

**21 June 2005****THE MEAT MARKET - A NEW LEASE ON LIFE****Committee**    Community and Culture Committee**Presenter**    Cr Wilson**Purpose**

1.    To:
  - 1.1.    revise the existing in principle approval by Council to manage the Meat Market Arts Centre (“Meat Market”), in accordance with legal advice; and
  - 1.2.    consider legal agreements (Crown land lease and funding agreement) for Council to enter into an arrangement with the State Government, through Arts Victoria, for the ongoing management of the Meat Market in North Melbourne.

**Recommendation**

2.    That Council:
  - 2.1.    revoke the instrument of delegation to the Chief Executive Officer made by resolution of Council on 26 August 2004;
  - 2.2.    endorse Council:
    - 2.2.1.    leasing the Meat Market from the Meat Market Craft Centre Reserve Committee Incorporated for a term of three years; and
    - 2.2.2.    entering into an agreement with the State of Victoria for the funding of Council’s management of the Meat Market during the term of the lease,  
  
generally in the form of the lease (Attachment1) and funding agreement (Attachment 2) attached to the Management Report;
  - 2.3.    by instrument of delegation sealed by the Council under section 98(1) of the Local Government Act 1989 (“the Act”) delegate to the Chief Executive, or the persons from time to time acting in that position, the authority to enter into the lease and funding agreement referred to in the previous subclause, and do all things incidental and ancillary to the same, provided the lease and funding agreement in conjunction reflect the following matters:
    - 2.3.1.    that the Meat Market is managed to maximise outcomes for support for the arts through provision of cultural venues, creative development and housing the arts in the municipality;

- 2.3.2. that there is no net cost impact for Council from the normal operations of the Meat Market;
  - 2.3.3. that funding is made available by Arts Victoria for creative development projects at the Meat Market. This funding to be calculated as 15% of the annual operating expenditure for the Meat Market and is provided in lieu of a fee for service; and
  - 2.3.4. such other terms and conditions as may be required by the Manager Legal and Governance; and
- 2.4. resolve that the instrument of delegation, referred to in the previous sub-clause, will cease and be of no further effect upon the completion of all necessary steps and the execution of all necessary documents to enter into the lease with the Meat Market Craft Centre Reserve Committee Incorporated and the funding agreement with the State of Victoria.

7 June 2005

## THE MEAT MARKET – A NEW LEASE ON LIFE

**Division** Design and Culture

**Presenter** Morris Bellamy, Manager Arts and Culture

### Purpose

1. The purpose of this report is to revise the existing *in principle* approval by Council to manage the Meat Market Arts Centre (“Meat Market”), in accordance with legal advice.
2. To consider legal agreements (Crown land lease and funding agreement) for Council to enter into an arrangement with the State Government, through Arts Victoria, for the ongoing management of the Meat Market in North Melbourne.

### Recommendation

3. That the Community and Culture Committee recommend that Council:
  - 3.1. revoke the instrument of delegation to the Chief Executive Officer made by resolution of Council on 26 August 2004;
  - 3.2. endorse Council:
    - 3.2.1. leasing the Meat Market from the Meat Market Craft Centre Reserve Committee Incorporated for a term of three years; and
    - 3.2.2. entering into an agreement with the State of Victoria for the funding of Council’s management of the Meat Market during the term of the lease,  
  
generally in the form of the lease (Attachment 1) and funding agreement (Attachment 2) attached to this Management Report.
  - 3.3. by instrument of delegation sealed by the Council under section 98(1) of the *Local Government Act 1989* (“the Act”) delegate to the Chief Executive, or the persons from time to time acting in that position, the authority to enter into the lease and funding agreement referred to in the previous subclause, and do all things incidental and ancillary to the same, provided the lease and funding agreement in conjunction reflect the following matters:
    - 3.3.1. that the Meat Market is managed to maximise outcomes for support for the arts through provision of cultural venues, creative development and housing the arts in the municipality;
    - 3.3.2. that there is no net cost impact for Council from the normal operations of the Meat Market;

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  - 3.3.4. such other terms and conditions as may be required by the Manager Legal and Governance.
- 3.4. resolve that the instrument of delegation, referred to in the previous sub-clause, will cease and be of no further effect upon the completion of all necessary steps and the execution of all necessary documents to enter into the lease with the Meat Market Craft Centre Reserve Committee Incorporated and the funding agreement with the State of Victoria.

## Key Issues

4. At its meeting on 26 August 2004, Council considered a report on the redevelopment of the Meat Market in North Melbourne. As a result Council approved, that the refurbished Meat Market be managed by Council subject to conditions being:

*“that the Meatmarket Arts Centre is managed to maximise outcomes for cultural venues, creative development and housing the arts in the municipality;*

*that there is no net cost impact for Council;*

*that funding is made available by Arts Victoria for creative development projects at the Meatmarket Arts Centre. This funding to be calculated as 15% of the annual operating expenditure for the Meatmarket Arts Centre and is provided in lieu of a fee for service;*

*the initial term of the agreement will be for a period of three years, with two 12 months options for renewal;*

*such other terms and conditions as may be required by the Manager Legal & Governance”.*

5. The \$3.26 million refurbishment of the Meat Market was completed in March 2005.
6. The Council resolution of 26 August 2004 was on the basis that Council would enter into a management agreement for the Meat Market. Subsequent legal advice identified that as:
  - 6.1. the Meat Market was Crown land reserved under the *Crown Land (Reserves) Act 1978*; and
  - 6.2. the Meat Market Craft Centre Reserve Committee Incorporated had been appointed as Committee of Management,

a management agreement permitting Council to have day to day operational control over the Meat Market and those using the Meat Market was not permitted under the *Crown Land (Reserves) Act 1978*. Additionally, as the Meat Market was under the management of the Meat Market Craft Centre Reserve Committee Incorporated but the funding for its operation by Council would come from the State, two separate legal arrangements needed to be created.

7. Discussions involving Council, Arts Victoria, the Department of Sustainability and Environment and each of their respective legal advisers occurred to identify a way to achieve the intended operational responsibility described in the Council resolution of 26 August 2004 and comply with the *Crown Land (Reserves) Act 1978* leading to the arrangement described in the recommendation to this Management Report.

#### **Time Frame**

8. The proposed handover date to Council is 1 July 2005.

#### **Relation to Council Policy**

9. Council's *Arts Strategy 2004-2007* includes the following priorities:
  - 9.1. *“Deliver proactive management of Council’s cultural venues, including a curatorial approach to programming and effective models for ‘housing the arts.’*
  - 9.2. *Implement mechanisms to ensure artists live, develop and present their work in the city.*
  - 9.3. *Provide multi-use, well resourced and affordable spaces for arts and community use.”*

#### **Consultation**

10. The State Government conducted two extensive consultation processes in relation to use of the Meat Market resulting in extensive refurbishment and the existing proposed use of the venue.

#### **Government Relations**

11. Council has developed a strong working relationship with the State Government through Arts Victoria.
12. Council manages Horti Hall under a similar lease and funding agreement with the State Government.

#### **Finance**

13. The Meat Market proposal is designed to be cost neutral to Council. The attached funding agreement with Arts Victoria provides a budget that is annualised over the three years of the agreement.
14. The funding agreement provides mechanisms to ensure that normal operations occur at no net cost to Council, taking into account that revenue and expenditure may require adjustment from year to year to achieve this outcome. Similar mechanisms are linked into the Crown land lease to protect Council's interests.

#### **Legal**

15. Legal advice has been provided on the project and the structure to implement the project in accord with the *Crown Land (Reserves) Act 1978* including the proposed lease and funding agreement. The report accurately describes the relevant legal issues.

## Sustainability

### Connected and Accessible City

16. Council's cultural venues contribute to the 'cultural accessibility' of the City through its range of arts programming and community activities and the cultural diversity of those people attending arts and community events in the venues.

### Inclusive and Engaging City

17. The draft 2005-2009 Council Plan the following actions '*Encourage and support artists and arts communities*' and '*Promote the cultural precincts and arts spaces across the city*'.

### Innovative and Vital Business City

18. The Victorian arts industry, with Melbourne as its core activity centre, employs around 20,000 people and generates \$2.05 billion annually.
19. Council's cultural venues complement the existing cultural elements in the city with an infrastructure to sustain an energetic, 'creative industry' for the City. That is an industry in which all aspects thrive – individuals, small projects and organisations through to leading state-wide and national arts organisations. This links to *City Plan 2010* (2002) which states:

*“the arts and cultural environment is a significant component of modern city infrastructure and contributes to the City's liveability, innovation, competitiveness and image”.*

### Environmentally Responsible City

20. The proposed usage for the Meat Market is in keeping with the heritage and local planning requirements for the facility and its environment.

## Background

21. The State Government acquired the Meat Market in 1979 and it was reserved for Public Purposes (Arts Centre). Until 1999, most of the building was used as a craft centre until the company operating it went into voluntary liquidation. Since closing as a craft centre the Meat Market has been underutilised, providing office accommodation to a limited number of arts organisations.
22. Whilst the Meat Market Craft Centre Reserve Committee of Management Incorporated is the Committee of Management under the *Crown Land (Reserves) Act 1978*, Arts Victoria currently manages the building on behalf of the State Government and is committed to its' re-development as an arts centre that supports independent arts practitioners and cultural organisations'. Arts Victoria does not normally manage buildings as their core business and sought an appropriate management arrangement for the Meat Market.
23. Council is interested in maintaining a vibrant artistic life in the City and supports a direction proposed for the Meat Market that complements, rather than competes with, other cultural venues, particularly the nearby North Melbourne Town Hall in Queensbury Street.

24. To this end Arts Victoria and Council established a joint working party to look at these issues and commissioned consultants to develop a mission and management model for the building.
  25. This process resulted in a vision for the building as a hot house for creative development. As such the building will not be operated on a standard venue for hire model, although there are two art galleries and two conference spaces that will be available for casual use. There will be some limited hiring opportunities for the main rehearsal, exhibition and creative development/performance spaces outside the creative development program. The budget has been developed on this basis.
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**MEAT MARKET CRAFT CENTRE RESERVE COMMITTEE OF  
MANAGEMENT INCORPORATED**  
(“Lessor”)

-and-

**THE CITY OF MELBOURNE**  
(“Lessee”)

**LEASE**

*SECTION 17D - CROWN LAND (RESERVES) ACT 1978*

**Legal Branch  
Department of Premier and Cabinet  
Level 2, 1 Treasury Place  
Melbourne 3002**

REF: FN19/26/0045



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**THIS LEASE** commences on the date in Item 1 of Schedule A **BETWEEN** the Lessor and the Lessee

**Recitals**

**WHEREAS**

- A. The land described in Item 4 of Schedule A is reserved pursuant to Section 4 of the *Crown Land (Reserves) Act 1978*; and
- B. The Lessor has been appointed by the Minister as the Committee of Management of the land described in Item 4 of Schedule A and has power to enter into this Lease pursuant to Section 17D of the *Crown Land (Reserves) Act 1978* subject to the approval in writing of the Minister.
- C. The Lessee has entered into a separate funding agreement with the State of Victoria whereby the State will finance certain activities and functions of the Lessee associated with the premises leased to it under this lease.

**1 Demise**

The Lessor hereby grants a lease of the premises described in Item 5 of Schedule A to the Lessee, on the terms and conditions following, and the right to possess and use the Lessor's fittings, if any, and the Lessor's chattels, if any, for the term but in each case only in conjunction with the use of the premises.

**2 Reservations**

This lease is granted subject to:-

- 2.1** the reservation to the Crown of:-
  - 2.1.1** any minerals as defined in the *Mineral Resources Development Act 1958* (the "reserved minerals");
  - 2.1.2** rights of access to any part of the land to search and obtain the reserved minerals; and
  - 2.1.3** rights of access to any part of the land for pipeline works and other purposes necessary to obtain and convey the reserved minerals on and from the land;
- 2.2** The right to resume the land for mining purposes under Section 205 of the *Land Act 1958*; and
- 2.3** The right of a licensee under the *Mineral Resources Development Act 1990* or any corresponding previous enactment, to enter the land and do work, within the meaning of that Act, and to erect and occupy mining plant or machinery on the land in the same manner and under the same conditions and provisions as such licensee currently has on Crown land, provided compensation under that Act is paid for surface damage to the lands.

**3 Lessee's Obligations (Positive)**

The Lessee **hereby covenants** with the Lessor that during the term the Lessee will -

**3.1 Rent**

Duly and punctually pay the rent or cause it to be paid to the Lessor at the payment address provided in Item 11 of Schedule A or as the Lessor may otherwise from time to time by notice direct at the times and in the manner provided in Item 9 of Schedule A without demand, deduction, set-off or abatement.

**3.2 Rates and Taxes**

- 3.2.1** Duly and punctually pay as and when they respectively fall due all:-
  - 3.2.1.1** rates and taxes and State Land Tax (on a single holding basis); and
  - 3.2.1.2** telephone, gas, electricity, heat and other utilities which are provided or available to the premises; and
- 3.2.2** If the Lessee defaults in payment of any sum referred to in sub-clause 3.2.1, the Lessor may pay the same and, in addition to the Lessor's other rights recover that payment as rent in arrears;
- 3.2.3** If the year or other period in respect of which any of the rates and taxes is payable does not coincide with the lease year, the amount the Lessee is to pay in the first year of the term will be adjusted proportionately. In the last year of

the term, the Lessee must pay the full amount for the whole year or period, but the amount paid will be adjusted at the end of the term and then paid or credited to the Lessee as the case requires.

- 3.2.4** The Lessee, if requested to do so by the Lessor, must produce receipts to the Lessor evidencing payment of the rates and taxes.

### **3.3 Lessee's Works**

Erect and construct on the premises any Lessee's works only if the same shall have first been approved by the Lessor and by the Minister under sub-clause 4.1, and then strictly in accordance with this Clause that is to say:-

- 3.3.1** Only of such materials and according to such plans specifications and designs as shall be first approved in writing by the Lessor and by the Minister and conformably with all the required statutory, planning and building regulations.

- 3.3.2** The Lessee when carrying out the Lessee's works must comply with all laws and the requirements of any authorities which have jurisdiction over the premises, the Lessee's works or the Lessee and must:-

**3.3.2.1** expeditiously apply for, obtain, keep current and observe any conditions of all permits, approvals and consents necessary to carry out the Lessee's works;

**3.3.2.2** give all notices necessary to comply with laws and requirements;

**3.3.2.3** if requested by the Lessor deliver a certified copy of any permit approval or consent issued by any authority;

**3.3.2.4** pay all fees, charges or levies for obtaining any permit, approval or consent.

- 3.3.3** If the Lessor notifies the Lessee that the Lessor does not approve in any respect of the plans, specifications and designs the Lessee shall within such further time as the Lessor reasonably allows amend the plans, specifications and design and submit them to the Lessor for approval.

- 3.3.4** The Lessor or the Lessee may propose to the other and may agree from time to time to variations to the plans and specifications. Any such agreement must be in writing and must be signed by the Lessor and by the Lessee and shall then be binding on each of them. The Lessor may give or withhold his consent at the Lessor's absolute discretion to any request to vary the plans and specifications.

- 3.3.5** As soon as practicable after obtaining all necessary permits, approvals and consents the Lessee must at the Lessee's cost cause the Lessee's works to be commenced and thereafter to be expeditiously completed in accordance with the plans and specifications and:-

**3.3.5.1** in accordance with all laws and requirements;

**3.3.5.2** to the satisfaction of the Lessor;

**3.3.5.3** in accordance with this lease; and

**3.3.5.4** The Lessee must cause the Lessee's works to be constructed in accordance with the plans and specifications in a proper and workmanlike manner.

- 3.3.6** The Lessee acknowledges and agrees with the Lessor that it is an essential term of this lease that the Lessee's works will be of a high quality and that during the prosecution of the Lessee's works the quality of the materials and workmanship and the competence of all builders, consultants and contractors used, employed or engaged in carrying out the Lessee's works shall be such that the Lessee's works will be of a standard and quality prescribed by this lease, any other agreement between the Lessor and the Lessee and the plans and specifications.

- 3.3.7** If the Lessor or any consultant engaged by the Lessor or the Lessee considers that the quality of goods, materials or work is not in accordance with the requirements of this lease then:

**3.3.7.1** the Lessor may instruct the Lessee to remove and/or re-execute and/or replace any such goods, materials or work or to make good any defect:

**3.3.7.2** the Lessee must carry out any such instruction.

- 3.3.8** The Lessee must provide at the Lessee's cost everything necessary for the proper execution and completion of the Lessee's works and for the proper performance by the Lessee of the Lessee's obligations under this lease so that the Lessor will not be responsible for any cost or expense whatsoever incurred or occasioned by carrying out the Lessee's works.
- 3.3.9** The Lessee must not remove or demolish any part of the Lessee's works without the prior written consent of the Lessor which may be given or withheld at the absolute discretion of the Lessor or be given subject to conditions.
- 3.3.10** If any dispute or difference arises between the Lessor and the Lessee out of or in connection with this Clause, other than any matter relating to the Minister's consent, then either party may give to the other written notice (the "dispute notice") adequately identifying the matters the subject of that dispute or difference.
- 3.3.11** If the dispute or difference is not resolved within seven days of the receipt of the dispute notice, or such further time as the parties agree, then the dispute or difference shall be submitted for resolution in accordance with the provisions of this Clause.
- 3.3.12** A dispute or difference arising under this Clause shall be referred to a person agreed between the parties and, failing agreement within fourteen days of the receipt of the dispute notice, then the dispute or difference shall be referred to an appropriate professional appointed by the President for the time being or in his absence the senior officer, of the Institute of Arbitrators Australia, Victorian Chapter.
- 3.3.13** The person agreed upon or appointed to determine the dispute or difference shall:
- 3.3.13.1** act as an expert and not as an arbitrator and his decision shall be final and binding on the parties;
  - 3.3.13.2** have power to investigate, make enquiries, call witnesses and obtain the advice of any consultant;
  - 3.3.13.3** conduct proceedings in any manner that person considers appropriate; and
  - 3.3.13.4** hand down that person's decision within 7 days of being appointed.
- 3.3.14** The parties shall provide the agreed or appointed expert with all assistance and documents and may at the hearing conducted by the expert appear personally or be legally represented.
- 3.3.15** The costs of the agreed or appointed expert shall be borne equally unless otherwise determined by the expert.
- 3.3.16** If any destruction or damage affecting the Lessee's works occurs, the Lessee must immediately advise the Lessor and must thereafter reinstate or reconstruct the Lessee's works or the parts of the Lessee's works destroyed or damaged at the Lessee's cost but utilising any insurance moneys recovered or recoverable in respect of the destruction or damage.
- 3.3.17** During the carrying out of the Lessee's works, the Lessor or the Lessor's authorised representatives and/or the Minister or the Minister's authorised representatives may from time to time but without unreasonably interfering with the Lessee's works:
- 3.3.17.1** enter on the land and inspect the Lessee's works and have access to places and workshops where materials and equipment are being stored or constructed for use in the Lessee's works; and
  - 3.3.17.2** inspect the test materials used in carrying out the Lessee's works.
- 3.3.18** The Lessee must invite and permit the Lessor or the Lessor's authorised representative to participate in all consultations and meetings that may be called or held during the execution of the Lessee's works. The Lessee at the Lessee's cost must give to the Lessor adequate notice of all such Lessee's works consultations and meetings and prepare minutes of all Lessee's works consultations, meetings and any other meetings and submit them to the Lessor

promptly and in any event within ten (10) days of the consultation or meeting being held.

**3.4 Maintenance**

**3.4.1** Keep the premises and all additions and improvements to the premises and the Lessor's fittings and the Lessor's chattels in good order and repair, having regard to their respective condition at the commencement date, or if constructed or added or supplied after the commencement date, at the date of such construction, addition or supply and without limiting the generality of the foregoing will:-

3.4.1.1 Keep the premises and all other fixtures in a neat and tidy condition;

3.4.1.2 Keep the premises free of pests and vermin.

3.4.1.3 Immediately reinstate all damaged windows or plate glass in the premises to the Lessor's satisfaction and apply all money received under the plate glass insurance policy to that end;

**3.5 Notice of Defects**

**3.5.1** Give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or fittings in the premises and of any circumstances likely to be or cause any damage risk or hazard to the premises or any person in them;

**3.5.2** give to the Lessor within 7 days of its receipt by the Lessee a true copy of every notice, proposal or order given, issued or made in respect of the premises and full details of the circumstances thereof;

**3.5.3** without delay take all necessary steps to comply with any notice, proposal or order referred to in sub-clause 3.5.2 which the Lessee is required to comply with; and

**3.5.4** at the request of the Lessor make or join with the Lessor in making such objections or representations against or in respect of any notice, proposal or order referred to in sub-clause 3.5.2 as the Lessor deems expedient.

**3.6 Removal of advertising**

Remove any sign, advertisement or other notice to which the Lessor's and the Minister's consent has previously been given if, in the opinion of the Lessor or the Minister, it is or has become unsightly or objectionable and the Lessor or the Minister gives notice to the Lessee requiring its removal.

**3.7 Licences**

Take out and keep current all licences and permits required to carry on every business conducted in the premises.

**3.8 Inspection**

After being given reasonable forewarning by the Lessor or the Minister permit the Lessor or the Minister either with or without their agents, during daylight hours to enter the premises and to examine and view the repair, condition and cleanliness of the premises and of the Lessor's fittings and the Lessor's chattels, if any and will remedy any defects found pursuant to this Clause or otherwise of which notice is given by the Lessor to the Lessee within a reasonable time to be specified in the notice but in any event within not less than 14 days.

**3.9 Condition at Termination**

At the end of this lease return the premises to the Lessor in good and substantial repair, order and condition and otherwise in accordance with the Lessee's obligations and will remove all signs, names, advertisements or notices in or on the premises required by the Lessor to be removed and make good any damage or disfigurement caused to the premises by their respective affixing, retention or removal.

**3.10 Compliance with Law**

Comply at the Lessee's cost with the provisions of all statutes, regulations and by-laws relating to the premises and all lawful orders or directions made under them and carry out all alterations, additions and repairs to the premises thereby required if such

compliance, alterations, additions or repairs have either been caused by the Lessee or by the use to which the premises are put.

**3.11 *Increased premiums and charges***

Pay the extra amount of any increased insurance premiums or charges incurred as a result of the use to which the premises are put by the Lessee.

**3.12 *Comply with regulations***

Comply with the sprinkler and fire alarm regulations as they relate to the use of the premises and with the requirements of any insurer of the premises and pay to the Lessor the cost of any alterations to the sprinkler or fire alarm installations which may become necessary because the Lessee does not comply.

**3.13 *Indemnity***

**3.13.1** Indemnify the Lessor in its capacity as Committee of Management and the Crown in respect of any claim or liability; and release and discharge the Lessor in its capacity as Committee of Management and the Crown from any loss or liability for property damage and/or the injury or death of any person which arises directly or indirectly out of negligence, tort, contract, or breach of statutory duty, by the Lessee or any person for whom the Lessee is legally responsible, consequential to the use or occupation of the premises (other than the act, default or negligence of the Lessor, the Crown or their respective servants or agents) and any costs, charges and expenses incurred in connection therewith;

**3.13.2** Release and discharge the Lessor and the Crown from and against all claims, suits, demands and actions of every description whatsoever and whenever occurring which the Lessee has, may have or which may accrue in the future or which, but for the execution of this lease, the Lessee would or might have had against the Lessor and the Crown as a result of the presence of any contaminant in, on or under the land and from and against all claims for costs and expenses in respect of such claims, suits, demands and actions.

**3.13.3** Indemnify and hold harmless the Lessor and the Crown from and against all loss, damage, liability, claims, suits, demands, financial penalty and actions of every description whatsoever and whenever occurring resulting or arising from the presence of any contaminant in, on or under the land (including without limitation, any costs or expenses incurred in relation to any notice, direction or order issued or made under the *Environment Protection Act 1970* or any other Act or Regulation in force from time to time in Victoria relating to the protection of the environment) and from and against all claims for costs and expenses in respect of such loss, damage, liability, claims, suits, demands and actions.

**3.14 *Arrears and Interest***

Pay to the Lessor:-

**3.14.1** on any moneys payable by the Lessee to the Lessor and outstanding for thirty (30) days or on any judgment for the Lessor in an action arising from the lease, interest at the penalty rate of interest for the time being made payable under the *Penalty Interest Rates Act 1983* computed from the date the moneys or judgment became payable until all moneys (including interest) on them are paid in full;

**3.14.2** if required by the Lessor, pay upon demand all the Lessor's legal costs (including the Lessor's internal legal costs) charged on a solicitor to own client basis, and disbursements payable in respect of or in connection with the preparation and execution of this lease, any surrender of this lease, any assignment of this lease or sub-letting of the premises, the giving of any consent by the Lessor as required by this lease, any failure by the Lessee to perform and observe this lease, or any deed or other document executed in connection with this lease.

**3.15 Lessor Repair**

- 3.15.1** After being given notice by the Lessor permit the Lessor and/or the Lessor's agents during daylight hours and at all other reasonable times for any following purpose or purposes to enter the premises and without unnecessary interference to the Lessee's proper use of them, carry out the following works -
- 3.15.2** works to comply with the terms of any statute affecting the premises;
- 3.15.3** structural works which the Lessor thinks should be carried out;
- 3.15.4** to install any services which the Lessor thinks should be installed;
- 3.15.5** works to adjoining premises which the Lessor thinks should be carried out;
- 3.15.6** to remedy any defects of which the Lessor has notified the Lessee under sub-clause 3.8 and which the Lessee has not remedied within the required time; and
- 3.15.7** if the Lessor carries out any works in the premises which should have been carried out by the Lessee, the Lessee must pay the Lessor on demand the cost which the Lessor incurs in doing so, including the Lessor's internal management costs.

**3.16 Insurance**

Take out and keep current, at the Lessee's own expense, the following insurance policies:-

- 3.16.1** A public liability insurance policy over the premises (providing no less limit of indemnity for any one occurrence during the policy period than the amount shown at Item 12 of Schedule A), which is endorsed (as follows), to note:

'the Committee of Management, the Crown in the right of the State of Victoria, the Secretary to the Department of Natural Resources and Environment, its servants, agents and employees in respect to providing indemnity for personal injury and/or property damage caused by an occurrence, and/or for breach of Professional duty arising out of the negligent acts, errors or omissions of the Lessee and/or its servants agents and employees. The endorsement and extension to the policy does not extend to negligent acts, errors or omissions of the Crown (and others above mentioned), and is limited to the amount shown in Item 12 of Schedule A for any one occurrence.'

- 3.16.2** A plate and other glass policy, if there is any plate or other glass in the premises.
- 3.16.3** A 'Fire & Specified Events' insurance policy, which covers damage to the property of the Lessor and Lessee for their full replacement value, including buildings, contents and stock in trade caused by the following events: fire, lightning, thunderbolt, explosion, earthquake, subterranean fire or volcanic eruption, wind and/or water, sprinkler damage, impact, riot, malicious damage, acts of terrorism, and accidental damage. The sum insured under this policy shall be adequate to enable the policy to also pay for the following 'Additional Costs' - as applicable, including: removal of debris, architects and surveyors fees, rewriting of records, fire extinguishment costs, temporary protection of the premises and; shall include cover for the following 'Special Costs' - as applicable, including: temporary removal of property from the premises, salvage of branded goods and automatic reinstatement;
- 3.16.4** Before taking possession of the premises, the Lessee is to deliver a copy of the insurance policies required under the lease to the Lessor and the Minister.
- 3.16.5** Within seven days of receiving any certificate of renewal or further policy, the Lessee is to deliver a copy of it to the Lessor.
- 3.16.6** After the expiration of any policy, the Lessee, on request, is to provide satisfactory evidence to the Lessor and the Minister that it has been renewed.
- 3.16.7** The Lessee must in respect of each such insurance policy:-
  - 3.16.7.1** pay each premium at least fourteen days before the same becomes due;



**3.16.7.2** forthwith deposit a true copy of the policy or policies of insurance with the Lessor;

**3.16.7.3** forthwith deposit the receipt evidencing the payment with the Lessor;

**3.16.7.4** ensure that it cannot be cancelled until the insurer gives the Lessor 14 days written notice of its intention to do so; and

**3.16.7.5** ensure that the policies are in the names of the Lessor, the Crown and the Lessee and are taken out with an insurance company approved by the Lessor.

**3.16.8** On any breach or non-observance of this covenant the Lessor may, without prejudice to any other remedy the Lessor may have, insure that which the Lessee has failed to insure. All moneys which may be received under any insurance so effected shall, if so required by the Lessor, be applied in reinstating the premises or in effecting such improvements thereto as the Lessor may approve or require or may be applied to both these purposes.

**3.16.9** The Lessor at any time during the term may give notice to the Lessee that the Lessor intends to take out a policy of insurance in replacement for the policy taken out or to be taken out by the Lessee under any one or more of sub-clauses 3.16.1, 3.16.2, or 3.16.3. If the Lessor gives such a notice, then the Lessee within seven days of demand must reimburse the Lessor all premiums for and stamp duty on the policy of insurance effected by the Lessor.

### **3.17 Lessee's Further Obligations**

Observe, perform and fulfil the Lessee's further obligations, if any, set out in Item 16 of Schedule A.

## **4 Lessee's Obligations (Negative)**

The Lessee **hereby covenants** with the Lessor that during the term the Lessee will not-

### **4.1 Lessee's Works**

Undertake any Lessee's works on the premises without first obtaining the Lessors and the Minister's written consent.

### **4.2 Use of Premises**

Use the premises for any purpose other than the specified purpose in Item 10 of Schedule A without first obtaining the Lessor's and the Minister's written consent which can be given or withheld at the absolute discretion of the Lessor and of the Minister or be given subject to conditions.

### **4.3 Advertising**

Display or permit to be displayed on the premises any externally visible sign, advertisement or notice, other than a sign, advertisement or notice required by law to be displayed only on the premises, without first obtaining the Lessor's and the Minister's written consent.

### **4.4 Overloading floors**

Overload the floors of the premises or allow them to be overloaded by placing on them heavy articles whose individual or combined weight exceeds the limits permitted by the design and construction of the premises or bring onto the premises any article which may result in damage to the premises because of vibrations or movement caused by the operation or use of the article. The Lessor may prescribe the weight and position of safes and other heavy articles or goods. The Lessee must pay the reasonable costs of the Lessor's consultants in verifying the floor loadings.

### **4.5 Noise or damage**

Subject to the use of the premises for the specified purpose according to law, cause or allow any loud noise or other nuisance, disturbance or annoyance to be made in or to emanate from the premises.

### **4.6 Deface walls**

Mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the premises unless permitted by the lease.

**4.7 Allow rubbish**

Permit any rubbish to accumulate in or about the premises unless confined in suitable containers.

**4.8 Use of Utilities**

Use or permit to be used the light areas, toilets, conveniences and the water, lighting, heating and air conditioning apparatus and fire and water sprinkler systems, if any, in or on the premises otherwise than for the purpose for which each, respectively, was constructed. Nor may the Lessee throw or place or permit to be thrown or placed in any of these any sweepings, rubbish or unsuitable substances.

**4.9 Hazardous Materials**

Keep any hazardous materials on the premises without the Lessor's written consent save a reasonable quantity of any hazardous material which is normally used in any specified purpose actually carried on in or upon the premises and which is kept in compliance with the requirements of any authority charged with regulating the keeping of it.

**4.10 Assignment**

**4.10.1** Assign, sublet, mortgage, or charge this lease or part with or share possession of the premises or any part of them without the Lessor's and the Minister's written consent;

**4.10.2** Without the prior written consent of the Lessor permit any change in the membership of the corporation or any holding company of the corporation (unless that holding company is a corporation whose shares are listed on the Australian Stock Exchange Limited) or in the beneficial ownership of any shares in the capital of the corporation or any holding company of the corporation (unless that holding company is a corporation whose shares are listed on the Australian Stock Exchange Limited) or in the beneficial ownership of the business or assets in the corporation or part thereof resulting in a change in the effective control of the Lessee existing as at the commencement date. For the purposes of this sub-clause, a change in the effective control of the Lessee means a change in the shareholding or voting rights which is more than fifty per cent whether by one or a series of transactions. This sub-clause does not apply to the Lessee if the Lessee is a corporation whose shares are listed on the Australian Stock Exchange Limited.

**4.10.3** Declare the Lessee trustee of the premises or any part of the premises or of any legal or equitable estate or interest in the premises.

**4.11 Void insurance**

Do or allow anything to be done which might result in any insurances on or relating to the premises becoming void or voidable or which might increase the premium on any policy.

**4.12 Use as a Dwelling**

Use the premises for living or sleeping otherwise than if the same is a specified purpose or if it is occupied by a person employed or otherwise retained in connection with the specified purpose.

**5 Lessor's Obligations****5.1 Quiet Enjoyment**

If the Lessee pays the rent whenever it is due and does not breach this lease then the Lessee may use and occupy the premises during the term without any interference from the Lessor or from any person lawfully claiming under the Lessor, subject always to the provisions of this lease and the Lessor's rights under it.

**5.2 Lessor's Further Obligations**

Observe, perform and fulfil the Lessor's further obligations, if any, set out in Item 16 of Schedule A.

## 6 *Mutual Obligations*

The Lessor and the Lessee agree as follows:-

### 6.1 *Ownership of Improvements*

The Lessee acknowledges that all buildings and structures on the premises at the date of commencement of this Lease and all the Lessee's works (except for any Lessee's trade fixtures or fittings) and any additions or modifications to the Lessee's works carried out during the term of this Lease are and remain the property of the Lessor.

### 6.2 *Default Events of default*

The following are events of default:

- 6.2.1 if the rent or any part of it or if any other moneys owing to the Lessor under the lease is or are in arrears for thirty days (30) days, whether formally demanded or not;
- 6.2.2 if the Lessee breaches the lease,
- 6.2.3 if defects notified under sub-clause 3.8. are not remedied within the time specified in the notice;
- 6.2.4 if the Lessee is a company and an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which is not to be unreasonably withheld;
- 6.2.5 if the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is by any means appointed;
- 6.2.6 if the Lessee is a company and is placed under official management or administration under the *Corporations Law* or enters into a composition, scheme of arrangement or moratorium whether formal or informal with its creditors or financiers;
- 6.2.7 if the interest of the Lessee under the lease is taken in execution;
- 6.2.8 if the Lessee or any person claiming through the Lessee conducts any business from the premises after the Lessee has committed an act of bankruptcy;
- 6.2.9 if the business formerly conducted in or from the premises ceases to operate;
- 6.2.10 if the Lessee fails to comply with any condition for the erection of any Lessee's works.

### 6.3 *Forfeiture of lease*

If any of the events of default specified in the preceding Sub-clause occur then the Lessor may, without prejudice to any other claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of such default, at any time re-enter into and upon the premises or any part of them in the name of the whole and thereupon this lease shall be absolutely determined.

### 6.4 *Re-entry*

The right of re-entry for breach of any covenant or condition to which section 146(1) of the *Property Law Act 1958* applies must not be exercised until the expiration of 30 days after the Lessor has served on the Lessee the notice required pursuant to that section.

### 6.5 *Lessor may rectify*

The Lessor may, but shall not be obliged to, remedy at any time without notice any default by the Lessee under this lease, and whenever the Lessor so elects all reasonable costs incurred by the Lessor (including all legal costs and disbursements of a like nature to those referred to in sub-clause 3.14.2) in remedying a default shall constitute a liquidated debt and shall be paid by the Lessee to the Lessor on demand.

### 6.6 *Waiver*

The Lessor's failure to take advantage of any default or breach of covenant on the part of the Lessee shall not be or be construed as a waiver of it, nor shall any custom or practice which may grow up between any of the parties in the course of administering this lease be construed to waive or to lessen the right of the Lessor to insist upon the

timely performance or observance by the Lessee of any obligation of this lease or to exercise any rights given to the Lessor in respect of any such default.

**6.6.1** A waiver by the Lessor of a particular breach or default shall not be deemed to be a waiver of any breach or default occurring subsequently whether the same or otherwise.

**6.6.2** The demand by the Lessor for, or subsequent acceptance by or on behalf of the Lessor of, rent or any other moneys payable under this lease shall not constitute a waiver of any earlier breach by the Lessee of any covenant or condition of this lease, other than the failure of the Lessee to make the particular payment or payments of rent or other moneys so accepted, regardless of the Lessor's knowledge of any earlier breach at the time of acceptance of such rent or other moneys.

**6.7** *Tender after determination*

**6.7.1** Any moneys tendered by the Lessee after the determination of this lease and accepted by the Lessor may be and (in the absence of any express election of the Lessor) shall be applied:

**6.7.1.1** firstly, on account of the Lessor's Costs of re-entry; and

**6.7.1.2** secondly, on account of any rent and other moneys accrued and due pursuant to this lease but unpaid at the date of determination of this lease

**6.8** *Essential Terms*

The Lessor and the Lessee agree that each of the following covenants by the Lessee are essential terms of this lease:-

**6.8.1** to pay the rent;

**6.8.2** to use the premises solely for the specified purpose;

**6.8.3** to carry on the specified purpose in the premises;

**6.8.4** to comply with laws and requirements;

**6.8.5** to repair the premises;

**6.8.6** not to assign this lease or sub-let the premises or any part of it without the consent of the Lessor and the Minister;

**6.8.7** to take out and keep current those insurances required to be taken out by the Lessee;

**6.8.8** to reimburse the Lessor's insurance premiums (if required to do so under this lease);

**6.8.9** to pay or reimburse rates and taxes;

**6.8.10** any further obligations in Item 16 of Schedule A unless otherwise stipulated in that obligation ;

**6.8.11** any other covenant in respect of which the Lessee's breach of non-observance is serious, persistent and of a continuing nature.

**6.9** *Damages for Breach*

The Lessee covenants to compensate the Lessor for any breach of an essential term of this lease and the Lessor may recover damages from the Lessee for such breaches. The Lessor's entitlement under this Clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this lease);

**6.10** *Repudiation by Lessee*

**6.10.1** If the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this lease (or of the Lessee's obligations under this lease) or constitutes a breach of any lease obligations, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

**6.10.2** The Lessor may recover damages against the Lessee in respect of repudiation or breach of lease obligations for the loss or damage suffered by the Lessor during the entire term of this lease.

**6.11 Acceptance of Rent**

The demand or acceptance by the Lessor of arrears or of any late payment of rent or a sum in part payment shall not constitute a waiver of the essentiality of the Lessee's obligations to pay rent.

**6.12 Acts by the Lessor not to constitute forfeiture**

The Lessor's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

**6.12.1** the Lessee abandons or vacates the premises; or

**6.12.2** the Lessor elects to re-enter the premises or to terminate the lease; or

**6.12.3** the Lessor accepts the Lessee's repudiation; or

**6.12.4** the parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

**6.13 Lessor may institute proceedings at any time**

The Lessor may at any time in the Lessor's absolute discretion institute legal proceedings claiming damages against the Lessee for the entire lease term including the period before and after the repudiation, abandonment, termination, acceptance of repudiation or surrender by operation of law referred to in the preceding sub-clause whether the proceedings are instituted either before or after such conduct.

**6.14 Mitigation**

Nothing in this Clause shall operate to relieve the Lessor of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Lessor. The Lessor's conduct taken in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

**6.15 Lessee's Fittings**

**6.15.1** Subject to sub-clause 6.16 all Lessee's fittings shall remain the property of the Lessee.

**6.15.2** Unless the Lessor shall otherwise, in writing and upon such conditions as the Lessor shall impose, agree, the Lessee shall at or prior to the termination or expiration of the lease, remove all Lessee's fittings and chattels from the premises and forthwith make good all damage caused to the premises by the affixing, retention or removal of any Lessee's fittings.

**6.16 Lessor may remove and dispose of property**

If the Lessor terminates the lease or it expires, the Lessor may remove the Lessee's chattels and fixtures remaining on the premises after the date of such termination or expiration, as the case may be, and store them at the Lessee's expense without being liable to the Lessee for trespass, detinue, conversion or negligence. After storing them for at least one month, the Lessor may sell or dispose of the same, by auction, private sale, gift, distribution or otherwise and apply the net proceeds towards the payment of any moneys owed by the Lessee to the Lessor.

**6.17 Debt Recovery**

All moneys payable by the Lessee to the Lessor under this lease shall be recoverable from the Lessee as liquidated debts payable on demand.

**6.18 Notice to Let**

**6.18.1** If the Lessee has not validly exercised the option to renew this lease for a further term under sub-clause 6.23, the Lessor may at any time during the last three months of the term place and leave appropriate notices on the premises to advise their availability for lease and the Lessor or the Lessor's agent may conduct prospective future lessees through the premises for the purpose of inspection.

**6.18.2** The Lessor may at any time during the term place and leave appropriate notices on the premises to advise their availability for sale and the Lessor or the Lessor's agent may conduct prospective purchasers through the premises for the purpose of inspection.

**6.19 Holding Over**

If the Lessee remains in occupation of the premises or any part of them after the end of the term without objection by the Lessor, the Lessee shall during such overholding, which shall not in any event exceed any period by law provided, be deemed to be a tenant from month to month at a rent equal to the rent applicable immediately prior to the end of the term, but reduced to a monthly basis, subject to the provisions of this lease so far as they can be construed to apply to a monthly tenancy and such tenancy may be determined by either party giving one month's notice, which notice may be given on any day.

**6.20 Rent Adjustments**

The rent shall be adjusted in accordance with the provisions in Item 9 of Schedule A.

**6.21 Damage and Destruction**

**6.21.1** If the premises or any part of them is at any time damaged or destroyed by any disabling cause so as to render the premises or any part wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the premises and the normal means of access) wholly or substantially inaccessible then the Lessee must expeditiously at the Lessee's cost in a proper and workmanlike manner reinstate the premises and make them fit for the occupation and use and/or accessible to the Lessee. In reinstating the premises the provisions clause 3.3 apply.

**6.21.2** The provisions of sub-clause 6.21.1 apply irrespective of whether the damage or destruction has been caused by or contributed to, or arises from, any act or omission of the Lessee or the Lessee's servants or agents and irrespective of whether any policy or policies of insurance effected on the premises has been avoided, or payment of the policy moneys refused or reduced, in consequence of any act or default of the Lessee or of the Lessee's servants or agents.

**6.22 Rent and Rates and Taxes**

The Lessee must continue to pay the rent and the rates and taxes even if the premises are destroyed or damaged or rendered inaccessible.

**6.23 Option for Renewal**

Subject to this Clause, at the end of the term, the Lessor must grant and the Lessee must take a further lease of the premises with the provisions set out in sub-clause 6.23.7 if the Lessee -

**6.23.1** has paid rent punctually during the term;

**6.23.2** has not failed to observe and perform the Lessee's obligations during the term in a way which has been serious or persistent or both;

**6.23.3** notifies the Lessor in accordance with sub-clause 6.23.5; and

**6.23.4** between the time of notification and the end of the lease, duly and punctually pays rent and observes and performs the Lessee's obligations;

**6.23.5** A notice of exercise of option -

**6.23.5.1** must state clearly that the Lessee wishes to take a further lease of the premises in accordance with the option contained in this lease for the further term specified in the option provisions set out in Item 13 of Schedule A;

**6.23.5.2** must be given not earlier than 12 months and not later than 6 months before the end of the term; and

**6.23.6** notwithstanding sub-clause 6.27 or any statute or rule of law relating to the service of notices,

**6.23.6.1** must be received by the person named at the address specified in Item 14 of Schedule A and only when received by that person will it be deemed to have been given to the Lessor at that time.

**6.23.7** The provisions of the further lease will be the same as the provisions of this lease, with the following exceptions -

**6.23.7.1** The commencement date of the new lease shall be the day after the last day of the term of this lease.

**6.23.7.2** The rent at the commencement of the new lease shall be the rent determined in accordance with Schedule B.

**6.23.7.3** It will not provide for an option for a further term unless such an option is required by the option provisions in this Lease in which case the provisions for an option shall accord with the provisions of this Clause subject to any variations provided by the option provisions.

**6.23.8** If there is a guarantor of this lease, the Lessor need not grant a further lease of the premises unless the Lessee obtains a further guarantee of the due and punctual observance and performance of the Lessee's obligations, either by the guarantor or by other guarantors acceptable to the Lessor on terms similar to the guarantee to this lease.

**6.23.9** Unless by the operation of law and/or the provisions of sub-clause 6.1 all the Lessee's works have reverted to and become the property of the Lessor during the term of this lease, at the option of the Lessor a Deed of Renewal of lease, in a form acceptable to the Lessor and carrying into effect the requirements for a further lease required by this Clause, may be used in lieu of a further lease document.

**6.24** *Other Legislation*

All provisions of this lease shall be construed so as not to infringe the provisions of any applicable Act whether State or Federal. To the extent that any such provision is invalid or unenforceable by reason of any such Act, that provision shall be read down so as to be valid and enforceable, and if that is not possible the provision, to the extent that it is capable, shall be severed to the extent of the invalidity or unenforceability without affecting the remaining provisions.

**6.25** *Entire Agreement*

This lease document constitutes the entire agreement between the parties relating to the premises and this lease and any other prior or simultaneous leases, arrangements, agreements, promises, understandings or undertakings are, unless herein elsewhere stipulated, hereby superseded by this lease.

**6.26** *Lessor's Agents*

Every act or thing to be done, decision to be made or document to be signed pursuant to this lease by the Lessor, including the signing of any notice, and which is not required by law to be done, made or signed by the Lessor personally may be done made or signed by any person authorised by the Lessor to carry out that function in relation to this lease as the Lessor's duly appointed agent.

**6.27** *Minister's Agents*

Every act or thing to be done, decision to be made or document to be signed pursuant to this lease by the Minister, including the signing of any notice, and which is not required by law to be done, made or signed by the Minister personally may be done made or signed by the Regional Manager or by any person or any member of a class of persons authorised by the Minister to carry out that function in relation to this lease as the Minister's delegate.

**6.28** *Notices*

A notice served by either party pursuant to this lease is valid and effectual if it is signed by that party (if a natural person) or by any director, alternate director, Secretary, executive officer, manager, Regional Manager, managing agent or solicitor for the time being of, or a person nominated for the time being by, that party.

**6.28.1** A notice is sufficiently served on the recipient party if :-

**6.28.1.1** served personally at the recipient party's registered office or, in the case of service upon the Lessee, left addressed to the Lessee on the premises; or

**6.28.1.2** served personally on the Lessee or upon the officer of the recipient party, if any, specified in Item 14 of Schedule A; or

**6.28.1.3** sent by facsimile transmission to the recipient party's facsimile machine number specified in Item 14 of Schedule A and marked to the

attention of the officer of the recipient party, if any, specified in Item 14 of Schedule A; or

**6.28.1.4** forwarded by prepaid post (airmail if posted outside Australia) addressed to the recipient party at the address specified in Item 14 or to the Lessee at the Lessee's registered office or last or usual place of abode or business.

**6.28.2** Provided that a party may by notice on the other party substitute the name of a new officer or a new address, or new facsimile machine number.

**6.28.3** A notice is deemed to have been duly served if given :-

**6.28.3.1** by prepaid post, two business days after the day it was posted (unless posted by airmail when it shall be ten business days after posting);

**6.28.3.2** by facsimile transmission, at the time of transmission to the recipient party's facsimile machine number unless the time of dispatch is later than 5.00 p.m. in the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next business day in that place. A copy of any notice sent by facsimile transmission must also on the date of dispatch be sent by prepaid post to the party to whom it was sent by facsimile transmission;

**6.28.3.3** personally, on the date of service.

### **6.29** *Easements*

As long as it does not affect the rights of the Lessee under this lease, the Lessor may, for the purpose of the provision of public or private access to the premises, or for the support of structures hereafter erected on or from adjoining land, or for any services, dedicate land or transfer, grant or create any easement or other right in favour of, or enter into any arrangement or agreement with, any owners, tenants or occupiers or others having an interest in any land (including the land on which the premises are located or which forms part of the premises) near the premises or with any Authority.

### **6.30** *Set-Off*

If the Lessee defaults in the payment of the rent, the rates and taxes, any insurance premium or any other moneys payable under this Lease to the Lessor or any authority, the Lessor may set-off that amount against any moneys which may from time to time be payable by the Lessor to the Lessee on any account whatsoever but any set-off shall not relieve the Lessee from the Lessee's default for any non-payment of the rent, the rates and taxes or other moneys under this Lease.

### **6.31** *Bank Guarantee*

**6.31.1** If requested to do so by the Lessor the Lessee must, at any time before or during the term of this Lease, provide the Lessor with an unconditional undertaking, in a form approved by the Lessor, given by a bank or financial institution, also approved by the Lessor, ("Bank Guarantee") for the amount stated in Item 15 as security for the performance of the Lessee's obligations under this Lease.

**6.31.2** The secured sum or any part of it is payable and may be appropriated and applied by the Lessor at any time in payment of any loss or damage which the Lessor suffers by reason of any breach or non-observance by the Lessee of the Lessee's obligations under this Lease as if the secured sum or any part of it was a sum of money due or to become due to the Lessor upon the Lessee's breach or non-observance of the Lessee's obligations as aforesaid. Notwithstanding anything express or implied to the contrary, acceptance or appropriation of the secured sum or any part of it does not affect or limit the rights of the Lessor under this Lease or operate as a waiver of any of the Lessee's obligations.

**6.31.3** If the rent is revised the secured sum shall, if required by the Lessor, be increased by the same proportion as the increase in the rent and the amount of the increase in the secured sum must be made on the date for the payment of the first instalment of the revised rent.



**6.31.4** If the secured sum or any part of it is appropriated by the Lessor, the Lessee must immediately provide the Lessor with a new or additional bank guarantee to reinstate the secured sum to its proper level immediately before such appropriation occurred.

**6.31.5** The bank guarantee will cease to operate on a date being the latest of the expiration of this Lease, the earlier termination of this lease or the satisfactory completion of all the Lessee's obligations, including payment to the Lessor of any damages arising from any breach or non-performance of the Lessee's obligations, under this Lease.

## **6.32 GST**

### **6.32.1 GST Definitions**

For the purposes of this clause 6.32:

"**GST**" means GST within the meaning of the GST Act (as amended);

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999*;

"**GST Law**" means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

### **6.32.2 Amounts otherwise payable do not include GST**

Except where express provision is made to the contrary, and subject to this clause 6.32, the *consideration* payable by any party under this lease represents the *value* of any *taxable supply* for which payment is to be made.

### **6.32.3 Liability to pay any GST**

If a party makes a *taxable supply* in connection with this lease and including the granting of this lease for a *consideration*, which, under clause 6.32.2 or clause 6.32.4, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

### **6.32.4 Reimbursements**

If this lease requires the Lessee to pay, reimburse or contribute to an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor's recovery from the Lessee is a *taxable supply* any GST payable under clause 6.32.3.

## **7 Definitions**

Unless inconsistent with the context or subject matter of this Lease, the following words or phrases shall bear the following meanings respectively.

### **7.1 "commencement date"**

means the date set out in Item 1 of Schedule A;

### **7.2 "Crown"**

means the Crown in right of the State and includes the Secretary and each employee and agent of the Crown or the Secretary;

### **7.3 "Department"**

means the Department of Sustainability and Environment or any other Victorian Government department subsequently administering this Crown Lease;

### **7.4 "hazardous materials"**

include all substances which are hazardous, contaminant or pollutant to persons or property or substances under or defined as such by any federal, state or local law;

- 7.5 "Item"**  
followed by a number means the Item of that number set out in Schedule A;
- 7.6 "lease year"**  
means a year of the term computed from the commencement date;
- 7.7 "Lessee"**  
means the person named as such in Item 3 of Schedule A and includes -  
**7.7.1** the personal representatives and permitted assigns of any natural person who is a Lessee;  
**7.7.2** the successors and permitted assigns of a corporate Lessee; and  
**7.7.3** the survivor or survivors of a Lessee comprising more than one person.
- 7.8 "Lessee's fittings"**  
includes plant, machinery, utensils, shelving, counters, safes and other articles (other than of a structural nature) brought onto the premises by the Lessee;
- 7.9 "Lessee's works"**  
means all buildings, structures, erections and improvements constructed on the land and any alteration, extension or renewal of any buildings, structures, erections and improvements on the land from time to time.
- 7.10 "Lessor"**  
means the Committee of Management appointed by the Minister, any subsequent Committee of Management appointed by the Minister or where there is no Committee of Management, the Minister and includes the person for the time being entitled to the reversion of the premises;
- 7.11 "Lessor's chattels"**  
means the chattels described in Item 6 of Schedule A and every replacement thereof or attachment thereto;
- 7.12 "Lessor's fittings"**  
means the fittings described in Item 7 of Schedule A or supplied by the Lessor during the term;
- 7.13 "Minister"**  
means the Minister of the Crown for the time being with responsibility for the *Crown Land (Reserves) Act 1978* and includes his or her successor in law or such other Minister of the Crown or Government Authority to whom responsibility for this lease may at any time be given;
- 7.14 "payment address"**  
means the payment address set out in Item 11 of Schedule A or the last variation of it, notice of which has been given to the Lessee;
- 7.15 "person"**  
includes a body corporate as well as an individual;
- 7.16 "premises"**  
means the land described in Item 5 of Schedule A to a depth of 15 metres below the surface of it and includes everything attached at or after the commencement date to that land and all rights, easements and appurtenances usually and normally enjoyed with that land;
- 7.17 "rates and taxes"**  
means all existing and future rates, tariffs, (including water by consumption and any

special rates or levies) taxes (including land tax) duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the premises or the Lessor or the Lessee or payable by the owner or occupier of the premises.

**7.18 "Regional Manager"**

means the Regional Manager of the Department responsible for the locality in which the premises are situated (and if that position ceases to exist, means whomsoever carries out the functions of Regional Manager under this lease);

**7.19 "rent"**

means the rent set out in Item 9 of Schedule A as varied during the term;

**7.20 "reserved mineral"**

means all gold and minerals within the meaning of the *Mineral Resources Development Act 1990* and petroleum within the meaning of the *Petroleum Act 1958*;

**7.21 "Schedule"**

means a Schedule to this Lease;

**7.22 "Secretary"**

means The Secretary to the Department of Natural Resources and Environment, a body corporate established under the *Conservation, Forests and Lands Act 1987*;

**7.23 "specified purpose"**

means the specified purpose described in Item 10 of Schedule A;

**7.24 "State"**

means the State of Victoria;

**7.25 "term"**

means the period of time, as and from the commencement date, set out in Item 1 of Schedule A;

**7.26 "writing"**

includes typewriting, printing, photography, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning.

**8. Interpretation**

In this Lease-

**8.1 Gender**

A reference importing any gender includes a reference to all other genders.

**8.2 Singular and Plural**

A reference importing the singular includes the plural and vice versa.

**8.3 Headings**

The index, headings and marginal notes are included for ease of reference and shall not alter the interpretation of this lease.

**8.4 Counting of Days**

If any day appointed or specified by this agreement falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* as a holiday for the whole day the day so appointed or specified shall be deemed to be the day succeeding the day so appointed or specified which is not in turn a Saturday, Sunday or day so appointed as a holiday for the whole day.

**8.5**     ***Legislation***

References to an Act of Parliament or a section or Schedule of it shall be read as if the words "or any statutory modification or re-enactment thereof or substitution thereof" were added to the reference.

**8.6**     ***Covenants***

If the Lessee comprise more than one person, the covenants and agreements contained in this lease shall be construed as having been entered into by and shall be deemed to be binding jointly and severally on all and each of the persons who constitute the Lessee.

**8.7**     ***Clauses***

References to Clauses, sub-clauses and paragraphs are references to Clauses, sub-clauses and paragraphs of this agreement respectively.

**8.8**     ***Statutory Covenants***

Covenants implied by statute are not incorporated in this lease, unless the relevant statute provides that certain covenants are to be implied and cannot be excluded by agreement.

**9.**     ***Special Conditions***

**9.1**     ***Application of special conditions***

In addition to the obligations imposed upon them by the clauses of this lease, the parties will also perform any obligations described in the schedule to this lease titled "Special Conditions".

**9.2**     ***Inconsistency with special conditions***

In the event of any inconsistency between the terms of the clauses of this lease and the terms of the Special Conditions schedule referred to in clause 9.1, the terms of the Special Conditions schedule will prevail.

**10.**    ***Interdependency***

**10.1**    ***Dependency upon funding agreement***

This lease is dependent upon the funding agreement described in Recital C, and will expire or terminate when that funding agreement expires or terminates.

IN WITNESS WHEREOF the parties have executed this lease on this                    day of                    2005

**THE COMMON SEAL** of **MEAT MARKET**                    )  
**CRAFT CENTRE RESERVE COMMITTEE OF**                    )  
**MANAGEMENT INCORPORATED** was hereunto                    )  
affixed in the presence of:

.....  
(                    ) **Chairperson**

.....  
(                    ) **Member**

.....  
(                    ) **Member**

**EXECUTED** for and on behalf of **THE CITY OF**                    )  
**MELBOURNE** in accordance with                    )  
Section 127 of the Corporations Act 2001 (Cth.) by:                    )

.....  
(                    ) **Name**  
Title:

**CONSENT OF DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT**

Under Section 17D of the Crown Land (Reserves) Act 1978, I, **WAYNE MALONE**, Manager, Land Victoria in the Department of Natural Resources and Environment, as delegate for the Minister for Environment and Conservation, hereby-

- \* consent to the grant of this Lease;
- \* approve the covenants, exceptions, reservations and conditions contained herein; and
- \* declare that I am satisfied that the purpose for which the Lease is being granted is not detrimental to the purpose for which the land is reserved.

.....  
(**WAYNE MALONE, Manager, Land Victoria** )

DATED                      day of                      2005

## SPECIAL CONDITIONS

### *Definitions*

1. In these Special Conditions:
  - “**Building Defect**” means a defect of a type that is covered by any existing builder’s warranty that applies to the Premises, as notified to the Lessee in writing by the Lessor.
  - “**Defects Liability Period**” means the period to be notified to the Lessee by the Lessor applicable under the State’s contract with a builder, in relation to the Premises, under which the State may notify the builder of a Building Defect.
  - “**Department**” means the State of Victoria, represented by the Director, Legal Branch, Department of Premier and Cabinet, or such other person as the Lessor may notify to the Lessee.
  - “**Funding Agreement**” means an agreement between the State of Victoria and the Lessee under which the State agrees to provide sufficient funds to the Lessee to meet the Lessee’s costs of administering and managing the Meat Market Arts Centre, including the Premises, and including the Lessee’s normal costs of meeting its obligations under this Lease.
  - “**Meat Market Arts Centre**” means the land, buildings and the fixtures in the buildings known by that name (except for the Lessee’s fittings specified in this Lease), situated at 42 Courtney Street, North Melbourne, Victoria 3051.

### *Interdependency*

2. The parties agree that:
  - (a) This Lease is conditional upon the making of the Funding Agreement before the expiry of 28 days from the date of execution of this Lease.
  - (b) This Lease will be dependent on the Funding Agreement, and will terminate when the Funding Agreement expires or terminates, unless the parties otherwise agree.
  - (c) The Lessee will notify the Lessor of any changes or proposed changes to, or disputes arising under the Funding Agreement that might affect the Lessee’s capacity to continue performing its obligations under this Lease.

### *Lessor to notify Lessee of proposed extended term or new lease*

3. If the Lessor proposes to extend this Lease beyond the term, or to offer the Lessee a new lease in relation to the Premises to run from the end of the term, the Lessor will use its best endeavours to advise the Lessee of that proposal no later than six months before the expiry of the term. The parties acknowledge that the capacity of the Lessee to enter into an extended or new lease will depend on the Lessee negotiating an extension of the Funding Agreement or some other satisfactory funding arrangement with the State of Victoria.

### *Transfer of functions from Lessor and Lessee in relation to other tenants*

4. The parties acknowledge and agree that:
  - (a) The Meat Market Arts Centre contains and will contain, in addition to the Lessee, other long-term tenants.
  - (b) They intend that the Lessor will transfer to the Lessee certain functions that the Lessor would normally perform in relation to those other tenants, in the Lessor’s capacity as their landlord, on such terms and conditions as the parties may agree.
  - (c) In the event that a transfer of functions occurs as described in paragraph (b) above:
    - (1) The Lessee will not be entitled to any payment or reimbursement of any rent under this Lease for performing those functions.
    - (2) The Lessee must deal with the other tenants in good faith at all times.

### *Adjustment of size of Premises*

- 5.1. The parties acknowledge that the leased area in the Meat Market Arts Centre occupied by other long-term tenants may vary during the term, and they agree that, in that event, the Lessee will assume occupation of any area within the Centre relinquished by another tenant, on the following conditions, namely where:
  - (a) The Lessor notifies the Lessee that the Lessor wishes the Lessee to assume occupation of a particular area.

- (b) The area will become part of the Premises for the purposes of this Lease, and all of the Lessee's obligations under this Lease will apply to the area as part of the Premises.
- (c) The Lessee will not be liable to pay any additional rent.
- (d) As soon as is practicable following any change in the leased area under this clause 5.1 of these Special Conditions, and on each occasion when such a change occurs, the Lessor will amend the plan annexed to this Lease as Annexure 1 to show all changes to the leased area, and the Lessee will review and endorse the amended plan, and upon such endorsement the amended plan will be replace the existing Annexure 1 and become incorporated into this Lease as Annexure 1.

- 5.2 The Lessee may refuse to accept occupation of the area referred to in clause 5.1 of these Special Conditions if:
- (1) The occupation would significantly increase the Lessee's costs of administering or managing the Premises, and
  - (2) The Funding Agreement is not amended to offset those additional costs.

*Building Defect reporting procedure*

6. In addition to its obligations under clause 3.5, where the Lessee discovers a Building Defect in the Premises during the Defects Liability Period, the Lessee will report that Building Defect to the Department, as well as to the Lessor, and will endeavour to facilitate the performance of any consequential remedial works.

*Asset register*

7. The parties agree that:
- (a) Within 30 days of the date on which the Lessee assumes occupation of the Premises under this Lease, the Lessor will prepare and provide an asset register to the Lessee listing all fittings and chattels provided to the Lessee by the Lessor together with the Premises.
  - (b) The asset register will state the condition of each item that it refers to, and will be signed and dated by the Lessor.
  - (c) The Lessee will sign and date a copy of the asset register and return it to the Lessor as soon as practicable after the Lessee receives it, and in any event within 30 days, and by signing and returning the copy will be deemed to indicate its acceptance of the contents of the asset register.
  - (d) If the Lessee disagrees with anything stated in the asset register, the Lessee and the Lessor will consult in order to resolve the disagreement. If the disagreement is not resolved, it will be referred to a mediator chosen by the parties for resolution through mediation.
  - (e) The parties will endeavour to update or amend the asset register, as may be necessary, during the Term, and will each sign and date duplicate copies of any updated or amended register to indicate their acceptance of it.
  - (f) An asset register signed by both parties as provided by this clause, or an updated or amended asset register signed by both parties, will become incorporated into this Lease and will provide details of the Lessor's fittings for the purposes of item 7 of Schedule A.
  - (g) In any litigation between the parties, the parties will not dispute the accuracy of the most recent version of the asset register that is signed and dated by each of them in accordance with this clause.



## SCHEDULE A

**1. COMMENCEMENT DATE**

The 1<sup>st</sup> day of July 2005

**2. LESSOR**

MEAT MARKET CRAFT CENTRE RESERVE COMMITTEE OF MANAGEMENT  
INCORPORATED of Level 6, 2 Kavanagh Street, Southbank, Victoria 3006

**3. LESSEE**

THE CITY OF MELBOURNE of 220 Little Collins Street, Melbourne, Victoria.

**4. RESERVATION**

Crown land reserved for Public Purposes (Arts Centre) by Order In Council of 28 August 1979 published in the Government Gazette on 5 September 1979 on page 2827.

**5. PREMISES**

Those portions of the land situated at 42 Courtney Street, North Melbourne, Victoria being part of Crown Allotment 21 Section 11 at North Melbourne Parish of Jika Jika County of Bourke and hatched on the plan annexed hereto marked "Annexure 1" together with all improvements erected and / or contained thereon and as listed below, except for the excised parts (leased to other parties), which are marked in blue in the floor plans annexed hereto as "Annexure 2" In the event that the size of the leased area is varied as permitted by clause 5.1 of the Special Conditions, the Premises will be that amended area, as more particularly described in the amended plan to be prepared and endorsed by the parties as required by that clause.

**6. LESSOR'S CHATTELS**

None

**7. LESSOR'S FITTINGS**

As per the asset register to be provided by the Lessor to the Lessee in accordance with clause 7 of the Special Conditions.

**8. TERM**

Three years from the commencement date. The Lessor may offer the Lessee an extension of the term in the manner described in clause 3 of the Special Conditions.

**9. (a) RENT**

\$ 1.00 per annum (plus GST), payable yearly on 1 July of each year of the term.

**(b) RENT REVIEW**

The rent will be reviewed annually on the anniversary of the commencement date in accordance with Schedule B except for the rental for the first year of each and every renewal term of the Lease, which shall be determined after a review conducted in accordance with Schedule C.

**10. SPECIFIED PURPOSE**

Arts centre, administration offices and for community purposes.

**11. PAYMENT ADDRESS**

To the Lessor c/o Arts Victoria, Level 6, 2 Kavanagh Street, Southbank 3006.

**12. PUBLIC RISK INSURANCE AMOUNT**

\$10,000,000

**13. OPTION PROVISIONS**

None. (Refer to Item 8 with respect to the extension of the Term.)

**14. SERVICE OF NOTICES**

**UPON THE LESSEE**

**Name of Recipient** Manager, Arts and Culture, City of Melbourne

**Lessee's Service Address** GPO Box 1603M, Melbourne, Victoria, 3001

**Facsimile number** 9658 8436

**UPON THE LESSOR**

**Name of Officer** Chairperson, Meat Market Craft Centre Reserve Committee of Management Incorporated

**Lessor's Service Address** Level 6, 2 Kavanagh Street, Southbank, Victoria 3006

**Facsimile number** 9686 6186

**15. BANK GUARANTEE**

Nil.

**16. LESSEE'S / LESSOR'S FURTHER OBLIGATIONS**

None, (other than the Special Conditions).

## SCHEDULE B

The Lessor shall review the annual rent on each rent review date as follows:

On the expiration of the first year of the term and at the expiration of twelve month period thereafter during the term (hereinafter called "the rent review date ") the rental payable by the lessee shall with effect for and during the next year be increased above the annual rate of rental payable for the preceding year by reference to the Consumer Price Index the weighted average six capital cities ("CPI") (All Groups) for the preceding 12 months as follows:-

- (i) by multiplying the preceding monthly rental by 12 plus an amount equal to the proportionate percentage increase (if any) in the CPI for the preceding 12 months; or
- (ii) in the event there is any suspension or discontinuance of the CPI or its method of calculation is substantially altered then the increase shall be the weighted average for the Australian Bureau of Statistics. If such weekly wage rates shall not be calculated at the date of review by the Australian Bureau of Statistics then the increase shall be such increase to reflect fluctuations in the cost of living in Melbourne and which the parties shall mutually agree upon or;
- (iii) If the parties are unable to agree such increase shall be determined by the President for the time being of the Law Institute of Victoria or its nominee.

## SCHEDULE C

The Lessor may review the annual rent on each renewal of the term of the lease as follows;

1. Not earlier than three months before the commencement date of the new term of the lease (hereinafter referred to as “the rent review date”) and not later than sixty days after the rent review date the Lessor shall give the Lessee notice of the new rental it proposes be paid by the Lessee during that period or part thereof.
2. Time shall not be of the essence in respect of the Lessor’s rent review notice and any delay by the Lessor in giving notice shall not affect the Lessor’s rights.

Within twenty one days of being notified in writing of the proposed new rent the Lessee may give to the Lessor written notice of objection to the proposed new rent and within a further thirty days from the notice of objection supply the Lessor with a rent valuation from a qualified valuer. If no notice of objection is given or if notice is given and no rent valuation is supplied the new rent shall be the new rent as proposed in the Lessor’s notice.

3. If within thirty days from the lodgement with the Lessor of the Lessee’s rent valuation the Lessor and the Lessee are unable to agree on the new rent and a conference of the Lessor’s and Lessee’s valuers has failed to result in agreement on the rent the new rent shall be determined by a valuer nominated by the President for the time being of the Institute of Valuers and Land Economists Inc. (Victorian Division) (“the nominated valuer”) who in making a determination, shall accept representations from either party received within twenty one days of the appointment.
4. The decision of the nominated valuer shall be final and binding and the nominated valuer’s costs and fees shall be paid by the parties equally.
5. Until the new rent is agreed or determined the Lessee shall pay rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.
6. After the new rent is determined the Lessee shall pay the difference if any between the amount of the new rent and the rent paid since the date fixed for review.

### **Method of Determination:**

1. In determining a new rent for the premises the valuer shall as nearly as possible determine the open market rent value on the date when that rent is to apply for the premises having regard to the following matters:
  - a) the Lessor is a willing but not anxious Lessor and the Lessee is a willing but not anxious Lessee;
  - b) there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;
  - c) the Lessor and the Lessee are well acquainted with the demised land and aware of any factors which might affect its value.
  - d) the length of the lease term and the period between rent reviews.

- e) the terms and obligations of the lease.
- f) the permitted use under the lease.
- g) the rental of comparable premises
- h) rents paid to the Lessee under any sub leases or licences.

but shall disregard the value of any improvements owned by the Lessee, sub lessees or licensees.

## ANNEXURES: PLANS & GUIDELINES

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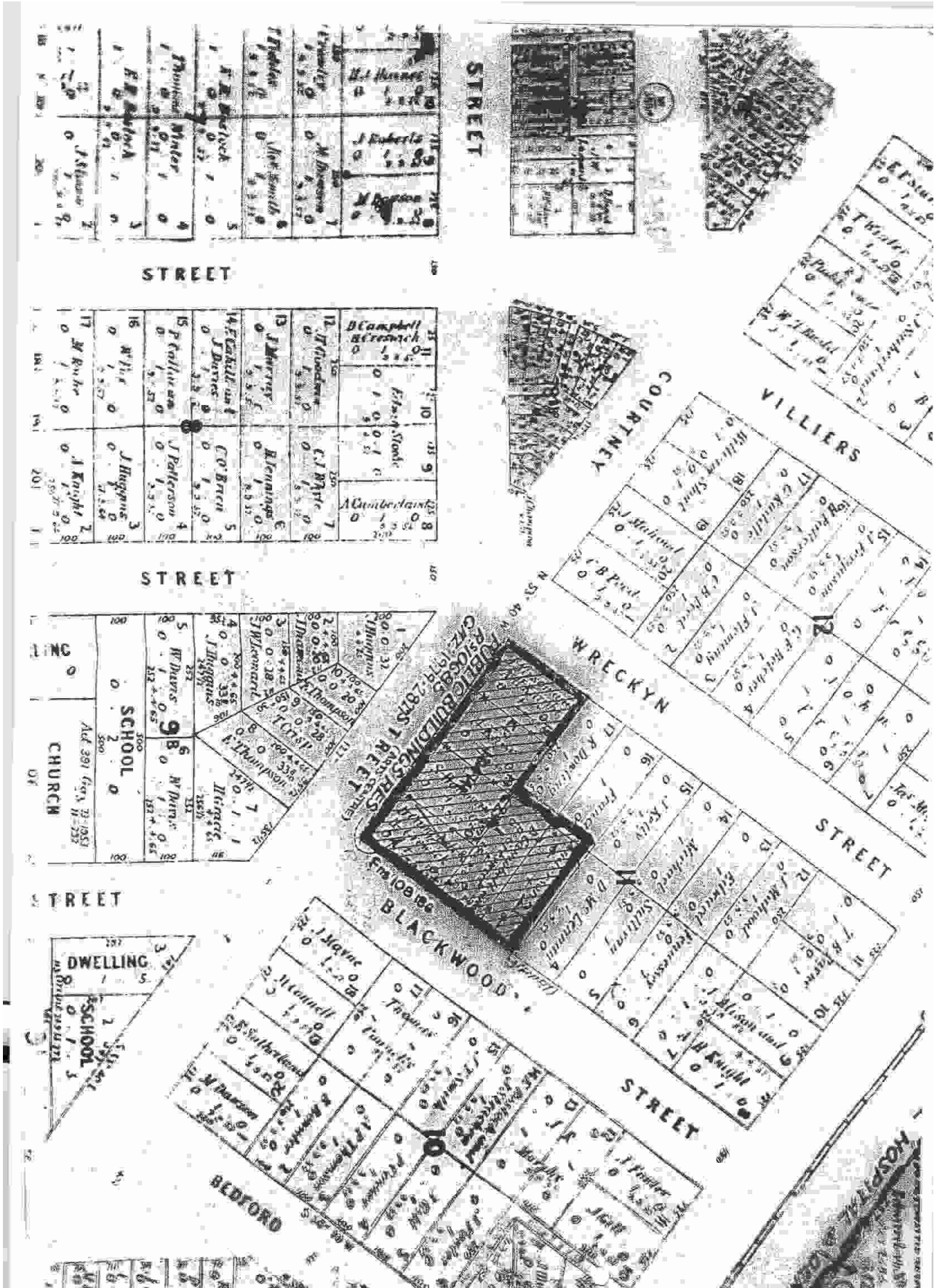
NOTE -The area bearings and measurements are given approximately in the annexed plans.

Attached are:

- Annexure 1 Site plan of the land in County of Bourke Parish of Jika Jika at North Melbourne Section 11, Part Crown Allotment 21.
- Annexure 2 Meat Market Arts and Craft Centre Floor Plan.
- (a) Basement
  - (b) Ground floor
  - (c) First floor
- Annexure 3 Meat Market Arts and Craft Centre Guidelines.
- A. Occupancy and Usage Guidelines.
    - Section 1 – Leasing & Licensing.
    - Section 2 – Programming Guidelines.
  - B. Maintenance Repairs & Works Guidelines.
    - Section 3 – Defects.
    - Section 4 – Maintenance, Repairs and Works.
    - Section 5 – Major Capital Works.

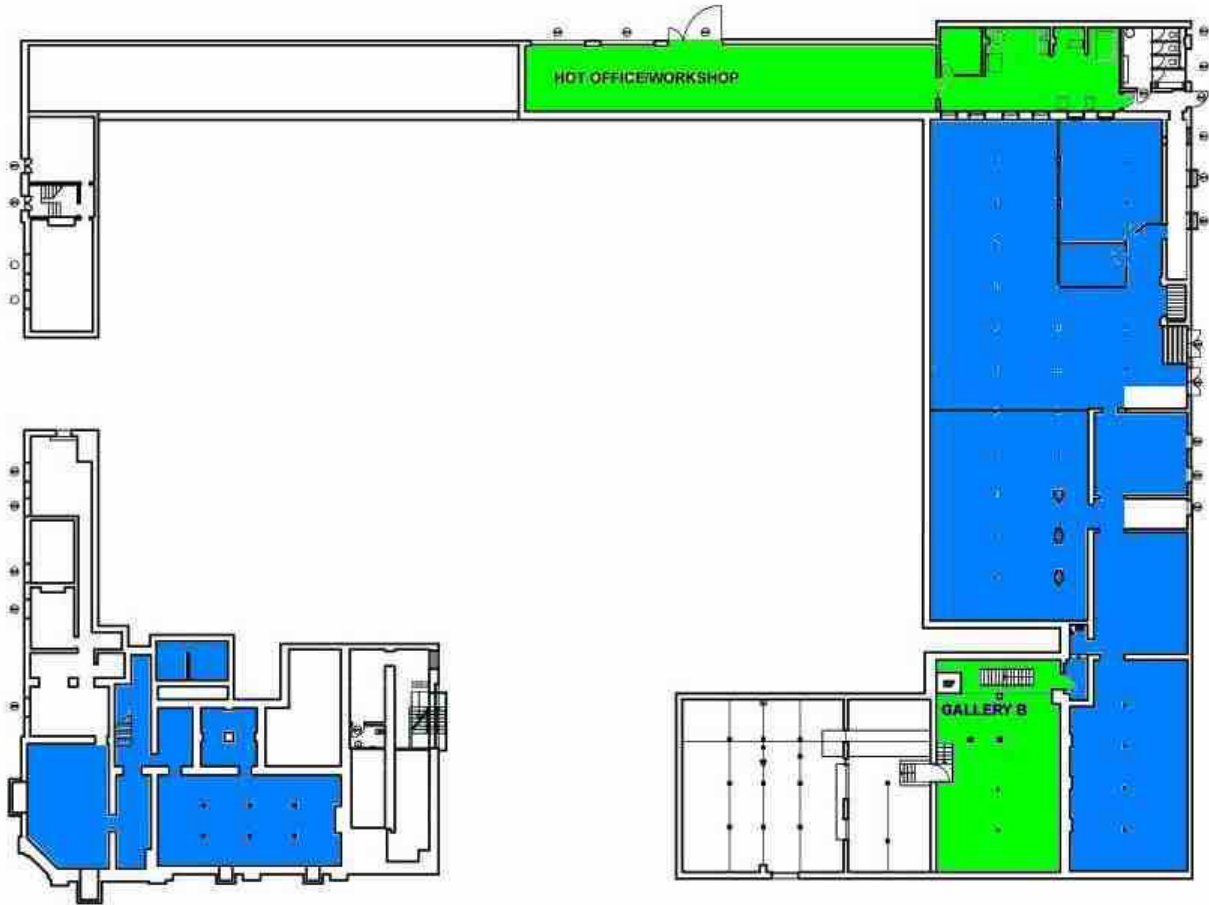
**ANNEXURE 1**

**SITE PLAN OF PREMISES**



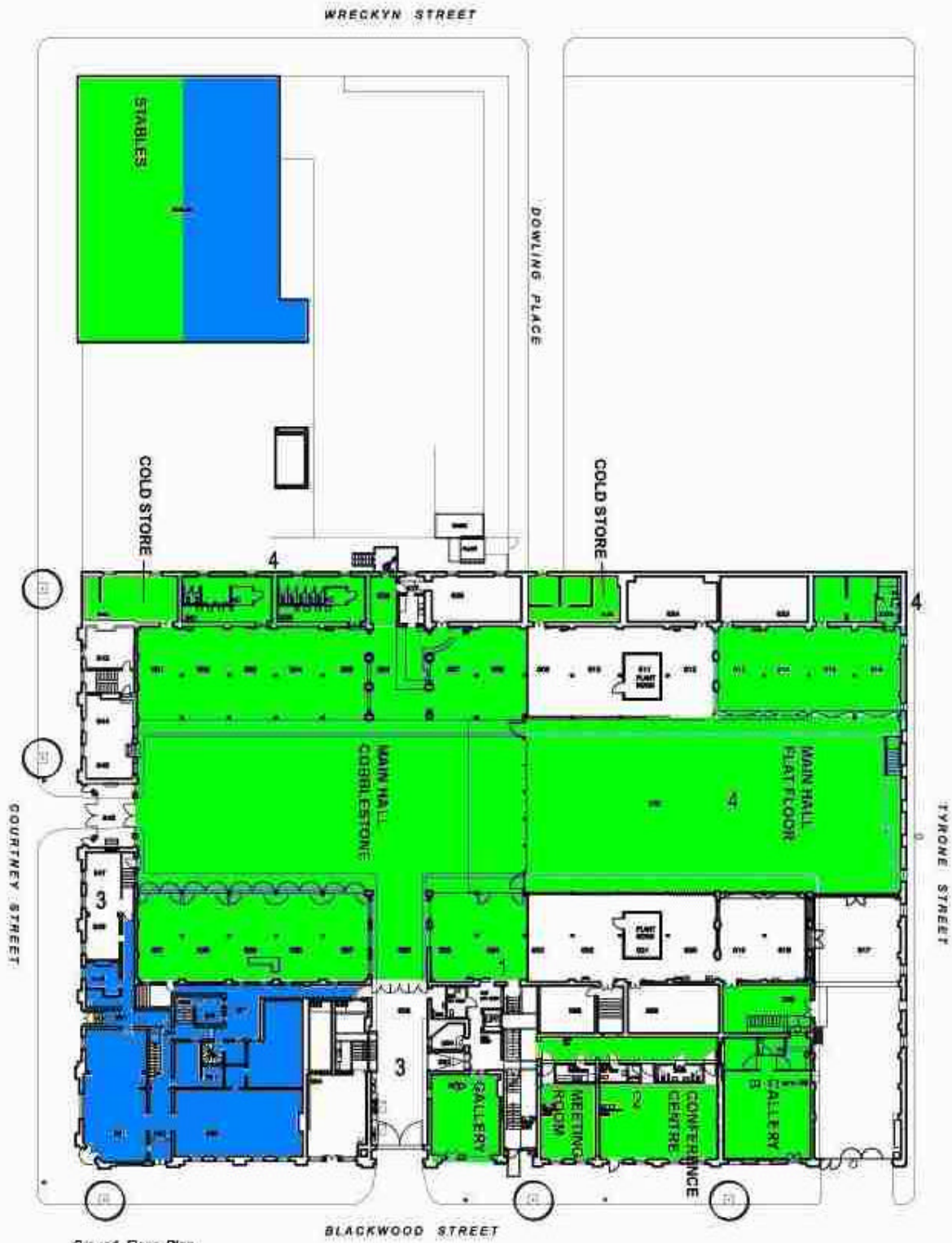


**ANNEXURE 2**  
**FLOOR PLAN OF PREMISES**

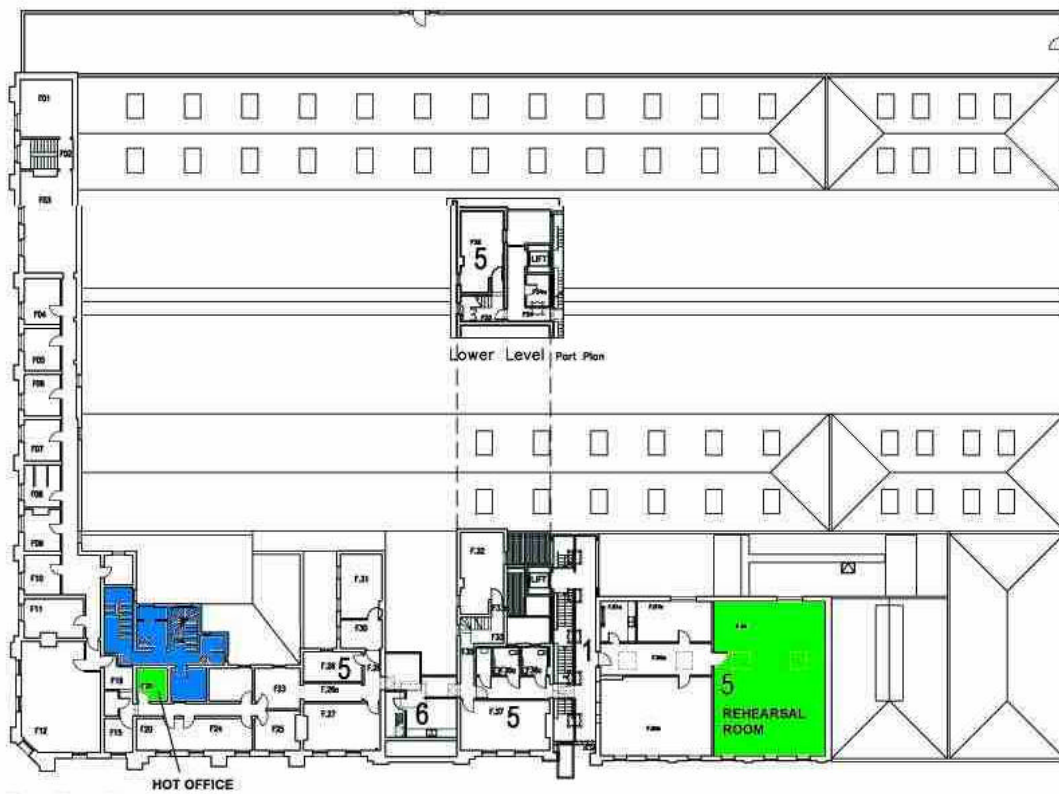


Basement Floor Plan

BLACKWOOD STREET



Ground Floor Plan



First Floor Plan

**ANNEXURE 3**

**MEAT MARKET ARTS AND CRAFT CENTRE GUIDELINES**

## **A. OCCUPANCY AND USAGE GUIDELINES**

### **SECTION 1: LEASING & LICENSING**

These guidelines outline the management requirements of the leased and licensed spaces at the Meat Market.

#### **1.1 Selection of leased and licensed tenants**

- 1.1.1 In order to assist the Committee to select tenants for the leased and licensed areas the City will conduct an Expression of Interest (EOI) process.
- 1.1.2 The EOI process will exhibit probity and transparency and prioritise applicants whose core business is consistent with the Meat Market's purpose and objectives.
- 1.1.3 Once the EOI process is completed, the City will submit a list of proposed applicants to the Committee for final approval.
- 1.1.4 The EOI process will be conducted in accordance with VGPB guidelines.

#### **1.2 Tenancy Mix**

- 1.2.1 The City acknowledges that in keeping with the purpose and objectives of the premises, the tenancy mix will reflect a diversity of arts organisations including: arts creators, co-ordinators, entrepreneurs, distributors, suppliers & supporters.
- 1.2.2 At least 70% of licensed areas will be occupied by not-for-profit arts organisations.
- 1.2.3 Applications to alter the above tenancy mix must be submitted to the Committee for approval.
- 1.2.4 The City agrees to honour all lease and licence agreements entered into by the Committee prior to the commencement of this Agreement.

#### **1.3 Rental rates**

- 1.3.1 Tenancies occupied by not-for-profit arts organisations will receive a 30% subsidy on the commercial rental rate.
- 1.3.2 Licensed tenancies let to arts-related commercial businesses will be let at a full commercial rental rate.
- 1.3.3 Rental rates will be determined by a commercial rental assessment by an independent valuer.
- 1.3.4 Applications to alter the above rental rates must be submitted to the Committee for approval.

#### **1.4 Leasing and licensing general requirements**

- 1.4.1 The City will undertake day-to-day administration of current and future license and lease agreements.
- 1.4.2 The City will submit a standard form license agreement to the Committee for approval.
- 1.4.3 The City will ensure that tenants fulfil and adhere to all requirements of the licence and lease agreements.
- 1.4.4 Should a tenant breach their license or lease agreement the City will record the breach and notify the tenant and the Committee of the breach.
- 1.4.5 The City will provide customer service of a high standard to all tenants.
- 1.4.6 The City will undertake commercial rental evaluations of the tenancy spaces immediately prior to the renewal cycle of the license and lease agreements.
- 1.4.7 The City will collect all rental in the manner outlined in the licence and lease agreements.
- 1.4.8 The City will send notices of late payments and instruct a collection agency to recover outstanding debt as required, consistent with the City's regular financial practises.
- 1.4.9 The City will keep up-to-date records of all accounts associated with all tenancies.
- 1.4.10 The City will develop and implement the following procedures that identify the tenant's roles and

responsibilities in relation to all tenancies:

- induction manual
- technical procedures
- incident and hazard reporting and investigation forms
- evacuation plans
- complaints policy and dispute resolution procedure

1.4.11 The Committee reserves the right to request changes to the documents if they conflict with the purpose and objectives of the building or compromise the Department's standards.

1.4.12 The City will develop a protocol to ensure fair and equitable access between tenants and hirers to common areas and spaces for hire in the building.

1.4.13 The City will ensure sensitive and professional management of tenants' shared resources including but not limited to: administration, rehearsal and meeting rooms.

### **1.5 Dispute resolution**

1.5.1 The City will resolve all tenant disputes in accordance with its existing complaints procedures.

1.5.2 Complaints unable to be resolved through this process will be referred directly to the Committee.

## **SECTION 2: PROGRAMMING GUIDELINES**

These guidelines outline the usage parameters of the programmable spaces at the Meat Market.

### **2.1 Programmable spaces**

2.1.1 The programmable spaces are those spaces that are available for short-medium term hires in accordance with the purpose and objectives of the facility.

2.1.2 Programming within these spaces will comprise of creative development projects and general hires. The programmable spaces include but are not limited to:

- Main Hall flat floor area
- Main Hall cobble stone area
- Gallery A
- Gallery B
- Rehearsal room
- Conference room
- Meeting room
- Hot Office, Cold Stores & Stables

2.1.3 The programmable spaces are depicted green in Annexure 2.

### **2.2 Creative development projects**

2.2.1 The City will utilize funds provided by the Department for creative development projects to occur within, or in conjunction with, the programmable spaces.

2.2.2 The City will not disburse grants until it has submitted a proposed grant program to be approved by the Department.

2.2.3 In order to achieve the purpose and objectives of the facility, all creative development grants will be awarded to small-to-medium arts individuals or organisations.

2.2.4 In order to assist the Committee to select recipients for creative development grants, the City will conduct and publicise a grant funding rounds.

2.2.5 The grant funding round will exhibit probity and transparency and prioritise projects that are consistent with the purpose and objectives of the facility.

### **2.3 Programming mix**

2.3.1 The City acknowledges that in keeping with the purpose and objectives of the premises, the programming mix will reflect a diversity of arts organisations including: arts creators, co-ordinators, entrepreneurs, distributors, suppliers & supporters.

2.3.2 In order to achieve the above programming mix, a predominance of arts related activities will take place in the programmable spaces.

2.3.3 Applications to alter the above programming mix must be submitted to the Committee for approval.

### **2.4 Hire fees**

2.4.1 The City will implement a schedule of hire fees and charges to be approved by the Committee.

2.4.2 The City will review the fees and charges schedule at regular intervals and any subsequent changes to the schedule of hire fees and charges will be reported to the Committee prior to implementation.

2.4.3 The City will program the spaces to achieve financial viability.

2.4.4 The City will offer subsidies to not-for-profit organizations and Meat Market tenants.

### **2.5 Programming general requirements**

2.5.1 The City will develop and implement an annual Meat Market program and undertake all day-to-day management and administration of the programmable spaces.



- 2.5.2 The City will process all accounts receivable and payable for services related to the programmable spaces in a timely manner.
- 2.5.3 The City will send notices of late payments and instruct a collection agency to recover outstanding debt as required, consistent with the City's regular financial practices.
- 2.5.4 The City will provide customer service of a high quality to all hirers.
- 2.5.5 The City will supply written quotes, based on the approved Schedule of Fees and Charges, in response to inquiries as necessary.
- 2.5.6 The City will keep up-to-date records of all quotes and agreements entered into.
- 2.5.7 The City will liaise with all regulatory authorities and observe all statutory requirements resultant from activities undertaken within the programmable spaces.
- 2.5.8 The City will collect statistical information on the use of the programmable spaces. The statistics will identify types of events and will include the number of participating artists and public, art forms, revenue and after-hours staff costs. The range and format of statistics collected will be similar to those collected at the City's other cultural venues.
- 2.5.9 The City will establish and implement the following procedures that identify the hirer's roles and responsibilities in relation to the programmable spaces:
- Venue booking agreement
  - Venue induction manual (including OH&S and risk management considerations)
  - Venue technical operation procedure (including OH&S and risk management considerations)
  - Incident and hazard reporting and investigation forms
  - Evacuation procedures
  - Complaints policy and dispute resolution procedure
- 2.5.10 The Committee reserves the right to request changes to any of the above documents should they conflict with the purpose or objectives of the building or compromise the Department standards.
- 2.5.11 The City will obtain and maintain all necessary insurances for activities undertaken on the premises and will ensure that hirers have adequate public liability insurance.
- 2.5.12 The City will ensure that hirers obtain all applicable licences if alcohol is to be consumed on the premises.
- 2.5.13 The City will ensure that all activities undertaken in the programmable spaces are compliant with the building's heritage status and town planning restrictions (eg. maximum capacities, noise restrictions).
- 2.6 Dispute resolution**
- 2.6.1 The City will resolve all hirer disputes in accordance with its existing complaints procedures.
- 2.6.2 Complaints unable to be resolved through this process will be referred directly to the Committee.

**B. MAINTENANCE REPAIRS & WORKS GUIDELINES**

**SECTION 3: DEFECTS**

This procedure addresses the issue of defects and omissions in works to the renovated areas of the Meat Market.

**3.1 Definitions**

- 3.1.1 These works were completed under the terms of contract AS2124-1992 with Special Conditions between the Department (the Principal) and Contract Management Systems (the Contractor). For the purpose of these works the Superintendent, on behalf of the Principal, is Allom Lovell & Associates.
- 3.1.2 Under Contract AS 2124-1992 the defects or omissions in the work are subject to Clause 37 Defects Liability. The Defects Liability Period is the period from 20 April 2005 to 19 April 2006.

**3.2 Overall Responsibility**

- 3.2.1 During the Defect Liability Period, the City of Melbourne will:

ensure, for the duration of the Defect Liability Period, that no structural, electrical, mechanical, services, physical or aesthetic works or alterations are undertaken to the areas and locations identified in aforementioned plans by any employee, officer, contractor, supplier or any other person associated with the City of Melbourne or by any tenant, hirer or member of the public present in the building;

identify, for the duration of the Defect Liability Period, any defects or omissions as they arise from or affect the operational management of the building and the ability of the City of Melbourne to deliver on its obligations under the Service Agreement.

**3 Day-to-day Management**

- 4 Defects and omissions in works must be addressed in accordance with the contractual obligations between the Department and the Contractor, and in a manner that allows continued delivery of operational and cultural programming services by the City of Melbourne. To ensure this is achieved, the following procedure is to be followed.

- 5 Upon identification of a defect or omission in the relevant areas, the operational staff from the City of Melbourne will:

ensure repairs or alterations are NOT undertaken by the City of Melbourne or anyone engaged by the City;

ensure no tenant or hirer attempts repairs or alterations;

erect an appropriate notice and barrier to prevent continued use of/or access to the areas or item of defect/omission and to ensure safe environment for the public, employees, tenants and hirers;

prepare a fax/letter describing the nature of the potential defect/omission, the exact location of the potential defect/omission and a request for rectification of the defect/omission;

immediately forward the fax/letter to the Department's representative;

call the Department's Representative within 24 hours of forwarding the fax to ensure they have received the fax/letter;

ensure access is provided to Contract Management Systems to carry out the work of rectification.

- 6 The Contractor is obliged to carry out such works at times and in a manner which cause as little inconvenience to the occupants and users of the areas and locations as is reasonable possible.

**7 Expiration of Defects Liability Period**

- 8 The City of Melbourne will notify the Department of any outstanding defects/omissions 30 days prior to the expiration Defects Liability Period.

**9 Contact Information**

- 3.5.1 All defects/omissions should be reported to:

Eleanor Whitworth

T: 9954 5024

F: 9686 6186

[eleanor.whitworth@dpc.vic.gov.au](mailto:eleanor.whitworth@dpc.vic.gov.au)

## SECTION 4: MAINTENANCE, REPAIRS AND WORKS

This procedure describes the maintenance, repairs and works considered to be routine maintenance to be undertaken by the City in its role as property manager and the routine maintenance management requirements.

### 4.1 Routine Maintenance

4.1.1 Routine maintenance comprises two components:

- i. *Programmed Maintenance* - means maintenance that is carried out at specific intervals on items where a failure would have expensive or unacceptable consequence and includes essential services e.g. lifts, fire alarms, electricity supply etc. Many of these items may also be subject to statutory requirements for maintenance and inspection. Programmed maintenance costs are included in the monies payable to the Lessee under the Funding Agreement described in clause 1 of the Special Conditions to this Lease.
- ii. *Day-to-day Maintenance* - means day-to-day operational maintenance activities required to keep the Meat Market operating effectively (e.g. light bulbs, cleaning of drains, repairing leaks). Day-to-day maintenance costs are included in the monies payable to the Lessee under the Funding Agreement described in clause 1 of the Special Conditions to this Lease.

### 4.2 Programmed Maintenance

4.2.1 The City will conduct routine technical inspections, safety checks, regular servicing, and minor replacement according to plant documentation of the following items:

Air conditioning and ventilation systems  
Lifts and hoists  
Roller shutters and automatic doors  
Heating appliances  
Hydraulic systems  
Pumps and compressors  
White goods  
Sound equipment and other theatrical/ performance infrastructure  
Internal and external lighting  
Communications and data cabling  
Electrical systems  
Security systems hardware and software  
The City will maintain a regular maintenance/ service program for the following items:  
Waste management  
Hygiene/Pest control services  
Security  
Cleaning  
Grounds maintenance including garden and car park  
Roof and gutters  
Carpet cleaning

4.2.3 The City will undertake routine technical inspections, safety checks, regular servicing, and minor replacement according to plant documentation and statutory requirements of the following items:

Fire protection systems including alarm monitoring, sprinkler system and portable fire fighting equipment  
Electrical services including thermal testing of switch boards, lead tagging, emergency lights, exit lights and RCDs  
Sump pumps including liquid waste collection

### 4.3 Day-to-day maintenance

4.3.1 The City will undertake timely action to rectify and repair the following items (the list below is not intended to be exhaustive):

Blocked or leaking toilets  
Gas leaks

Electricity failure (lights or power)  
Non-availability of hot water  
Glass replacement  
Fixing door locks  
Fixing washers  
Light bulb replacement  
Minor repairs drains or pipes

#### **4.4 Additional items**

- 4.4.1 The City is responsible for the maintenance of all equipment items owned by State at the time of contract commencement. Items purchased by the State after the commencement of the contract, and for the use of the Meat Market site, will also be maintained by the City. Ownership of all items purchased by the State will remain with the State.
- 4.4.2 Should the City or the Committee identify additional items that are reasonably considered to be routine maintenance they will be dealt with in the manner outlined in these guidelines.

#### **4.5 Routine maintenance program**

- 4.5.1 The City will develop, implement and manage a routine maintenance program.
- 4.5.2 The routine maintenance plan will include a programmed maintenance and essential services schedule of works to be approved by the Committee.
- 4.5.3 The routine maintenance program will adhere to all statutory requirements at all times.
- 4.5.4 The routine maintenance program will be based on up-to-date plans of plant and equipment and technical documentation provided by the Committee and will be designed to maximise the effective operating life of the designated items, while minimising breakdown maintenance.
- 4.5.5 The City will undertake annual condition reporting and identify and report to the Committee on modifications and replacement requirements/ recommendations that need to be incorporated into the routine management plan.

#### **4.6 Routine Maintenance general requirements**

- 4.6.1 The City will process all accounts receivable and payable for routine maintenance services.
- 4.6.2 The City will maintain, and provide to the Committee upon request, detailed records of routine maintenance undertaken.
- 4.6.3 The City will maintain an up-to-date library of plant and equipment technical documentation.
- 4.6.4 The City will develop and implement procedures to ensure that routine maintenance is carried out in an efficient and timely manner.

#### **4.7 Routine Maintenance financial delegation**

- 4.7.1 Routine maintenance costs are included in the monies payable to the Lessee under the Funding Agreement described in clause 1 of the Special Conditions to this Lease.

#### **4.8 Emergency Repairs**

- 4.8.1 In attending to an emergency repair, the City will advise the Committee immediately if the nature of the repair is considered outside the scope of routine maintenance. Where the Committee agrees to allow the City to undertake emergency repairs, the City will be entitled to reimbursement of costs associated with “making good”.

## **SECTION 5: MAJOR CAPITAL WORKS**

Major Capital Works means the repair or replacement of items pertaining to the structure of the Meat Market (e.g. external/internal painting, carpet replacement) or the upgrade of major single plant and equipment elements, e.g. a heating system which has reached the end of its useful life. The section documents the procedures to support the Committee in its responsibility for major capital works.

### **5.1 Major Capital Works**

5.1.1 Major capital works include:

- replacement of major plant and equipment
- significant structural upgrades
- painting of extensive internal and external areas
- carpeting of extensive areas

### **5.2 Additional items**

5.2.1 Should the City or the Committee identify additional items that are reasonably considered to be major capital works they will be dealt with in the manner outlined in these guidelines.

### **5.3 Major capital works program**

5.3.1 The City will develop, implement and manage a capital works program to be approved by the Committee.

5.3.2 The City will maintain accurate records of any major capital replacements.

5.3.3 The major capital works program will consider all statutory requirements at all times.

5.3.4 The major capital works program will be based on up-to-date plans of plant and equipment and technical documentation provided by the Committee and will be designed to maximise the effective operating life of the designated items, while minimising breakdown maintenance.

5.3.5 The City will undertake annual condition reporting and identify and report to the Committee on modifications and replacement requirements/ recommendations for inclusion in the major capital works program.

### **5.4 Major capital works general requirements**

5.4.1 The City will provide the Committee with reasonable notice of major capital works items identified in the program.

5.4.2 The City will submit to the Committee detailed plans of any major capital works required, and a recommendation for action to the Committee for approval.

5.4.3 Any capital works will be procured in line with VGPB guidelines.

5.4.4 The City will immediately advise the Committee of any unforeseen major capital works that are not documented in the major capital works program.

### **5.5 Major capital works financial delegation**

5.5.1 Major capital works will be authorised and paid for through a separate budget held by the Department. The Department will make available a sum of \$20,000 per annum for the purposes of major capital works. If this allocation is not spent in any particular financial year it will accumulate.

5.5.2 The Committee's approval must be gained prior to funds being released.

THE STATE OF VICTORIA  
(THROUGH ARTS VICTORIA,  
A DIVISION OF THE DEPARTMENT OF PREMIER AND CABINET)  
(THE "DEPARTMENT")

-AND-

THE MELBOURNE CITY COUNCIL  
(ABN 55 370 219 287)  
(THE "CITY")

MEAT MARKET ARTS PROGRAM  
FUNDING DEED

DPC Legal Branch  
1 Treasury Place  
Melbourne VIC 3002  
Ref: FN 19/26/0045

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**MEAT MARKET ARTS PROGRAM FUNDING DEED**

**THIS DEED** is made on the date shown at the foot of this document

**BETWEEN**

**THE STATE OF VICTORIA** (through Arts Victoria, a division of the Department of Premier and Cabinet) of Level 6, 2 Kavanagh Street, Southbank, Victoria 3006 (the “Department”)

**AND**

**THE MELBOURNE CITY COUNCIL (ABN55 370 219 287)** of 200 Little Collins Street, Melbourne Victoria 3000 (the “City”)

**WHEREAS**

- A. The City is a municipal corporation that is a body corporate established by the *City of Melbourne Act 2001* and the *Local Government Act 1989*.
- B. The Premises:
  - (a) consist of land, buildings and fixtures and comprise a reserve under the *Crown Land (Reserves) Act 1978* under the management of the Meat Market Craft Centre Reserve Committee of Management Incorporated (“the Committee”); and
  - (b) have been reserved for public use as an arts centre.
- C. Under a separate lease agreement (“the Lease”) made on or about the day of this Deed:
  - (a) the City is the lessee of a large part of the Premises (“the Leased area”); and
  - (b) the City has some liaison and communication role in respect to other persons who have leased parts of the Premises not within the Leased area.
- D. The Department has agreed to fund:
  - (a) the cost of the maintenance and administration of the Premises by the City, including both the Leased area and the parts occupied by other persons; and
  - (b) the cost of the administration by the City of an arts program that the Department has arranged with the Committee to take place at the Premises,with the intention that, apart for any payments due under the Lease, the City’s management and administration of the Premises and of the arts program will be cost neutral to the City.
- E. The parties now wish to formalise the arrangement described in recital D above by this Deed.
- F. The parties acknowledge that the entry by the City into the Lease, and the City’s performance of many of its obligations under the Lease, is dependent upon the making and continuance of this Deed

**The parties now agree as follows:**

***Preamble***

- (a) This Agreement is divided into four Parts, which are lettered A, B, C and D consecutively.
- (b) The numbers of all clauses in this Agreement include a letter designating its respective Part.

**PART A**

**A.1. Interpretation**

A.1.1 In this Agreement unless the context otherwise requires:

**“Arts Program Administration Services”** means all of those aspects of the Services that the City is obliged to perform under this Deed that pertain to the management and administration of Grants and the Grant Monies, and the supervision of Grantees, in particular any such obligations and requirements described in Part C and Schedule 4;

**“Budget”** means the table of payments and expenditures for the Services set out in Schedule 2, with any modifications that the parties may agree in writing;

**“Business Day”** means a day that is not a Saturday, a Sunday or a public holiday appointed under the *Public Holidays Act 1993* including any day appointed by the Minister (within the meaning of that Act) under Section 7 (1) (a) of the Act, applicable to the Melbourne metropolitan area;

**“City”** means the Melbourne City Council;

**“City’s Representative”** means the person so identified in Schedule 1, who is appointed by the City to represent it for the purposes of this Deed or such other person as may subsequently be appointed by the City and notified to the Department in writing;

**“City’s Staff”** means the employees of the City who will provide the Services or such other persons, including sub-contractors, whom the City and the Department otherwise agree may provide the Services;

**“Code of Practice”** means a code of practice as defined in, and approved under, the *Information Privacy Act 2000* (Vic);

**“Commencement Date”** means the date so identified in Schedule 1;

**“Completion Date”** means the date so identified in Schedule 1;

**“Committee”** means the committee of management of the Premises for the time being appointed under the *Crown Land (Reserves) Act 1978*, which at the Commencement Date is the Meat Market Craft Centre Reserve Committee of Management Incorporated;

**“Confidential Information”** means all Information provided by one party to the other for the purposes of this Agreement which, at the time it is provided, is expressly stated to be confidential, or which, from the circumstances in which it is provided, would be assumed by a reasonable person to be intended to be confidential;

**“Deed”** means this Meat Market Arts Program Funding Deed and includes all schedules and annexures to it, and any documents or parts of documents incorporated by reference;

**“Department”** means the State of Victoria represented by Arts Victoria, a division of the Department

of Premier and Cabinet, but does not mean the Minister in the Minister's capacity as the administrator of the *Crown Land (Reserves) Act 1978*;

**"Department's Representative"** means the person so identified in Schedule 1, who is appointed by the Department to represent it for the purposes of this Deed or such other person as may subsequently be appointed by the Department and notified to the City in writing;

**"Ethical Purchasing Policy"** means the Ethical Purchasing Policy of the State supporting fair and safe workplaces, which is published on the Victorian Government Purchasing Board web site at < [www.vgpb.vic.gov.au](http://www.vgpb.vic.gov.au) >;

**"Expert"** means a person of appropriate qualifications and expertise appointed under clause D.8.2 to resolve a dispute between the parties;

**"Expert Determination"** means the resolution of a dispute among the parties in accordance with clause D.8.2;

**"Grant Monies"** means all monies provided by the Department to the City under clause A.9.1(b) for the purposes of allocation as Grants;

**"Grant"** means an allocation by the City of some part of the Grant Monies to a Grantee in accordance with Part C of this Deed;

**"Grantee"** means a person whom the City selects to receive a Grant in accordance with Part C of this Deed;

**"GST"** means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

**"Information"** means all information or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio-visual recordings;

**"Information Privacy Principles"** means the Information Privacy Principles set out in the *Information Privacy Act 2000* (Vic);

**"Intellectual Property"** includes all proprietary rights in relation to Information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**"Lease"** means the separate lease agreement between the City and the Committee referred to in Recital C;

**"Minister"** means the Minister of the Victorian Government responsible for the administration of the Premises under the *Crown Land (Reserves) Act 1978*, at the time of this Deed being the Minister for Planning;

**"Payment Cap"** means the maximum amount of monies payable to the City by the Department under this Deed for the performance of the Services, as specified in Schedule 1;

**"Performance Standards"** means the standards set out in Schedule 3;

**"Premises"** means the land, buildings and fixtures known as the Meat Market Craft Centre Reserve

situated at 42 Courtney Street, North Melbourne, Victoria, and more particularly described as Crown Allotment 21, Section 11, Parish of Jika Jika, County of Bourke;

**“Property Management Services”** means those aspects of the Services that the City is obliged to perform under this Deed that pertain to the management and care of the Premises, in particular any such obligations described in Part B;

**“Services”** means all services to be provided by the City under this Deed, including the Arts Program Administration Services and the Property Management Services;

**“Systems or Equipment”** means any systems or equipment used by or on behalf of the City for the purpose of the provision of the Services or in support of the provision of the Services and without limitation includes any heavy machinery, plant, tools, telecommunications and computing equipment;

**“State”** means the State of Victoria, and all references in the Deed to the State will be construed as references to the Crown in right of the State of Victoria;

**“Tax Invoice”** has the same meaning as in the GST Act;

**“Term”** means the period from the Commencement Date to the Completion Date or such other period as the parties may agree in writing;

**“Termination Payment”** means the payment due to the City where the Department terminates this Deed under clause D.3.1 and calculated in the manner specified in Schedule 1;

- A.1.2 A recital, schedule, annexure or a description of the parties forms part of this Deed.
- A.1.3 In this Deed, unless a contrary intention appears, words importing a gender include any other gender and words in the singular include the plural and vice versa.
- A.1.4 In this Deed, unless a contrary intention appears, a reference to:
- (a) “dollars” or “\$” is a reference to the lawful currency of Australia;
  - (b) any legislation includes any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made thereunder and includes any statutory modification, substitution or re-enactment of such legislation;
  - (c) an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
  - (d) a recital, clause, Part, schedule or annexure is a reference to a recital, clause, Part, Schedule or Annexure to or of this Deed; and
  - (e) a party to this Deed includes the executors, administrators, successors and permitted assigns of that party.
- A.1.5 Clause headings in this Deed are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- A.1.6 In this Deed if a word is defined, cognate words and phrases have corresponding definitions.
- A.1.7 If a party to this Deed consists of more than one person those persons will be jointly and severally bound under this Deed.

**A.2 – Application of Crown Land (Reserves) Act**

A.2.1 The parties acknowledge that the *Crown Land (Reserves) Act 1978* (the “Act”) applies to the Premises and each agrees:

- (a) to comply with all applicable requirements of the Act, and
- (b) not to obstruct the compliance by the other party with the requirements of the Act.

**A.3 – Relationships and authority**

A.3.1 The parties agree and acknowledge that:

A.3.1(a) Although the City must provide the Property Management Services under this Deed, the City is not responsible to the Department for the management and administration of the Premises, in respect of which it is responsible to the Committee under the Lease.

A.3.1(b). For the purposes of this Deed, the City is the agent and trustee of the Department in respect of any part of the Grant Monies in the City’s possession.

A.3.1(c) The relationship between the City and the Department established by this Deed:

- (1) does not entitle the City to any payment or compensation from the Department over and above what is provided by this Deed; and,
- (2) does not entitle either party to make any representations to any third party or to enter into any binding relationships with any third party on behalf of the other, except to the extent explicitly authorised by this Deed.

A.3.1(d) The Department and the City declare that they do not intend this Deed to establish a joint venture or partnership between them.

**A.4. - Maintenance of records**

The parties agree that:

A.4.1 The City must:

- (a) maintain full and proper records of all aspects of the Services provided including the disbursements incurred and the number of hours worked by the City’s Staff;
- (b) on request, provide copies of the records to the Department’s Representative and allow the authorised representatives of the Department to have access to and to inspect the records at all reasonable times;
- (c) maintain such records for not less than six years after the Completion Date; and
- (d) permit an accountant or auditor acting on behalf of the Department, or of the Parliament of Victoria, from time to time during ordinary business hours and upon reasonable notice, to inspect and verify such records.

A.4.2. The City, its employees, agents and sub-contractors (including each member of the City’s Staff) must give all reasonable assistance to the accountant or auditor referred to in clause A.4.1(d) as that person may require to conduct his or her inspection under that clause.

**A.5. – Auditing of records**

A.5.1 In addition to its obligations under clause A.4, the City will cause the records described in clause A.4.1(a) to be audited by the City’s auditors in the same fashion as the City’s own accounts, and will provide copies of the resulting auditors’ reports to the Department at the conclusion of each financial year during the Term.

**A.6. – Meetings**

A.6.1 The parties agree to convene regular meetings between them to discuss the performance by the City of its obligations under this Agreement and any incidental issues of significance to either of them, and that in any event such meetings will occur not less than once every six months during the Term.

A.6.2 In addition to the meetings held in accordance with clause A.6.1, either party may convene an extraordinary meeting by giving notice to the other party, for the purpose of discussing any urgent or special issue that, in the opinion of the convening party, should be dealt with by the parties as soon as possible.

A.6.3 Either party, with the consent of the other party, may invite a representative of the Committee, an expert or some other third party to attend any meeting convened under this clause 6 in order to present relevant information or opinions to the meeting.

A.6.4 The parties must keep an accurate record of all meetings held under this clause A.6, and accurate notes of all matters discussed at such meetings. Copies of these notes will be distributed to the parties after every meeting. Unless otherwise agreed, the originals of these notes will be held by the Department and will be available to the City for inspection on reasonable notice.

**A.7. – Indemnities, Guarantees and Warranties**

A.7.1 Subject to clause A.7.5, the Department hereby guarantees any indemnity provided to the City by the Committee under the Lease in respect of any claim for compensation or damages arising from any defect in the Premises existing at the Commencement Date to the extent that any such defect causes any loss or damage to any person (including any member of the City’s Staff) during the Term.

A.7.2 Subject to clause A.7.5, the Department hereby guarantees any indemnity provided to the Committee by the City under the Lease in respect of any claim for compensation or damages arising from any breach by the City of its obligations under the Lease to the extent that any such breach causes any loss or damage to any person (including any member of the City’s Staff) during the Term, except where the breach results from the negligent acts or omissions of the City (and the City’s Staff).

A.7.3 The Department hereby guarantees that it will meet any financial obligations imposed on the

Committee by the Lease.

A.7.4 Apart from the matters stated in clauses A.7.1 to A.7.3, and apart from any other indemnities or guarantees expressly stated elsewhere in this Deed, the Department and the City declare that they do not intend to provide one another with any indemnities or guarantees relation to the matters covered by this Deed, and they hereby exclude all indemnities or guarantees that might otherwise be implied into this Deed, to the extent permitted by law.

A.7.5 The City may not call upon the Department to meet its guarantee given under clause A.7.1 or clause A.7.2 unless it has consulted the Department, prior to settlement of the extent of the relevant liability, regarding any relevant discussions or negotiations that the City has with the Committee to determine that liability, and in every case the Department's guarantee will extend only so far as is reasonably required to discharge the indemnity.

**A.8. – City's Staff**

With respect to the City's Staff, for the duration of the Term, the parties agree:

- A.8.1 The City warrants that each member of the City's Staff is competent and qualified to carry out his or her or its duties connected with the performance of the Services.
- A.8.2 The City will dedicate adequate personnel and resources to perform the Services to the satisfaction of the Department, in compliance with the Performance Standards.
- A.8.3 The City is liable for the negligent acts or omissions of each member of the City's Staff.
- A.8.4 The Department does not assume any responsibility for the payment, insurance, health and safety of City's Staff, by virtue only of this Deed.
- A.8.5 The City acknowledges that it is the employer of, or has entered into some other controlling contractual relationship with, each member of the City's Staff.
- A.8.6 The City warrants that it will meet all of its legal obligations to each member of the City's Staff.
- A.8.7 The City indemnifies and will keep the Department indemnified against any obligation to make any payments to any of the City's Staff and any obligation to pay any related statutory taxes, fees, levies or charges.
- A.8.8 The City must comply with any reasonable request by the Department for verification of its compliance with its payment obligations referred to in clause A.8.7.

**A.9. – Payments and invoicing**

A.9.1 Subject to the terms and conditions of this Deed, on a quarterly basis during the Term, the Department will pay to the City monies:

- (a) on demand by the City, to fund the Property Management Services and to be expended in accordance with the Lease; and
- (b) to fund the Arts Program Administration Services,

as specified in, and in accordance with the Budget, provided that these payments will not in aggregate exceed the Payment Cap.



A.9.2 The parties will comply with the following procedure for the making and collection of each payment in respect of the Property Management Services requested and made under clause A.9.1(a):

A.9.2(a) The City will give the Department's Representative an invoice in respect of each payment, following which the Department will make the payment.

A.9.2(b) The City will provide the Department's Representative with a receipt for each payment.

A.9.2(c) An invoice provided by the City to the Department under this clause will comply with all applicable requirements of the GST Act and in any case will, unless inconsistent with the GST Act, specify:

- (1) the City's Australian Business Number;
- (2) the amount payable to the City and the basis for its calculation;
- (3) the amount of any GST paid or payable by the City included in the amount to which the document relates;
- (4) the period to which the payment refers;
- (5) the City's address; and
- (6) the Department's reference number (if any).

A.9.2(d) All invoices submitted by the City to the Department under this clause A.9.2 must be certified for payment by the Department's Representative prior to payment. No invoice will be certified for payment unless the Department's Representative is satisfied that the payment is properly claimed for in compliance with this Deed.

A.9.2(e) Subject to certification under clause 9.2(d), the Department will:

- (1) pay the amount invoiced to the City within 30 days of the receipt of the invoice; and
- (2) on demand by the City, pay simple interest on a daily basis on any overdue amount at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic). For the purposes of this clause, "overdue amount" means an amount (or part of an amount) that is not, or is no longer, disputed under this Deed and that:
  - (i) is due and owing under a Tax Invoice properly rendered by the City in accordance with this Deed; and
  - (ii) has been outstanding for more than 30 days from the date of the relevant invoice or the date that the amount ceased to be disputed, as the case may be.

A.9.2(f) The parties will comply with the following procedure for the making and collection of each payment for Arts Program Administration Services made under clause A.9.1(b):

- (1) The City will give the Department's Representative a receipt in respect of each such payment; and
- (2) The City will make a report to the Department's Representative to account for the expenditure of each such payment, in the form and manner required by this Deed.

A.9.2(g) Payment by the Department of an invoice submitted by the City or delivery to the Department of a receipt by the City is not, in itself, to be taken as:

- (1) evidence or an admission that any relevant aspect(s) of the Services have been provided or will be provided in accordance with the requirements of this Deed;
- (2) evidence of the value of any relevant aspect(s) of the Services provided or to be provided;
- (3) an admission that any relevant aspect(s) of the Services were satisfactorily performed or will be performed, or that any related expenses were or will be properly incurred;
- (4) an admission of liability of any kind; or
- (5) acceptance or approval of the City's past or future performance of any relevant aspect of the Services.

A.9.2(h) Where the City cannot justify the expenditure of all of a payment received from the Department, or does not disburse all of a payment, the City must retain any surplus part of the payment and:

- (1) apply that surplus during the following quarter of the Term, as authorised by the Department, or
- (2) where the Term expires or terminates, reimburse the surplus to the Department less any allowance for costs or expenses properly claimable by the City under this Deed, or which the parties have otherwise agreed the City may retain.

A.9.3 The City warrants that, in calculating the amount of any payment that it will claim under this Deed, it will not engage in "price exploitation" within the meaning of section 75AU of the *Trade Practices Act 1974* (Cth).

**A.10. – Payment of taxes**

A.10.1 The Department will reimburse the City for the following rates and taxes where payable by the City under the Lease:

- A.10.1(a) State land tax.
- A.10.1(b) Municipal rates and charges (including rates and charges payable to the City in its capacity as a municipal authority).

A.10.2 When claiming reimbursement under clause A.10.1, the City will provide such documentation to the Department as the Department's Representative may reasonably require.

**A.11 – Compliance with Victorian Government policies**

In performing any aspect of the Services:

- A.11.1 the City must comply, to the fullest extent possible, with the Ethical Purchasing Policy of the State. (This policy is published by the Victorian Government Purchasing Board on its website at < <http://www.vgpb.vic.gov.au> >); and
- A.11.2 the City must comply with all applicable standards and requirements imposed by the Industrial Laws, and by any Industrial Instruments made under such laws binding upon the City.

A.11.3 For the purposes of clause A.11.2:

“**Industrial Laws**” means any legislation governing the employment conditions of workers, including but not limited to the following statutes: *Federal Awards (Uniform System) Act 2003, Outworkers (Improved Protection) Act 2003, Dangerous Goods Act 1985, Equipment (Public Safety) Act 1994, Occupational Health and Safety Act 1985, Workplace Relations Act 1996 (Cth), Long Service Leave Act 1992*; and

“**Industrial Instrument**” means any agreement or award made under or permitted by any Industrial Law, including but not limited to the following: awards of the Australian Industrial Relations Commission, enterprise agreements, workplace agreements and certified agreements.

A.11.4 In addition to its obligations described in clauses A.11.1 and A.11.2, the City must comply with all of its own applicable policies and procedures to the extent that they are not in conflict with the policies, standards and requirements described in clauses A.11.1 and A.11.2.

**A.12. – Inter-relation of Services components.**

A.12.1 The parties acknowledge that the calculation of the Budget has been made on the basis that the City will perform all components of the Arts Program Administration Services and the Property Management Services at the same time. In the event that the City will no longer perform all components of the Services, the parties agree to renegotiate the amount of the monies payable to the City for any relevant component of the Budget, accordingly.

**A.13. - Intellectual Property**

**A.13.1 Warranty by City**

The City warrants that it is entitled to use any Intellectual Property that may be used by it in connection with the provision of Services.

**A.13.2 Indemnity by City**

The City indemnifies and will at all times keep the Department indemnified against any action, claim, suit or demand, including a claim, suit or demand for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party’s Intellectual Property rights in breach of clause A.13.1.

**A.13.3 Material created is Department’s Property**

The ownership of all Intellectual Property in all Information created by the City in the course of its provision of Services will vest in the Department. The City hereby assigns ownership of all Intellectual Property rights in such Information to the Department and will ensure that its employees, sub-contractors and agents execute all documents necessary to assign to the Department all such rights. To avoid any doubt, it is not intended this clause A.13.3 alter Intellectual Property rights arising from or connected to arts, community and other activities performed by or created by users of the Premises either alone or in conjunction with the City.

**A.14. - Commencement and Completion**

- A.14.1 The City will commence the Services on the Commencement Date and complete the Services by the Completion Date.
- A.14.2 The City must perform each and every one of its obligations under this Deed in a timely fashion.

**A.15. - Conflict of Interest**

- A.15.1 The City warrants that it does not hold any office or possess any property, and, subject to clause A.15.4, is not engaged in any business, trade or calling, and does not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with its duties and obligations under this Deed.
- A.15.2 During the Term, the City will immediately inform the Department of any matter that gives rise or may give rise to an actual or potential conflict of interest of the type described in clause A.15.1.
- A.15.3. Where a conflict of interest of the type described in clause A.15.1 arises, whether or not it is reported in accordance with clause A.15.2 the Department may elect to terminate the Deed under clause D.1.2.
- A.15.4 For the purposes of this clause A.15, the City will not have a conflict of interest merely by virtue of any of the following things, namely that the City:
- (a) owns or manages other premises that are in competition with the Premises in the market for venues for arts or community activities in the Melbourne area;
  - (b) makes appropriate programming decisions to locate arts or community activities at the other premises referred to in paragraph (a) above instead of at the Premises , provided that it must always first attempt to locate activities funded by a Grant at the Premises, in accordance with this Agreement;
  - (c) has pre-existing bona fide agreements with any providers of goods or services that the City extends to include the provision of goods or services for the purposes of permitting it to fulfil its obligations under this Agreement or the Lease;
  - (d) engages in any activity, or maintains any relationship not within the ambit of paragraphs (a) to (c) above that the City adequately discloses to the Department and to which the Department does not object within 28 days; or
  - (e) nothing in this clause shall be taken to fetter the exercise by the Council of its powers, duties and discretions in its capacity as a local government authority including without limitation its powers duties and discretions under the Local Government Act 1989 and as a Responsible Authority under the Planning and Environment Act 1987.

**A.16. - Provision of Services**

- A.16.1 Unless the Department and the City otherwise agree, the City's Staff will perform all aspects of the Services.
- A.16.2 Where the City's Staff are unable to perform any aspect of the Services, the City will notify the

Department's Representative immediately.

A.16.3 After giving notice in accordance with clause A.16.2, the City will, if requested by the Department's Representative, provide replacement personnel of equivalent experience and qualifications to the reasonable satisfaction of the relevant representative, at no additional cost and at the earliest opportunity, to perform the relevant aspect(s) of the Services.

**A.17. - Sub-contracting or assignment**

A.17.1 Except as provided by this clause A.17, the City must not without the prior written agreement of the Department subcontract or assign the performance of any aspect of the Services or any of the City's rights or obligations under this Deed.

A.17.2 In giving its agreement under clause A.17.1, the Department may impose such terms and conditions as it considers necessary.

A.17.3 The City may subcontract technical, building maintenance or similar components of the Services without the prior approval of the Department to the sub-contractors specified in Schedule 1. With respect to any other sub-contractors, the City will obtain the Department's approval. The Department may object to the inclusion of a sub-contractor in Schedule 1 at any time during the Term on the grounds that the sub-contractor is not reputable or not competent to perform any relevant aspect(s) of the Services.

A.17.4 The City will maintain records of any subcontracting for inspection by the Department or the Committee on request.

A.17.5 The City will ensure that any sub-contractors that it engages to perform any aspects of the Services are aware of, and comply with, all applicable performance obligations imposed by this Agreement on the City.

A.17.6 The City will be fully responsible for the performance of the Services notwithstanding that the City has sub-contracted or assigned the performance of any aspect of Services under this clause A.17.

**A.18 – Systems or Equipment**

A.18.1 The City will ensure that all Systems or Equipment employed by it in performing the Services is maintained in a safe condition and is used safely and competently by the City's Staff.

**A.19 – No extra cost to City**

A.19.1 The parties agree that:

- (a) the monies payable to the City under this Deed are intended to cover the normal costs and expenses of the City in providing every aspect of the Services, and accordingly they intend that the City will be able to perform all of the Services at no extra cost to the City;
- (b) in the event that the payments programmed in the Budget are not sufficient to cover all costs and expenses that the City incurs in performing that aspect of the Services, the Department will advance monies to the City to cover any shortfall, provided that in no case may the aggregate of all payments by the Department to the City under this Deed exceed the Payment Cap (inclusive of any GST).

- A.19.2 The parties agree that, in the event that any unexpected circumstances result in the City's costs and expenses of performing the Services increasing beyond the amount of the Payment Cap (inclusive of any GST), the Department and the City will negotiate an increase in the monies payable to the City, but that the Department is not obliged to increase its payments under this Deed beyond the limit of the Payment Cap without such further agreement.
- A.19.3 To the extent any shortfall is not covered in accordance with clause A.19.2, ("remaining shortfall") notwithstanding any other provision in this Agreement, the City may reduce any aspect of the Services as it considers necessary to cover the remaining shortfall provided that such reduction will be carried out in consultation with the Committee and the Department.
- A.19.4 In the event that the City decides to reduce any aspect of the Services in accordance with clause A.19.3:
- (a) the City will notify the Department of the City's decision within 7 days, and will also so notify the Committee if the reduction will affect the maintenance or administration of the Premises;
  - (b) following receipt of such notification from the City, the Department or the Committee (if it has been notified) may notify the City within 7 days that the Department or the City (as the case may be) objects to the reduction, on the ground that the reduction will pose a risk of harm to the Premises or to any person; and
  - (c) upon receipt by the City of the notice(s) referred to in paragraph (b) above, a dispute within the meaning of clause D.8 will arise.

## **PART B**

### **B.1 – Property Management Services**

- B.1.1 The City will provide the Property Management Services to the Committee.
- B.1.2 The parties agree that:
- (a) nothing in this Part B is intended to establish an agency relationship between the Department and the City in respect of the management of the Premises; and
  - (b) the City is responsible to the Department, in relation to the Premises, for the City's expenditure of monies that it receives from the Department under this Deed for the purposes of the Property Management Services.

### **B.2 – Interdependency**

- B.2.1 Subject to this clause B.2, this Part B of this Deed is dependent upon the Lease, and, except as provided by clause B.2.2, will terminate or expire when the Lease terminates or expires.
- B.2.2 If the termination or expiry of Part B is triggered under clause B.2.1 by the termination or expiry of the Lease, then the rest of this Deed will also terminate or expire unless the parties agree within 28 days (or such further period as agreed by the parties) that the City will continue to provide the Arts Program Administration Services, in which case the Deed (not including Part B except for any clauses specified in clause D.16.1) will continue to operate and be binding upon the parties, with any modifications that they may agree or which may be necessary.

B.2.3 Where the Lease expires, but the parties to the Lease are negotiating the making of a new lease, the parties to this Agreement may agree to continue the Agreement pending the new lease being entered into, and, when the new lease is made, this Agreement will continue in force with all references in this Agreement to the Lease being interpreted as references to the Lease and the new lease, taken together.

**B.3 – Discharge of Lease requirements**

B.3.1 The City must expend all monies paid to it for the purposes of the Property Management Services in compliance with any relevant requirements of the Lease.

**B.4 – Cost and expense of managing Premises**

B.4.1 The City will monitor the cost and expense of managing the Premises on an ongoing basis during the Term.

B.4.2 The City will report to the Department as soon as is practicable any significant variation in any aspect of the cost and expense of managing the Premises.

**B.5. – Insurances**

B.5.1 The Department will reimburse the City for the cost of any insurances in respect of the Premises that the City is obliged to obtain and maintain under the Lease. Any claims for such reimbursement will be made by the City in accordance with clause A.9.

B.5.2 The Department will provide the City with details of the insurances that it holds in respect of the Premises.

B.5.3 The City, each member of the City’s Staff, and its agents and sub-contractors must not do any thing or permit any thing to be done that would invalidate the insurances described in clause B.5.1, or any claim made or that could be made under such insurances.

**B.6. - Performance standards for Part B**

B.6.1 The City will provide the Property Management Services in accordance with the Performance Standards.

B.6.2 The City will supply the Department’s Representative with such information as to the progress or execution of any aspect of the Property Management Services as he or she may from time to time reasonably require.

B.6.3 The City will institute and diligently maintain and apply all necessary systems and methods necessary for it to:

- (a) become aware of any breach of or failure to comply with the Performance Standards;
- (b) properly assess the consequences of that breach or failure; and
- (c) take all necessary and prudent remedial action.

**B.7. – Risk management assessments**

B.7.1 During the Term, on an annual basis, the City will conduct a risk management assessment of the

condition of the Premises, to the satisfaction of the Committee.

B.7.2 A summary of each such assessment will be provided by the City to the Department.

B.7.3 The Department will include an allowance to meet the reasonable cost of such assessments in the monies payable to the City under this Deed.

**B.8. – Reporting requirements for Part B**

B.8.1 The City will report the following events to the Department, as soon as is practicable after they occur:

B.8.1(a) any failure to comply with the requirements of this Part B; and

B.8.1(b) any significant incident occurring at or in relation to the Premises that could result in a claim for loss or damages by any person, or a claim under any policy of insurance referred to in clause B.4.

**B.9. – City’s liability for breach of Part B**

B.9.1 The City will be liable for any loss or injury caused to any person (including any member of the City’s Staff) resulting from a negligent breach by the City, or any member of the City’s Staff, or by any of its agents and sub-contractors, of any obligation imposed on the City by this Part B, but will not be liable for any loss or injury to the extent that it results from the negligent act or omission of the Department, the Committee or the State.

**PART C**

**C.1 – Arts Program Administration Services**

C.1.1 As the agent of the Department (but not as its delegate), and as its trustee, the City will perform the Arts Program Administration Services as required by this Deed.

C.1.2 The City will, in accordance with the requirements of this Deed and all applicable laws:

C.1.2(a) hold the Grant Monies that it receives from the Department;

C.1.2(b) disburse the Grant Monies through the allocation of Grants to selected Grantees; and

C.1.2(c) monitor the spending of Grants by Grantees.

**C.2. – Selection of Grantees**

C.2.1 The City will select suitable Grantees according to the artistic criteria set out in Schedule 4, and with the approval of the Department will distribute to each Grantee a Grant on the conditions required by this Deed. In particular, the City will draw the Department’s attention to any Grantees whose proposed work or presentations may be of a controversial or offensive nature, having regard to prevailing community standards.

C.2.2 In its allocation and management of Grants, the City will comply with any requirements specified in Schedule 4, and the principles that the City usually applies to the allocation and management of grants for artistic purposes (to the extent that such principles are not in conflict with the provisions of



Schedule 4).

- C.2.3 The City will apply generally acceptable accounting standards, or such other standards as it agrees with the Department, in its record-keeping of Grant Monies and Grants.
- C.2.4 Grants must be allocated by the City only for activities that Grantees propose to conduct at or in association with the Premises.
- C.2.5 When selecting Grantees, the City must not promise any Grantee that it or its guests or visitors will have the use of space at the Premises, and must clearly indicate that the responsibility for allocating such space belongs to the Committee.

**C.3. – Budgeting and spending limits.**

- C.3.1 In each quarter during the Term, the City must not commit itself to paying Grants in excess of the Grant Monies that the Department has given to it, or has promised to give to it, for that quarter, in accordance with the Budget.
- C.3.2 The Grant Monies paid to the City by the Department must be fully disbursed as Grants unless the Department otherwise agrees in writing.
- C.3.3 Grant Monies must be used by the City only as permitted by this Deed.
- C.3.4 The City may request the Department to reimburse the City or pay for any extraordinary costs and expenses not anticipated by the parties at the time of making this Deed, or which arise by force of circumstances beyond the City's control, that relate to the City's performance of the Arts Program Administration Services, but the Department will not be obliged to make any payments that in aggregate (including any GST) exceed the Payment Cap.

**C.4. – Supervision of Grantees.**

- C.4.1 The City must endeavour to ensure that each Grantee:
  - (a) uses its Grant for the purposes for which the Grant is allocated; and
  - (b) does not use the Premises for any activity that is harmful or dangerous to any person.

**C.5. – Acquittal reporting by Grantees.**

- C.5.1 The City must endeavour to ensure that each Grantee properly acquits the expenditure of its Grant by completing an acquittal report in a form satisfactory to the Department and by providing such other information as the City or the Department may reasonably require.

**C.6. – Reporting by City of project outcomes.**

- C.6.1 The City will provide a report to the Department at the conclusion of each financial year during the Term and at the expiry or earlier termination of this Deed assessing the City's performance of the Arts Program Administration Services for the relevant year or lesser period, to the Department's satisfaction.

**C.7. – Utilisation of Premises by Grantees**

- C.7.1 Subject to the Lease, the City will encourage each Grantee and its Guests to utilise the Premises in an

appropriate manner in keeping with the purpose of the relevant Grant.

**C.8. – Marketing and publicity.**

- C.8.1 The City will appropriately market and publicise the availability of Grants during the Term.
- C.8.2 The Department will provide the City with all reasonable assistance that the City may require to discharge its obligations under clause C.8.1, including but not limited to the provision of advice, provided that the Department is not obliged to incur any expense in doing so.

**C.9. – Acknowledgement of Department funding**

- C.9.1 The City will ensure that Grantees acknowledge the source of their Grant as deriving from the Department, in their promotion of any relevant activities conducted by them, as a condition of each Grant, unless the Department requests the City not to impose this requirement in relation to any particular Grantees.
- C.9.2 The City will acknowledge the Department as the source of the Grant Monies in the City’s relevant publications, reports, marketing and promotional materials.

**C.10. – Performance standards for Part C**

- C.10.1 The City will perform the Arts Program Administration Services in compliance with the Performance Standards, and any reasonable directions of the Department.
- C.10.2 The City must not, in performing the Arts Program Administration Services, depart from the purpose described in Recital B.
- C.10.3 The City will institute and diligently maintain and apply all necessary systems and methods necessary for it to:
  - (a) become aware of any breach of or failure to comply with clause C.10.1;
  - (b) properly assess the consequences of that breach or failure; and
  - (c) take all necessary and prudent remedial action.

**C.11. – Reporting requirements**

- C.11.1 In addition to any other reporting obligations imposed by this Deed, the City will report to the Department regarding the progress and completion of the Arts Program Administration Services in the manner specified in Schedule 5.

**PART D**

**D.1. – Breach of Deed.**

- D.1.1 A party will be in breach of this Deed where it fails to perform any of its obligations in a material respect.
- D.1.2 A breach by the City of any of the following clauses will entitle the Department to terminate this Agreement immediately: clauses A.4, A.15, A.16, A.17, A.18, B.6.3, C.3.3, C.4, C.10.2, and C.10.3.

D.1.3 A breach by the Department of any of the following clauses will entitle the City to terminate this Agreement immediately: clause A.9.1.

**D.2. – Renegotiation and suspension of Deed.**

D.2.1 In the event that it becomes uneconomical or inconvenient for either party to continue to perform any of its obligations as provided by this Deed, either party:

D.2.1(a) may request the other party to renegotiate this Deed or the relevant Part or Parts to the Deed to such extent as may be appropriate; or

D.2.1(b) may request the other party to consent to the suspension of the performance of some or all of either party's obligations under this Deed, to such extent and on such conditions as the parties may agree.

**D.3. - Termination of Deed.**

D.3.1 Subject to this clause D.3, the Department may terminate this Deed at any time, by giving written notice to the City.

D.3.2 On receipt of a notice given under clause D.3.1, the City:

(a) will immediately cease all performance of the Services; and

(b) will take all appropriate action to mitigate any loss or prevent further or unnecessary costs being incurred by it as a consequence of the termination.

D.3.3 Subject to clause D.3.4, if the Department elects to terminate this Deed under clause D.3.1, it must pay the City the Termination Payment to cover:

(a) the reasonable fees of the City for all Services satisfactorily performed by the City prior to the termination; and

(b) all costs and expenses reasonably incurred by the City (including any ongoing financial commitments) prior to the effective date of the termination.

D.3.4 In no case will the Department's obligations under clause D.3.3:

(a) extend to the provision of any compensation for any loss of prospective profits; or

(b) result in the aggregate of all payments made by the Department to the City under this Deed (including payments for GST) exceeding the Payment Cap.

D.3.5 The City may, upon one quarter's notice to the Department, terminate this Deed at any time, and when doing so will take all appropriate action to mitigate any loss or prevent unnecessary costs to the Department resulting from the termination.

**D.4 - Scope of agreement**

D.4.1 The parties agree and declare that:

(a) this Deed constitutes the entire agreement between the Department and the City in relation to the provision of the Services, and any previous correspondence is expressly excluded;

(b) there are no extraneous agreements, representations or undertakings either express or implied that may prevent them from complying with each and every one of their obligations under this Deed; and

(c) nothing in this Deed will be interpreted as obliging the City to breach any obligation imposed

upon it by the Lease.

**D.5. – Further assurances**

D.5.1 In addition to performing each and every one of its obligations specified in this Deed, each party will do all things reasonably necessary to give full effect to this Deed and the matters contemplated by this Deed.

**D.6. - Variation of Deed**

D.6.1 The parties may agree to the variation of any clause of this Deed in writing, except for this clause D.6, provided that the purpose described in Recital B is maintained.

**D.7. – Notices and service of documents**

D.7.1 All notices and documents required to be delivered or served by either party on the other party may be delivered or served by pre-paid post, facsimile, pre-paid courier at the address of the receiving party set out in Schedule 1.

D.7.2 A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, two business days after the date of posting; and
- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory,

but if the result of the foregoing is that a notice or document would be taken to be given or made on a day which is not a normal business day in the place to which it is sent or is later than 4.00 pm (local time) then it will be taken to have been duly given or made at the commencement of business on the next normal Business Day in that place.

D.7.3 The provisions of this clause D.7 are in addition to any other mode of service permitted by law.

**D.8 -Dispute resolution**

**D.8.1 Mediation**

- (a) If any dispute in relation to this Agreement arises between the parties, either party may by notice to the other party (a “Dispute Notice”) refer the dispute to the Panel for resolution. The Dispute Notice must specify the nature of the dispute in reasonable detail.
- (b) The Panel in respect of a dispute will consist of the Department’s Representative and the City’s Representative.
- (c) Where a dispute is referred to the Panel, the Panel will meet to resolve the dispute within five Business Days of the service of the Dispute Notice in accordance with paragraph (a), and a decision of the Panel will be binding on the parties.
- (d) Where a dispute relates to the maintenance or administration of the Premises, the Panel will invite a representative of the Committee to participate in the Panel’s discussions regarding the

dispute, but the representative will not be entitled to vote on any matter.

- (e) If the Panel does not resolve the dispute within 10 Business Days of the service of the Dispute Notice, either party may refer the dispute for Expert Determination under clause D.8.2.

#### **D.8.2 Expert Determination**

- (a) Where a dispute is referred for Expert Determination under clause D.8.1(d), the Panel will appoint an Expert. If the Panel cannot agree on the appointment of the Expert within 10 Business Days of service of the Dispute Notice, one of the parties must and either of the parties may request the President of the Law Institute Victoria to appoint an Expert.
- (b) The Expert will fix a time for presentation to the Expert by the parties of their respective positions in relation to the dispute, and will inform the parties accordingly. Unless the parties otherwise agree, the presentation must be held no later than five Business Days after the Expert's appointment.
- (c) The Expert will make a determination or finding in respect of the dispute within 10 Business Days after the presentation referred to in paragraph (b).
- (d) Any determination of a dispute by an Expert may include a determination as to the award of costs, but if no such costs determination is made then the costs will be borne equally by the City and the Department.
- (e) Any determination made by an Expert will be binding on the parties.
- (f) The Expert will act as an expert and not as an arbitrator.

#### **D.8.3. Performance during dispute resolution**

The parties will continue to perform their respective obligations under this Deed pending the resolution of a dispute in accordance with this clause D.8.

#### **D.8.4. Interlocutory relief and litigation**

The parties may apply for interlocutory relief pending the resolution of a dispute under this clause D.8, but will not otherwise litigate a dispute until they have first exhausted the procedures provided by this clause D.8 in good faith.

#### **D.9. – Jurisdiction**

- D.9.1 This Deed is governed by the laws in force in the State of Victoria, and the parties expressly submit to the jurisdiction of the courts of that State and of any courts competent to hear appeals from them.

#### **D.10. - Inconsistency**

- D.10.1 Where there is a variation or inconsistency between the provisions of the Schedules or Annexures to this Deed and the provisions of the clauses of this Deed, the provisions of the clauses will prevail.

#### **D.11. - Waiver**

- D.11.1 No right or obligation of either party under this Deed will be deemed to be waived except upon written acknowledgment signed by the party to whom the obligation is owed, or the party who is waiving the

right, as the case may be.

D.11.2 A waiver by a party given under clause D.11.1 will not prejudice any of that party's rights in respect of any subsequent breach of this Deed by the other party.

D.11.3. Subject to clause D.11.1, any failure by a party to enforce any clause of this Deed, or any forbearance, delay or indulgence granted by one party to another, is not to be construed as a waiver of the first party's rights under this Deed.

**D.12. – Compliance with applicable laws**

D.12.1 In performing their obligations under this Deed, the parties must comply with the requirements of all applicable laws, regulations and by-laws.

**D.13. - Confidentiality**

D.13.1 The City consents to the Department publishing (on the Internet or otherwise) the following matters:

- (a) the name of the City and the contract value together with the conditions of this Deed generally; and
- (b) any information regarding this Deed or regarding the City that is reasonably required to be published for the Department to discharge its legal obligations to publish appropriate and comprehensive performance data relating to its purchase of the Services.

D.13.2 Apart from its rights of publication under clause D.13.1, the Department will treat as confidential all Information provided to it by the City for the purpose of this Deed or in the course of the City's performance of the Services.

D.13.3 The City must maintain the confidentiality of all Confidential Information, except to the extent that it is required by law to publish details of its contractual obligations or communicate such details to third parties.

- D.13.4 The City and each member of the City's Staff, and its agents, councillors and consultants will not disclose to any person any Confidential Information or other Information relating to the affairs of the Department that comes into its or their possession or knowledge as a result of this Deed or the performance of the Services.
- D.13.5 The City will take all necessary precautions to prevent unauthorised access to or disclosure of Confidential Information and other Information in contravention of clauses D.13.3 and D.13.4.
- D.13.6 All Confidential Information provided by either party to the other for the purposes of this Deed will remain the property of the providing party and, where possible, will be returned by the receiving party to the providing party at the completion of the Services or upon the earlier termination of this Deed, or if not returned must be destroyed and a report of the destruction furnished to the providing party.
- D.13.7 Any Confidential Information supplied by the Department to the City for the purposes of this Deed must be used only for the purposes of discharging the City's obligations under this Deed, except as may be expressly directed or permitted by the Department's Representative.
- D.13.8 The City must not divulge to any person any Information regarding the nature or progress of the Services except as directed or permitted by this Deed or the Department's Representative.
- D.13.9 The City acknowledges that the Department will be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the City of clause D.13.8, without any need to prove any special damage.
- D.13.10 The City must require each member of the City's Staff and each other person to whom it proposes to disclose any Confidential Information provided to the City by the Department to provide a personal confidentiality undertaking in a form acceptable to the Department.
- D.13.11 The parties' obligations under this clause D.13 will not extend to Information that is:
- (a) already in the public domain other than due to a breach of this Deed; or
  - (b) reasonably required in order for the Department to comply with a request made by the Auditor-General for Victoria; or
  - (c) disclosed as required by any law.

**D.14 - Privacy**

- D.14.1 The City will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the City in its performance of the Services in the same way and to the same extent as the Department would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Department.
- D.14.2 With respect to the personal information of any person that it acquires in the course of performing the Services, the City must comply strictly with any applicable requirements of the *Privacy Act 1988* (Cth).

**D.15. - Severability**

D.15.1 Any provision in this Deed that is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and where that is not possible then the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

**D.16. – Surviving obligations**

D.16.1 The obligations of the parties under clauses A.7.1, A.7.2, A.9,2(e), A.13.2, A.19.3, B.9, D.13 and D.14 will survive the expiry or earlier termination of this Deed.



EXECUTED as a Deed by the parties this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Signed by [Duly Authorised Officer] )

for and on behalf of )

the **STATE OF VICTORIA** in the ) \_\_\_\_\_

presence of: )

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

**SIGNED** for the **MELBOURNE CITY** )

**COUNCIL** by its **CHIEF EXECUTIVE** ) \_\_\_\_\_

**OFFICER** pursuant to an Instrument of )

Delegation authorised by Resolution of )

Council. )

.....

Witness:

Name:

## SCHEDULE 1

Reference schedule

### *A. Details for service of notices and documents.*

1. **Department's Representative:** Ms Gail Conman, Arts Victoria, level 6, Kavanagh Street, Southbank, Victoria 3006. Phone: 9954-5080, Fax 9686-6186.
2. **City's Representative:** Mr Morris Bellamy, Council Offices, 200 Little Collins Street, Melbourne, Victoria 3000. Phone 9658-9956; Fax 9658-8436.

### *B. Term of agreement.*

1. **Commencement Date:** 1 July 2005.
2. **Completion Date:** 30 June 2008.

### *C. Payments.*

1. **Payment Cap:** \$ 1,087,419.30 (inclusive GST and exclusive CPI)
2. **Termination Payment:** The Termination Payment to which the City will be entitled:
  - (a) will be calculated having regard to the work that it has satisfactorily completed up to the time of termination, on a pro rata basis by reference to the Budget;
  - (b) will be inclusive of any GST applicable;
  - (c) will include an allowance for all reasonable expenses necessarily incurred by the City as a result of the termination;and
  - (d) must not exceed the Payment Cap specified above.

### *D. List of pre-approved sub-contractors*

- **Spotless P & F PTY Ltd.** (ABN 83 072 293 880)  
Level 3, 350 Queen St Melb. VIC.
- **AAA Seating Australia Pty Ltd** (ABN: 76079 350 137)  
11 Endeavour St  
Warrigal VIC 3020
- **John Barnes & Co** (ACN: 004 787 311; ABN: 15 004 787 311)  
576 Elizabeth St  
Melbourne VIC 3000

**SCHEDULE 2**

Budget

CATEGORY	ACCOUNT	AMOUNT (\$)
<b>REVENUE</b>		
Hire Fees	Hires - Main Hall Rehearsal / Performance	20,000
	Hire - Conference Centre	11,000
	Hire - Rehearsal Room	5,000
	Hire - Short term creative development	6,700
	Hire - Stables	3,000
	Hire - Gallery Large	5,400
	Hire - Gallery Small	6,500
Project income	Hire - Exhibition display items	500
Rent	Rental - 3 year licence holders & leasehold, predominantly office spaces	153,700
	Rental - short term creative development spaces	3,570
		215,370
Recoveries	Recovery - Electricity	22,000
	Recovery - Water	3,000
	Recovery - Gas	900
	Recovery - External Labour	2,000
	Recovery - Photocopy Costs	3,000
		30,900
Internal Revenue	Recovery - Internal Meat Market	4,000
		4,000
<b>Total Revenue</b>		<b>250,270</b>
<b>EXPENDITURE</b>		
Wages	Labour - 3 positions	227,441
Building Maintenance	Maintenance - Minor	59,700
	Maintenance - Waste	5,100
	Maintenance - Hygiene, Pest Control Services	10,800
	Maintenance - Essential Services	24,000
	Maintenance - electronic equipment sound & lighting	6,000
	Security	10,000
	Cleaning	25,000
		368,041
Risk management	OHS & Risk Review	5,000
	BECO evacuation training	5,000
		10,000
Consultants	Promotion and Marketing	20,000
		20,000
Administrative Expenses	Training	1,000
	Document Reproduction	1,000

	General Administration	10,000
	Office software licences	1,250
	Office Equip Maint Charges/Supp	3,500
	Advertising	1,000
	Couriers	200
	Postage	4,000
		21,950
Utilities	Telephones	8,000
	Electricity	40,000
	Water	6,000
	Gas	1,800
		55,800
Supplies	Cleaning Supplies	6,000
	Catering	1,000
	Supplies - General	2,000
		9,000
Management Fee		75,000
Annual Major Cyclical Maintenance		20,000
<b>Total Operating Costs</b>		<b>579,791</b>
<b>Net Surplus(Deficit)</b>		<b>-329,521</b>

## **SCHEDULE 3**

### Performance Standards

The City will perform all duties according to the purpose and objectives of the Meat Market set out below:

#### **PURPOSE**

To develop strategic opportunities for creative development and cultural programming and provide a home for arts-related organisations in the small to medium sector.

#### **OBJECTIVES**

1. Reinvigorate the Meat Market to become a hub of artistic activity that responds to the needs of the Melbourne arts community.
2. Maintain a diverse and complementary range of long and short-term tenancies to help cultivate a 'hot house' of creative activity.
3. Develop the Meat Market as a multi-arts venue with an emphasis on the development of new work by supporting experimentation and the creative process.
4. Balance the needs of the commercial and not-for-profit art sectors to deliver a sustainable home for the development of the arts.

The following performance standards will apply:

#### ***Reporting***

- High level accuracy of reporting
- Timely delivery of reports in accordance with predetermined response times
- Ready availability of reports
- Feedback from key stakeholders gained through surveys and interviews

#### ***Usage***

- Negligible complaints from tenants and hirers
- Availability of information to potential service users (i.e. type of information, readability, availability in different locations)
- Safe, clean and comfortable work environment for staff, tenants, hirers and visitors
- Professional venue management for all service users with minimal disruption to business activities

#### ***Maintenance and risk management***

- Compliance with relevant legislation, policies and standards
- Repairs and maintenance conducted in accordance with specific site requirements
- Provision of timely and accurate strategic infrastructure advice particularly associated with risk management
- Timely response times to repairs, routine and emergency breakdowns
- Maintain high standard of condition of grounds, buildings, systems and plant equipment

The following Key Performance Indicators will apply:

#### ***Usage***

- Occupancy rate of leased and licensed areas:  
90% (2005-2006); 95% (2006-2007); 98% (2007-2008)
- Occupancy rate of programmed spaces:  
60% (2005-2006); 70% (2006-2007); 80% (2007-2008)

- Hires to not-for-profit, commercial arts, commercial (%)
- Tenancies let to not-for-profit, commercial arts, commercial (%)
- Average turnaround time between tenancy lets (days)
- Number of new tenancies created
- Number of tenancies terminated

***Maintenance and risk management***

- \$ spent on day-to-day maintenance versus:
  - programmed maintenance (%)
  - major capital works (%)
- Programmed maintenance performed on time (%)
- Essential services maintenance performed on time (%)
- Number of risk related incidents reported

The Committee reserves the right to modify the Key Performance Indicators from time to time.

## SCHEDULE 4

### Artistic Criteria – “Creative Development Grant Criteria” [clause C.2]

This schedule outlines the criteria to be met by creative development grant applicants.

#### *Eligibility*

Applicants for creative development grants must meet the following criteria in order to be eligible:

- Individual professional artists (emerging and more established) living and working in Victoria with a minimum of two years of professional practice, excluding academic training (applicants undertaking post-graduate study must demonstrate that the proposed work will not be used for the purposes of academic assessment).
- Recognised and appropriate professional arts ensembles and organisations based in Victoria.

A professional artist, in this context:

- has specialist training in their field (not necessarily in academic institutions)
- is recognised by their peers (professional practitioners working in the art form area)
- is committed to devoting significant time to the artistic activity
- has a history of public presentation

#### *Assessment criteria*

Applications for creative development funds will be competitively assessed and prioritised according to each of the following criteria:

- **Artistic merit** - a strong artistic concept that challenges, develops or adds value to contemporary arts practice.
- **Practice development** - opportunity for artists to realise career or artform advancements in their chosen area of creative endeavour.
- **Project management** - a level of project management commensurate with the size and purpose of the project.
- **Innovation** – the potential for innovation in the content and development of the work, adding to the quality and diversity of arts practice in Victoria.
- **Public outcome** - the potential to identify and reach an appropriate audience for the project, commensurate with the level of funding sought.
- **Public presentation** - applications may be for one or more stages in the creative development. Priority will be given to creative development projects with the potential for public presentation
- **Suitability** – All applications must be consistent with the purpose and objectives of the Meat Market facility.

**SCHEDULE 5**  
Reporting Requirements  
[Clause C.11]

The City is required to submit:

**Half Year Report**

This is to be submitted within 30 days of the end of the relevant six month period and will include:

- statement of income and expenditure against budget to date;
- details of any annual budget revisions, including explanations of any amendments;
- a summary of activity to date and major management and financial changes;
- usage statistics, to be broken down per quarter and year-to-date;
- confirmed program details for the remainder of the period of the agreement;
- a report against the Department's Performance Standards. These standards represent the Department's minimum performance expectations. Documentation is required explaining the circumstances under which any of these performance levels are not met. The report should include a statement of ongoing ability to meet these standards.

**End-of-Financial Year Report**

This report of the previous year's activities is to be submitted within 60 days of the end of the relevant 12 month period. In addition to the information contained in the Half Year Report, the End-of-Financial Year Report will include:

- FINANCIAL REPORT on the financial management for the preceding year, certified by the City's representative and audited by an independent qualified accountant. The report will include an audited statement of income and expenditure.
- PROGRAMMING & MARKETING REPORT evaluating the City's performance in achieving the Meat Market's stated objectives. The report will be of sufficient detail to indicate to the Department the following matters:
  - Quantitative analysis of the actual programming undertaken, including an assessment of the successes and failures;
  - A financial assessment of the programming undertaken, incorporating cost savings/overruns and intended investment for the next financial year;
  - A trend analysis of the type of arts professionals utilising the building;
  - A report on the marketing activity undertaken for the preceding year.
- TENANCY REPORT providing details of any tenancy changes (and the reason for these changes) in the preceding year. It will also include any significant issues regarding tenancy matters in the relevant year. The tenancy report will contain a supporting statement that explains how current tenancy make-up conforms to the specified tenancy mix.



- **MANAGEMENT REPORT** detailing the corporate governance and corporate decision-making processes. The report should cover, in particular:
  - Management and staffing structure;
  - Management systems, and strategic planning and review processes;
  - Key decision-making processes and personnel.
- **MAINTENANCE REPORT** evaluating the City's performance against the criteria specified in the Meat Market Maintenance Repairs and Works Guidelines.

**FINANCE ATTACHMENT**

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**THE MEAT MARKET – A NEW LEASE ON LIFE**

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The Meat Market is cost neutral to Council.

**Joe Groher**  
Manager Financial Services

## LEGAL ATTACHMENT

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### THE MEAT MARKET – A NEW LEASE ON LIFE

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Legal advice has been provided on the project and the structure to implement the project in accord with the *Crown Land (Reserves) Act 1978* including the proposed lease and funding agreement. The report accurately describes the relevant legal issues.

**Alison Lyon**  
Manager Legal & Governance