



Mansfield Shire

LICENCE

Council:
Mansfield Shire Council (“Council”)

Lessee:
NUTRIEN AG SOLUTIONS (“the Lessee”)

Licensed Area:
Mansfield Trans Shipment Yards
Lakins Road, Mansfield Victoria

Our Ref: AG1423

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Item 1	Council	Mansfield Shire Council of 33 Highett Street, Mansfield, Victoria 3722.
Item 2	Lessee	Nutrien AG ACN 009 481 752 of 137 Fitzgerald Road, Laverton North, VIC, 3026
Item 3	Land	The area shown as shaded on the plan attached to this Licence as Annexure B being part of the land contained in Certificate of Title Volume 9022 Folio 665 and known as Trans Shipment Yards, Lakins Road, Mansfield, VIC, 3722
Item 4	Commencement Date	1 January 2024
Item 5	Expiry Date	31 December 2029
Item 6	Term	5 years
Item 7	Further Term	One (1) further term of five (5) years
Item 8	Rent	\$1375.00 per annum plus GST paid annually on 1 January, adjusted by the CPI in accordance with clause 5
Item 10	CPI Adjustment Dates	The License Fee will be increased each year by the Australian Bureau of Statistics' All groups CPI, index for Melbourne. This index currently resides at: https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia The market value assessment will occur on a five-year cycle.
Item 11	Permitted Use	Handling, transfer, yarding and transport of livestock

The Council Licences the Premises to the Tenant subject to the terms contained in this Licence.

The Licence is executed as a deed on the first day of January 2024

Signed under delegation on behalf of **Mansfield Shire Council** by:

.....
Chief Executive Officer
Kirsten Alexander

In the presence of

.....
Signature of witness

.....
Full name of witness

Signed by
Nutrien AG Solutions:

.....
Chief Executive Officer

1. Definitions

In this Licence unless expressed or implied to the contrary:

Act means the *Retail Licences Act 2003 (Vic)*

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

Building Regulations means the *Building Regulations 2006 (Vic)*

Commencement Date means the date specified in Item 4.

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

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

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

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

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

CPI means the Consumer Price Index – All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as Council reasonably determines.

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

Current CPI means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date

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

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

Expiry Date means the date specified in Item 5.

Further Term means the further term(s) specified in Item 7.

Hazardous Materials includes all hazardous substances and any pollutant or contaminant defined as such in (or for the purpose of) any Environmental Protection Legislation.

Insolvency Event means:

- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.

- (b) In the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisations;
 - (ii) is wound up or dissolve or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth)

Item means an item in the Licence Particulars.

Land means the land specified in Item 3.

Licence means this Licence and includes all annexures and schedules.

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

Lessee means the Lessee specified in Item 2 and includes the Lessee's successors and assigns and where it is consistent with the context includes the Lessee's employees, agents, invitees and persons the Lessee allows on the Licenced Area.

Local Government Act means the *Local Government Act 2020* (Vic)

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

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulations or by-law that applies to work being carried out on the Premises.

OHS Regulations means the *Occupational Health and Safety Regulations 2007* (Vic)

Operational Procedure Manual means the Mansfield Trans-shipment Yards Operational Procedures Manual dated September 2013, a copy of which has been provided to the Lessee.

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

Permitted Use means the use specified in Item 11.

Premises means the premises specified in Item 3 and includes Council's Fixtures

Previous CPI means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later)

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations

Rates and Taxes means the rates, taxes, charges and levies specified in clause 7.1.

Rent means the amount specified in Item 8 as reviewed, adjusted or increased under this Licence.

Schedule means the Schedule at the front of this Licence.

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

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

Tenant's Property means all property on the Land including all fixtures and fittings owned or Licenced by the Tenant but excluding the Council's fixtures.

Term means the term specified in Item 6.

Further Term means the term specified in Item 7.

Year means each year of this Licence specified in Item 7 (the first year commencing on the Commencement Date)

2. Local Government Act 2020

This Licence is entered into pursuant to section 190 of the *Local Government Act*.

3. Duration of the Licence

3.1 Term

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

3.2 Option of a Further Term

If a Further Term is specified in Item 7, Council will grant to the Tenant a new Licence for the Further Term if the Tenant:

- 3.2.1 gives Council written notice asking for a new Licence, not earlier than 18 months or later than 12 months, before the end of the;
- 3.2.2 has remedied any breach of this Licence of which the Tenant has received written notice for Council;
- 3.2.3 has not persistently defaulted under the Licence and Council has given written notice of the defaults; and
- 3.2.4 complies with all reasonable requirements of Council including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by Council to execute the guarantee contained in this Licence.

The new Licence for the Further Term will commence on the day after this Licence ends and contain the same terms and conditions as this Licence but with no option for a further term where the last option for the Further Term has been exercised. The Rent or the method to be used to review, adjust or increase the Rent during the Further Term is specified in clause 7.

3.3 Execution of new Licence for Further Term

The Tenant (where applicable) must:

- 3.3.1 execute the new Licence for the Further Term; and
- 3.3.2 sign any disclosure statement provided by Council to the Tenant

and return the above to Council within 14 days of receipt from Council.

3.4 Holding Over

If the Tenant continues to occupy the Premises after the Expiry Date with Council's consent, except under a Licence arising from the valid exercise of an option to renew, the following provisions will apply:

- 3.4.1 the Tenant will occupy the Premises as an annual tenant at a total rental payable annually in advance of the Rent and any other money payable by the Tenant to Council under this Licence as at Expiry Date;
- 3.4.2 as far as applicable, the tenancy will otherwise continue on the terms and conditions of this Licence;
- 3.4.3 the Rent or any part of it for the tenancy may be reviewed whenever Council determines it appropriate and any provisions in this Licence relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply;
- 3.4.4 either party may terminate the tenancy by giving to the other one month's notice to the other party expiring on any date; and
- 3.4.5 if the Tenant defaults in the performance of its obligations under the tenancy. Council may terminate the monthly tenancy by giving the Tenant 24 hour's notice.

4. Payments by the Lessee

4.1 Payment of Licence Fee

The Lessee must pay the Licence Fee to Council in the manner specified in Item 8.

4.2 Costs and duty

The Lessee must pay to Council within 7 days of demand:

- 4.2.1 Council's reasonable costs in giving any consent or approval under this Licence; and
- 4.2.2 Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Lessee.

4.3 Interest on late payments

The Lessee must pay to Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Lessee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due.

4.4 No deduction or right of set-off

The Lessee must pay all amounts due under this Licence to Council without deduction or right of set-off.

5. CPI Adjustment of Licence Fee

5.1 Calculation of Adjustment

If a CPI Adjustment Date is specified in Item 10, the Licence Fee from the commencement of the relevant Year will be adjusted up or down to match Current CPI Payment of adjusted Licence Fee.

5.2 Payment of Adjusted Rent

On the next due date of the Payment of the Rent, after the Tenant received notice of the adjusted Rent from Council, Council and the Tenant must make any necessary adjustment to apply on and from the CPI Adjustment Date, including payment of interest calculated in accordance with clause 9.2 on any money owing by either party calculated from the CPI Adjustment Date.

6. Operations

6.1 Lessee's obligations

6.1.1 The Lessee must comply with the 'Agents' obligations as set out in the Operational Procedures Manual.

6.1.2 Despite anything in the Operational Procedure Manual, the Lessee must keep the Licenced Area in the same condition as it was in as at the Commencement Date (fair wear and tear excepted)

6.2 Alterations and works.

The Lessee must not carry out any alterations or works on the Licence Area without the prior written consent of Council, such consent to be given or withheld at Council's absolute discretion. and subject to any conditions Council may require.

6.3 Notice of damage

The Lessee must give Council prompt written notice of any damage to the Licenced Area or anything. Likely to be a risk to the Licenced Area or any person in the Licenced Area.

7. GST

7.1 Definitions

In this clause:

- 7.1.1 words and expressions that are not defined in this Licence but which have a defined meaning in the GST Law have the same meaning as in the GST Law and includes penalties and interest. If under or in relation to the *National Tax Reform (Consequential Provisions) Act 2000 (Vic)* or a direction under section 5 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments, and expressions containing the term 'GST' have a corresponding expanded meaning; and
- 7.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other related legislation; and
- 7.1.3 words that are defined in the GST Law have the same meaning as their definition in the GST Law.

7.2 GST overholding

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

7.3 Increase in Consideration

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

7.4 Payment of GST

Subject to clause 8.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Licence.

7.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 8.4.

7.6 Reimbursements

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

- 7.6.1 the amount of the expense or outgoing less any input tax credits in respect of the

expense or outgoing to which the other party is entitled; and

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

7.7 Adjustment Events

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

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

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

8. Security Bond

Not applicable

9. Payment Requirements

9.1 No Deduction or Right of Set-off

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

9.2 Interest on Late Payments

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

9.3 Payment after Termination

The Tenant must:

9.3.1 make all payments due under this Licence; and

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

9.4 Method of Payment

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

10. Repairs, Refurbishment and Alterations

10.1 Repairs and Maintenance

The Tenant must:

- 10.1.1 keep the Land and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed.
- 10.1.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted)
- 10.1.3 pay the costs (if any) for the removal of waste from the Premises;
- 10.1.4 make good any damage caused to any adjacent property by the Tenant; and
- 10.1.5 give the Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person on the Premises.

10.2 Equipment in Premises

The Tenant must if applicable

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

10.3 Alterations to Premises

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

- 10.3.1 strictly in accordance with plans and specifications approved by the Council:
- 10.3.2 by qualified tradespersons approved by the Council:
- 10.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements (including the Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property): and
- 10.3.4 under the supervision of Council's architects or consultant (the cost of which must be paid by the Tenant to Council within 14 days of demand); and
- 10.3.5 in accordance with all rules and requirements of any authorities having jurisdiction

over the Premises.

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

10.4 Occupational Health and Safety

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

10.4.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;

10.4.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which OHS Law applies;

10.4.3 the Tenant must carry out such works in accordance with the requirements of the OHS Law; and

10.4.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 11.4.2.

10.5 Not interfere with services.

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

10.6 Defacing Premises

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by Council in accordance with clause 11.2.

10.7 Failure to Repair and Maintain

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

11. Insurance

11.1 Public Liability and Glass Insurance

11.1.1 The Tenant must maintain insurance with an insurer approved by Council for:

- (a) public liability for an amount of not less than \$20,000,000 in respect of any single occurrence; and

(b) any windows and any other glass in the Premises for the full replacement value.

11.1.2 The Tenant must ensure that the policies effected under the clause 12.1.1 contain a cross-liability clause extending the policy so that the words ‘the insured’ are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured.

11.1.3 For so long as the Tenant, Nutrien AG Solutions, the Tenant’s obligation to maintain public liability and other insurances under this Licence will be satisfied if the Tenant is covered by the insurance scheme maintained by Victorian Managed Insurance Authority.

11.2 Tenant’s Property

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

11.3 Condition in Policy

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

11.4 Payment and Production of Policies

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

11.5 Not Invalidate Policies

The Tenant must:

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

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

11.6 Requirements by Insurer

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

12. ReLicence, Indemnity, Compensation and Liability

12.1 ReLicence

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

12.2 Indemnity

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

12.3 No Compensation

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

12.3.1 any damage to the Premises

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

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

12.3.4 the overflow or leakage of water in the Premises,

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

12.4 No Liability

The Tenant acknowledges and agrees that:

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

12.4.2 Council will not be liable to the Tenant under this Licence (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Licence) for any acts or omissions of the Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 13.4.1,

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

13. Use of Premises

13.1 Permitted Use

13.1.1 The Tenant must use the Premises for the Permitted Use and not use the Premises for any other purpose as specified in Item 11

13.1.2 Without limiting clause 13.1.1, the Lessee acknowledges and agrees that:

- (a) the Licenced Area; or
 - (b) any Council owned land in the vicinity of the Licenced Area,
- must not be used for the sale or auctioning of livestock.

13.2 No Warranty

The Tenant:

13.2.1 acknowledges that the Council does not represent that the Premises is suitable for the Permitted Use; and

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

13.3 Illegal Purpose

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

14. Grant of Licence

The Lessee agrees with Council that:

14.1 the Lessee is not entitled to exclusive occupation of the Licenced Area;

14.2 Council may use, or permit other parties to use, the Licenced Area;

14.3 this Licence does not create any estate or interest in the Licenced Area, other than contractual right;

14.4 this Licence does not constitute a Licence of law and the Lessee will not claim before a court or Tribunal that this Licence constitutes a Licence at law; and

14.5 in the event that court or tribunal determines that this Licence is a Licence at law, Council may, At its option, terminate this Licence by written notice to the Lessee.

15. Other Obligations Concerning the Premises

15.1 Compliance with Laws

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

15.1.1 the negligent act or omission of the Tenant;

15.1.2 the failure by the Tenant to comply with its obligations under this Licence; or

15.1.3 the Tenant's use of the Premises.

15.2 Licences and Permits

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

15.3 Nuisance

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

15.3.1 cause a nuisance or interfere with any persons; or

15.3.2 be dangerous or offensive in Council's reasonable opinion.

15.4 Security

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant and must not cut additional keys or install any security system without the prior written consent of Council.

15.5 Signs

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

15.6 Heavy Objects/Equipment and Inflammable Substances

The Tenant must not:

15.6.1 store any inflammable or explosive substances in the Premises unless required for the Permitted Use; or

15.6.2 store any heavy objects in the Premises or anything likely to damage the Premises.

15.6.3 the Lessee must obtain Council's prior written consent before bringing any heavy equipment into the Licenced Area except to the extent to which it is consistent with the use of the Licenced Area.

15.7 Endanger Premises

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

15.8 Tenant's Employees

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

15.9 Tax Exempt

The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997*.

15.10 Tenant Reporting Obligations

The Tenant must give Council:

15.10.1 within 120 days of the end of each financial year, an audited financial report, including a statement of assets and liabilities and profit and loss statement for the Tenant for the financial year, including for the Tenant's Long Day Care business unit; and

15.10.2 within 14 days of the Tenant's annual general meeting, a written report detailing:

- (a) The activities conducted by the Tenant during the preceding year and, where applicable, a list of the groups which have used the Premises; and
- (b) The office bearers appointed to the Tenant.

15.11 Determination, Warranty and Obligations

15.11.1 the Tenant acknowledges that the Council has entered into this Licence on the basisthat:

- (a) The Tenant is a body corporate that exists for the purposes of providing or promoting community or similar facilities or objectives that applies its profits in promoting its objects and prohibits payment of any dividend or amount to its members; and
- (b) Accordingly, pursuant to the Determination, the Act does not apply to this Licence.

16. Tenant's environmental obligations

16.1 Comply with Environmental Protection Legislation

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

16.2 Not permit Contamination

The Tenant must not spill or deposit or carry out any activities on the Premises which may cause any Contamination or permit any Contamination to escape in any other way into or on the Premises or a breach of this clause by the Tenant.

16.3 Notify of and clean up Contamination

If any Contamination is found in or near the Licenced Area, or the existing Contamination is Exacerbated during the Term, the Lessee must:

- 16.3.1 immediately notify Council, the Environmental Protection Authority and any other appropriate Authority;
- 16.3.2 clean up the Contamination and do everything necessary to minimise harm; and
- 16.3.3 promptly comply with any notice, order, direction or requirement of Council and of any Authority in relation to any such Contamination.

16.4 Indemnity Council

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

16.5 Obtain Reports, Surveys or Audits

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

17. Dealing with Interest in the Premises

17.1 No Parting with Possession

The Tenant must not give up possession of the Premises including this Licence, sub-Licence the Premises or granting to any person a Licence or concession in respect of the Premises, subject to clause 17.2.

17.2 Conditions of Assignment

Council will not unreasonably withhold its consent to an assignment of this Licence if the Tenant:

- 17.2.1 requests Council in writing to consent to the assignment of the Licence to a new tenant which is an entity which is registered on the Australian Charities and Not-for-profits Commission Register;
- 17.2.2 has remedied any breach of this Licence of which the Tenant has received written notice from Council;
- 17.2.3 provides to Council the name and address of the new tenant and proves to Council's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Licence by providing at least 2 references as to the financial circumstance of the new tenant and at least 2 references as to the business experience of the new tenant;
- 17.2.4 executes and procures the new tenant to execute an assignment of Licence which must include a condition by which the Tenant releases Council from any claims arising under or in connection with the Licence and otherwise in a form approved by Council;
- 17.2.5 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by Council, to execute a guarantee and indemnity in a form required by Council;
- 17.2.6 pays Council's reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and
- 17.2.7 where the Act applies to this Licence, provides the new tenant with a copy of the disclosure statement as required by section 61(3) of the Act.

17.3 No Assignment if Act to Apply

Despite anything to the contrary in this Licence, if the Act does not apply to this Licence and an assignment of this Licence would result in the Act applying to this Licence (either during the Term or as a result of the grant of a Licence for the Further Term), Council may grant or withhold its consent to an assignment of this Licence at its absolute discretion or impose any conditions it considers reasonable on an assignment.

17.4 Change in Shareholding

If the Tenant is a corporation (other than a corporation listed to any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Licence.

17.5 Mortgage of Licence

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

18. Tenant's obligation at the end of this Licence

18.1 Tenant's obligations

At the end of this Licence, the Tenant must:

- 18.1.1 vacate the Premises and give them back to Council in a condition consistent with the Tenant having complied with its obligations under the Licence;
- 18.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Property including making good any damages caused by the removal of the Tenant's Property; and
- 18.1.3 give to Council all keys and other security devices for the purposes of obtaining access to the Premises.

18.2 Tenant's Property Left in Premises

Anything left in the Licenced Area after 14 days of the end of this Licence will be deemed to be abandoned by the Tenants and will become the property of Council and may be removed by Council at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 18.2 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*

19. Council's Right and Obligations

19.1 Quiet Enjoyment

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

19.2 Alterations to the Improvements

- 19.2.1 Tenant shall not make any alterations, additions, or improvements to the premises or any part thereof without obtaining the prior written consent of the Council. Any requested alterations, additions, or improvements shall be submitted to the Council in writing, detailing the nature and scope of the proposed changes.
- 19.2.2 If the Council grants consent for the requested alterations, additions, or improvements, such work shall be performed by qualified professionals, Licenced

contractors, or individuals approved by the Council. The Tenant shall bear all costs associated with the alterations, including design fees, construction costs, and any required permits or approvals.

- 19.2.3 Upon completion of the alterations, additions, or improvements, the Tenant shall the Council with a written record of the work performed, including any relevant warranties or guarantees. The Tenant shall be responsible for maintaining and repairing any alterations, additions, or improvements made to the premises throughout the term of this Licence.
- 19.2.4 The Tenant shall not make any structural alterations to the premises without the express written consent of the Council. Non-structural alterations that do not impact the integrity or safety of the premises may be made by the Tenant with the Council's prior written approval, provided that such alterations comply with all applicable laws, regulations, and building codes.
- 19.2.5 All alterations, additions, or improvements made by the Tenant shall become the property of the Council and shall remain on the premises at the expiration or termination of this Licence. The Tenant shall not be entitled to any compensation or reimbursement for the value of such alterations, additions, or improvements.
- 19.2.6 The Tenant shall promptly remove any alterations, additions, or improvements upon the Council's request, or upon the expiration or termination of this Licence, unless otherwise agreed in writing by the Landlord.
- 19.2.7 The Tenant shall be liable for any damage caused by the alterations, additions, or improvements and shall be responsible for restoring the premises to its original condition, reasonable wear and tear excepted.
- 19.2.8 This clause shall be binding upon the Tenant and its successors, assigns, and representatives, and shall survive the expiration or termination of this Licence.

19.3 Entry by Council

Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice of at least 3 business days to:

- 19.3.1 inspect the condition of the Premises;
- 19.3.2 rectify any default by the Tenant under this Licence;
- 19.3.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises, including energy and water use; or
- 19.3.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which Council decides to or it required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible

to the Tenant's use of the premises in exercising Council's rights under this clause.

19.4 Emergency Entry

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

19.5 Council's Consent

Unless otherwise provided for in this Licence, where Council is required to give its consent under this Licence, Council must not unreasonably withhold its consent, but may give its consent subject to such conditions as may reasonably determine.

20. Termination of Licence

20.1 Re-entry

Council may enter the Premises and terminate this Licence if:

20.1.1 If any portion of the Rent remains unpaid for a period of 14 days or is in arrears; or

20.1.2 an Insolvency Event occurs in relation to the Tenant; or

20.1.3 the Tenant breaches this Licence and does not remedy the breach within 14 days of receipt of written notice from Council.

20.2 Damages Following Determination

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

20.3 Essential Terms

The essential terms of this Licence are clauses 4, 6.1, 7.1, 7.2, 8, 11.1, 11.2, 11.3, 12, 14.1, 14.3, 15, 16, 17 and 18. The breach of an essential term is a repudiation of this Licence.

20.4 No Deemed Termination

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

21. Destruction or damage of Premises

21.1 Reduction in Rent

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

21.2 Reinstatement of Premises

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

21.2.1 terminating this Licence, where Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or

21.2.2 that Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.
Council does not have to reinstate the Premises.

21.3 Tenant's Right of Termination

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

21.3.1 give notice to the Tenant pursuant to clause 21.2; or

21.3.2 commence reinstatement within 12 months of the date of damage or destruction.
Upon termination of this Licence, each party is relicenced from all further obligations under this Licence except nothing in this clause relicences either party from any breach of this Licence arising prior to the date of termination.

21.4 Dispute Resolution

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

21.5 No Compensation

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

22. General

22.1 Notices

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

22.1.1 The Tenant at its address set out in this Licence, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and

22.1.2 Council at its address set out in this Licence or any other address notified in writing to the Tenant by Council.

22.2 Time of Service

A notice or other communication is deemed served:

22.2.1 if served personally or left at the person's address, upon service;

22.2.2 if posted, 2 business days after posted;

22.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and

22.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

22.3 Entire Understanding

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

22.4 Waiver

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

22.5 Special Conditions

If this Licence is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Licence.

23. Interpretation

23.1 Governing Law and Jurisdiction

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

23.2 Persons

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

23.3 Joint and Several

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

23.4 Legislation

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

23.5 Clauses and Headings

In this Licence:

23.5.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Licence; and

23.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

23.6 Severance

In this Licence:

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

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

23.7 Number and Gender

In this Licence, a reference to:

23.7.1 the singular includes the plural and vice versa; and

23.7.2 a gender includes the other genders.

23.8 No Relationship

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

23.9 Exclusion of Statutory Provisions

The following statutory provisions are excluded from this Licence:

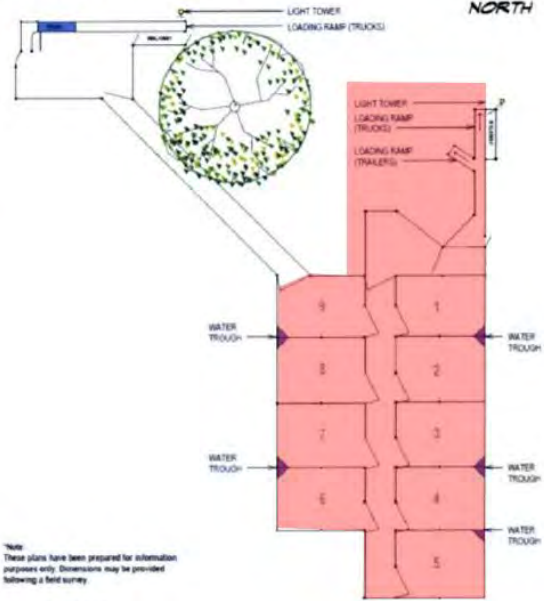
23.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

23.9.2 Division 7 of the *Transfer of Land Act 1958* (Vic).

Annexure A

Plan of Premises

MANSFIELD SHIRE TRANS SHIPMENT YARDS



MANSFIELD CONSULTING SERVICES
 21/4, CHURCHMAN AND BURGESS STREETS
 MELBOURNE, VIC 3000
 PHONE: (03) 9779 1111
 EMAIL: info@mcsls.com.au

Rev	Description	Date
1	Rev 1 - For information	7/08/2013

Client: MANSFIELD SHIRE COUNCIL
 Project: MANSFIELD SHIRE TRANS SHIPMENT YARDS

SITE PLAN

Project number	MCSL08113
Date	07/08/2013
Drawn by	GPT
Checked by	GPT

Scale: As indicated @A3