.

27.4 If two or more people comprise a party, notice to one is effective Notice to all.

28. **COSTS**

Subject to the Act, on request the Lessee must pay or reimburse to the Council:

28.1 all stamp duty (if any) payable on this lease;

28.2 all of the legal costs (determined on a solicitor and client basis) incurred by the Council in connection with any extension of this lease; and

28.3 all legal and other costs incurred by the Council in consequence of any actual or threatened breach by the Lessee under this lease or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this lease or at law or otherwise arising in consequence of any actual or threatened breach by the Lessee.

29. DISPUTE RESOLUTION

29.1 A party must not terminate this lease (except, in the case of the Council, for a breach of an essential term by the Lessee) or commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this lease, unless it first complies with this clause. If one party to the dispute fails to comply with this clause, any other party to the dispute need not comply with this clause.

29.2 If there is a dispute between the parties, the aggrieved party must serve a notice on the other party setting out the nature of the dispute and designating its representative with authority to settle the dispute (**Complaint Notice**). The other party must promptly give written notice to the aggrieved party designating its representative with authority to settle the dispute. The parties must then make every effort to resolve the dispute by negotiation.

29.3 The representatives must attempt to resolve the dispute within thirty (30) Business Days of service of the Complaint Notice.

29.4 If the dispute is not resolved within that period (or any further period the representatives agree), any party which has complied with this clause may in writing terminate the dispute resolution process under this clause and exercise their rights under the lease and terminate the lease and/or commence arbitration or court proceedings in respect of the dispute.

29.5 The sole purpose of any exchange of documents and other information or any offer of settlement under this clause is to attempt to settle the dispute. No party may use any documents or information obtained through the dispute resolution process under this clause for any purpose other than a bona fide attempt to settle the dispute.

29.6 Nothing in this clause is intended to oust the jurisdiction of any court of competent jurisdiction.

Schedule 1

Item 1 Premises	The portion of the land comprised in Certificate of Title Volume 5698 Folio 047 being the area(s) delineated on the plan in Annexure A	
Items 2 Land	The whole of the land comprised in Certificate of Title Volume 5698 Folio 047	
Item 3 Initial Term	Five (5) years commencing on 1 September 2019 (**Commencement Date**) and expiring at midnight on 31 August 2024	
Item 4 Rent	Minimum fee of $300.00 p.a. plus GST	
Item 5 Renewals	1x Option for Five (5) years	
Item 6 Review Dates and Review Methods	**Review Date**	**Review Method**
	Each anniversary of the Commencement Date except where Rent is reviewed to Current Market Rent 1 September 2024	CPI Review (pursuant to clause 5.2) Current Market Rent (pursuant to clause 5.5)
Item 7 Outgoings	**Outgoings** means the total of all amounts paid or payable by the Council in connection with the ownership, management, administration and operation of the Land and/or Improvements including: 1. all costs of the Council in connection with the operation, supply, maintenance, repair, replacement and renovation of Services and all other facilities within the Common Areas or elsewhere in the Improvements that are provided from time to time; and 2. a proportion of the costs of the Council in connection with providing utilities to the Premises including gas, electricity, and water for the buildings on the Premises as agreed by the parties.	
Item 8 Permitted Use	Kitchen facility for the provision of meals for the community	
Item 9 Public Liability Insurance	$20,000,000.00	

Schedule 3
Special Conditions

30. MAINTENANCE, REPAIR AND REPLACEMENT

30.1 Lessee's obligation

30.1.1 The Lessee must undertake and pay the costs of undertaking all maintenance, repair and replacement of or to the Premises and the Services throughout the Term as required to keep the Premises and Services in good, neat and sound repair and condition and in good working order throughout the Term.

30.1.2 The Lessee's obligation in special condition 30.1.1 includes:

30.1.2.1 all items of minor and major maintenance, repair and replacement; and

30.1.2.2 any capital or structural maintenance, repair or replacement.

30.2 Council's obligations

30.2.1 Council has no obligation to undertake or pay or reimburse the costs of undertaking any maintenance, repair or replacement of or to the Premises or Services throughout the Term, including maintenance, repair or replacement of a capital or structural nature.

30.2.2 Without limiting special condition 30.2.1, Council is not required to comply with its obligations under the guidelines for maintenance, repair and building upgrades for Council owned land contained at Annexure B of this lease.

31. CONDITION PRECEDENT TO LEASE

31.1 The parties acknowledge and agree that it is intended that the provisions of section 13 of the Act will not apply to this lease.

31.2 The parties further acknowledge and agree that as soon as reasonably practicable after execution of this lease, Council and the Lessee will jointly make application pursuant to section 77(1) of the Act for an exemption for this lease from the application of section 13 of the Act (**Application**).

31.3 The parties agree they will cooperate with respect to the Application and will provide such information and sign such documents as are required to progress the Application.

31.4 Each party will bear its own costs of and incidental to the preparation and assessment of the Application and any filing or statutory fees will be shared equally by the parties.

31.5 If an exemption from the provisions of section 13 of the Act is not granted, or is granted on conditions that are not acceptable to one or both of the parties, within six months of execution of this lease or such later date as the parties agree in writing, this lease will automatically terminate.

EXECUTED as an agreement

Signed for **The Corporation of the City of Marion** by its authorised delegate in the presence of:

.....	.....
Signature of witness	Signature of authorised delegate
.....	.....
Name of witness (print)	Name of authorised delegate (print)
	.....
	Position of authorised delegate

Signed for **Meals on Wheels (SA) Incorporated** by its authorised delegate in the presence of:

.....	.....
Signature of witness	Signature of authorised delegate
.....	.....
Name of witness (print)	Name of authorised delegate (print)
	.....
	Position of authorised delegate

Annexure A Plan



Emergency contact details:
City of Marion After Hours Number 8375 6666

Annexure B Maintenance Responsibilities

N/A

Emergency contact details:
City of Marion After Hours Number 8375 6666