



Request for Proposal Guidelines – Maryborough Airport Lease (RLP2024/25-001)

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1. INTRODUCTION

In line with Fraser Coast Regional Council's commitment to empowering local community groups and building better communities together, these guidelines outline the process for community organisations to express their interest in leasing Council-owned spaces.

The Fraser Coast Regional Council is fortunate to have many proactive organisations involved in providing programs and services that aim to support and respond to the needs of our diverse and growing community. Fraser Coast Regional Council regularly receive requests from such organisations for assistance in their pursuit of community, sporting and recreation facilities.

To ensure fairness and transparency in allocating these facilities, the Fraser Coast Regional Council applies a Request for Proposal process for identified facilities as they become available. Through this process, Council can invite, identify, and appoint suitable lessees for each of these facilities.

1.1 Council Policy

In accordance with Council's policy for Land/Lease Assistance for Not For Profit Incorporated Community Groups, Council resolved to undertake a Request for Proposal as follows:

Approval Date: 24 April 2024

Property: Maryborough Airport vacant land

Address: Frank Lawrence Circuit MARYBOROUGH QLD 4650

Council is looking to attract applications from suitable organisations interested to lease part of the property at Maryborough Airport.

1.1.1 Lodging Your Application

Applications close at 5:00pm Monday 30th September 2024.

Applications must be lodged through the SmartyGrants submission software via the Council website.

1.1.2 Late Applications

Late applications may be considered at the discretion of Council.

2. KEY OUTCOMES

It is envisaged that the successful organisations will develop and coordinate a range of services, programs, activities or events that are flexible, inclusive and create and sustain local networks.

The successful organisation will be responsible for:

- managing the facility, maximising its potential as a community facility

- coordinating programs, responding to identified and emergent needs within the local community
- promoting community engagement and connectedness

The successful organisation will be required to work with Council to:

- meet requirements of the tenure agreements
- work in partnership with Council to ensure the upkeep and the proposed facility improvements
- establish and strengthen networks and connections within the Fraser Coast community

3. BUILDING/LAND

3.1 Property Information

Facility Name:	Maryborough Airport (vacant land parcel)
Address:	Frank Lawrence Circuit MARYBOROUGH QLD 4650
Size of proposed lease area:	Part of 4300m ²
RPD:	Part of Lot 1 SP268957
Ownership:	Fraser Coast Regional Council
Zone:	Community Facilities 2 Government Purposes & Public Utilities



Note: land identified in red

It is Councils preference that this site is utilised by multiple community organisations on this parcel of land. Potential configurations include:

- 4 or more individual buildings.
- 2 individual buildings and a single building occupied by multiple groups.
- 2 buildings, both occupied by multiple groups.

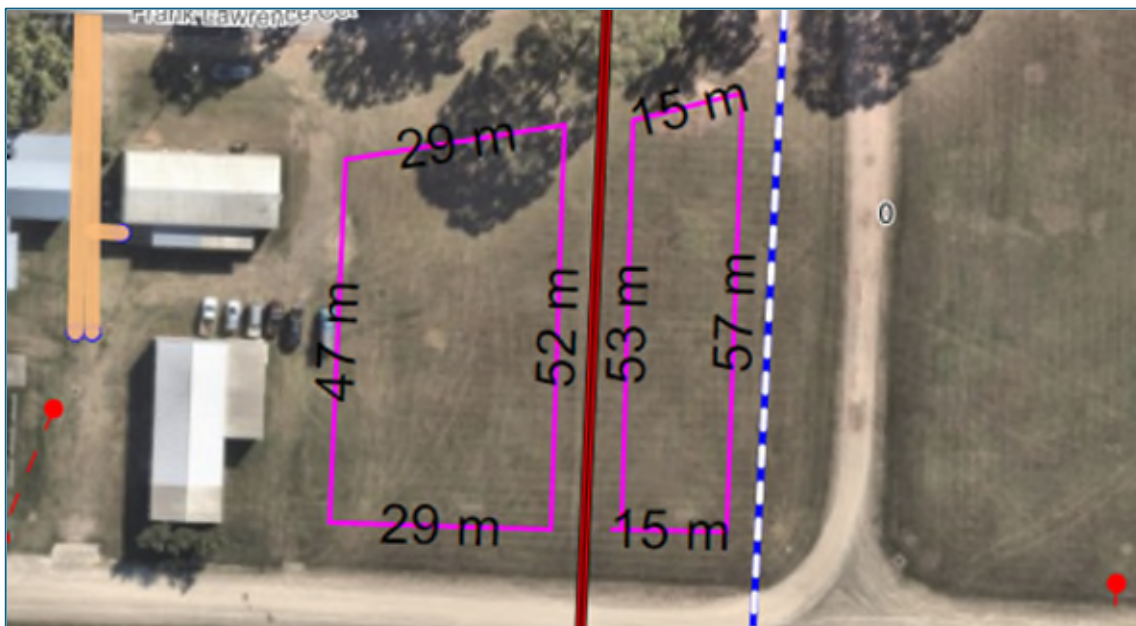
3.2 Facility/Utilities/Services

The property currently comprises of no facility improvements.

Community groups will be required to fund and complete approved building works in accordance with Council's "Community Leases Standard Terms Document (Lease Memorandum)" contained within the lease documents attached.

The site is surrounded by water, sewerage and electricity infrastructure however the feasibility of connecting building facilities is unknown. Council is committed to supporting the occupation of this land therefore there may be consideration for Council to cover significant utility connection works to the site.

The following gives an indication of the available infrastructure and potential building envelopes. Note that these services have not been formally surveyed and should be taken as a guide only. Further identification will be required by Council to determine the suitability of proposals.



Key

Purple line	Land available for buildings
Red solid line	Trunk Sewerage – unable to be built over or connected into
Blue and white dot line	Conduit – unable to be built over or connected into
Red dotted line	Domestic sewer
Red dot	Sewer manhole
Fawn line	Domestic water connection

3.3 Neighbouring Facilities

- Doon Villa Football Club
- Lions Club of Maryborough

- Maryborough Airport
- Maryborough Aero Club
- Maryborough Childcare Centre
- Maryborough Gem and Mineral Society
- Maryborough Military Aviation Museum
- Maryborough Skindivers
- Maryborough Caledonian Society
- Maryborough Brass

3.4 Facility Viewing Times

Questions can be asked at any time during the process to assist the groups in filling out the application form. Council officers will also be present onsite to answer any further questions in person should the group prefer this method.

Date: Thursday, 15th August 2024

Time: 12:00pm – 1:00pm

4. LEASE CONDITIONS

4.1 Lease Tenure

The successful applicants will be required to enter a standard, peppercorn lease for the building footprint, including buffer area for a maximum period of 10 years which is required to be registered on Title with the Department of Resources. A copy of the standard community group lease document is attached. A buffer area will be included in the lease area to allow for any roof overhang, allow for external maintenance works to be carried out, awnings, pathways and external features (eg air-conditioning units).

As the site is vacant land, and to ensure that successful applicants are not responsible for the unoccupied vacant land, an offer letter confirming Councils intention will be issued to the successful applicants to assist with applying for grant funding for facility construction/improvement. A lease will be executed only after the community group has supplied evidence to Council of success in obtaining the required funds for site improvements. Groups will have three (3) years to obtain funds and finalise the signing of the lease.

Building works must be completed within three (3) years of the commencement of the lease, at which stage a review of the agreement will be conducted.

Lessee is responsible for obtaining and paying for all building and planning approvals required for the construction of the building.

4.2 Fees and Charges

All costs associated with the lease preparation, registration on title and survey plans are the responsibility of the Lessee.

As a Lessee, the community organisation will be responsible for rates and utility costs, all repairs and maintenance including costs associated with theft and vandalism, and other fees and charges in accordance with the lease.

Concessions on general rates and other outgoings are available by application. Concessions on development application fees are available for eligible not for profit community organisations.

4.3 Maintenance and Asset Management Responsibilities

Lessee responsibilities include:

- connection of utilities and any other services required.
- general maintenance and repairs in accordance with Council's "Community Leases Standard Terms Document (Lease Memorandum)" contained within the lease documents attached.
- seeking external financial assistance for upgrades or extensions.

5. APPLICATION

5.1 Eligibility Criteria

To be eligible for consideration for this Request for Proposal, applicants must:

- be incorporated pursuant to the *Associations Incorporation Act 1981 (Qld)* or similar legislation, or otherwise be incorporated or a non-profit purpose.
- hold current Public Liability cover to the minimum value of \$20 million.
- be willing to obtain Building and Contents insurance to the value of the building and contents if successful.
- have no outstanding financial accountability, service delivery or performance issues for funding previously provided by Fraser Coast Regional Council or other sources.

5.2 Mandatory Documents

Requests for Proposal must include the following information:

- completed and signed application form which addresses the Eligibility and Proposal
- copy of Certificate of Incorporation
- copy of Certificate of Currency of Public Liability insurance to the minimum value of \$20 million
- copy of most recent audited financial statements

- copy of latest Annual General Meeting (AGM) minutes
- copy of Constitution
- any other relevant information to support the application

5.3 Application Process

Applications will be accepted and assessed according to the following process.

Step	Action												
Step 1	<p>Acceptance of Applications</p> <p>Applications will remain open for a 2 month period to allow the community organisation adequate time to provide a considered proposal.</p>												
Step 2	<p>Shortlisting</p> <p>Council officers will assess the applications using the following scoring matrix.</p> <table border="1"> <thead> <tr> <th>Criteria</th> <th>Weighting</th> </tr> </thead> <tbody> <tr> <td>Demonstrated suitability and appropriateness of proposal to suit the intended land.</td> <td>40%</td> </tr> <tr> <td>Demonstrated need that is not currently able to be met via an existing facility or land.</td> <td>10%</td> </tr> <tr> <td>Demonstrated broad community benefit.</td> <td>30%</td> </tr> <tr> <td>Demonstrated commitment to shared use to maximise resource utilisation.</td> <td>10%</td> </tr> <tr> <td>Demonstrated broad community participation and development opportunities.</td> <td>10%</td> </tr> </tbody> </table>	Criteria	Weighting	Demonstrated suitability and appropriateness of proposal to suit the intended land.	40%	Demonstrated need that is not currently able to be met via an existing facility or land.	10%	Demonstrated broad community benefit.	30%	Demonstrated commitment to shared use to maximise resource utilisation.	10%	Demonstrated broad community participation and development opportunities.	10%
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Step 3	<p>Optional Development</p> <p>Using the ranking outcomes from step 2, Council will plan a suitable layout for the land giving consideration for the infrastructure constraints and the combination of potential lessees on the site.</p>												
Step 4	<p>Council Approval</p> <p>Council will formally approve applications at an Ordinary Meeting where the successful applicants will be granted a 10-year lease.</p>												
Step 5	<p>Finalisation of Lease</p> <p>Council's Governance team will liaise with successful applicants to provide the required supporting documents and landlord approval allowing the community organisation ability to seek funding and building and planning approvals. Following funding approval, formal lease arrangements will be finalised.</p>												

6. RELEVANT DOCUMENTS

1. Standard Lease Template
2. Fraser Coast Regional Council Community Organisations Lease memorandum
3. Land Lease Assistance for Not for Profit Incorporated Groups Council Policy

FRASER COAST REGIONAL COUNCIL
COMMUNITY ORGANISATIONS
LEASE MEMORANDUM

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Reference Schedule

The Reference Schedule is intended to be read together with Standard Terms Document number ##. The purpose of the Reference Schedule specifically, is to:

1. Define terms that are used in the lease and to that end the terms listed in bold in the left hand column have the meaning shown opposite; and
2. Assisting the Landlord and the Tenant by presenting the significant terms of the Lease in a table format; and
3. Assisting the Landlord and the Tenant by specifically drawing their attention to other important provisions that are contained in the Lease Memorandum but not reproduced in their entirety in this Reference Schedule.

Landlord	
Landlord	Council of the Fraser Coast Regional Council
Landlord Address	The Chief Executive Officer Fraser Coast Regional Council PO Box 1943 Torquay Qld 4655
Tenant	
Tenant	
Tenant Address	
Leased Area	
Leased Area	
Street Address	
Land <i>(Real Property Description)</i>	
Buildings	
Landlord Supplied Buildings and Improvements	
Tenant Supplied Buildings and Improvements	
Landlord Property	
Services to Leased Area	
Tenant Property	
Duration of Lease	
Term	
Commencement Date	
Expiry Date	

Rent			
Rent			
Rent Payment Requirements			
Rent Review			
Outgoings			
Outgoings			
Outgoings Payment Requirements			
Use of Leased Area			
Permitted Use			
Use of Leased Area			
Tenant's Conduct			
Tenant's Obligations			
Insurance			
Lease Insurance Requirements	Risk	Amount of Cover	Who Insures
Requirements for Insurance to be arranged by Tenant			
Costs			
Costs payable by Tenant			
Costs payable by Landlord			
Repair and Maintenance			
Tenant Maintenance & Cleaning Obligations			
Landlord Maintenance Obligations			
Building Work			

Assignment, Subletting and Charging	
Can the Tenant Assign or Transfer the Lease	
Can the Tenant Sublet	
Can the Tenant Charge or Encumber its interest in the Lease	
End of Lease	
Tenant Obligations	
Tenant Supplied Buildings & Improvements to Landlord	

1. Interpretation

1.1 Terms and Reference Schedule

Terms in bold in the Reference Schedule have the meaning shown opposite

1.2 Definitions

- (1) "Building" means all buildings and improvements on the Land of which the Leased Area form part including the land
- (2) "Landlord's Agents" means the employees, agents or contractors of the Landlord
- (3) "Tenant's Agents" means the employees, agents, contractors, consultants, customers, workman, invitees, clients, visitors (with or without invitation) members, sub-tenant's, licensees and any other person who may claim through the Tenant.

1.3 Reference

- (1) Reference to:
 - (a) the singular includes the plural and the plural includes the singular
 - (b) a person includes a body corporate
 - (c) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) If a party consists of more than one person, this Lease binds them jointly and each of them severally.
- (3) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

2. Rent and Other Payments

2.1 Payments

The Tenant must pay the Landlord:

- (1) the Rent in accordance with the Rent Payment Requirements in the Reference Schedule
- (2) the Outgoings in accordance with Outgoings Payment Requirements in the Reference Schedule
- (3) charges for Services to the Leased Area during the Term promptly to the relevant assessing authority if assessed directly against the Tenant but otherwise to the Landlord within 14 days of receipt of an invoice
- (4) the Costs Payable by the Tenant listed in the Reference Schedule on demand
- (5) any reasonable additional or unusual charges and expenses incurred by the Landlord at the request of the Tenant within 14 days of receipt of an invoice.

2.2 Manner of making Payments

Payments must be made in the manner directed by the Landlord in writing from time to time including without limited by electronic funds transfer.

2.3 Charges for Electricity

The Tenant acknowledges that if the Landlord supplies electricity to the Tenant as provided in the *Electricity Act 1994* and Section 244 of the *Electricity Regulations 1994* that the Landlord has elected to recover the cost of it from the Tenant as provided in that Act.

2.4 Interest

If the Tenant is late in paying the Landlord any money, the Landlord may charge the Tenant daily interest on any late payments at the rate of two percent (2%) per month or any part of a month. All interest charged must be paid on demand.

2.5 GST

(1) The parties agree that:-

- (a) In this Lease "GST" means GST within the meaning of the GST Act, and "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
 - (b) Terms used in this Lease that are defined in the GST Act have the same meaning given in the GST Act.
 - (c) All amounts payable by the Tenant to the Landlord under this Lease are stated exclusive of GST.
 - (d) Failure by the Tenant to pay the Landlord for the GST pursuant to this clause treated in the same manner as this Lease treats the failure to pay the consideration for the relevant taxable supply.
- (2) The Tenant must pay to the Landlord for each taxable supply made in connection with this Lease the amount of GST that will be payable by the Landlord for that taxable supply as and when the consideration for that taxable supply is payable by the Tenant to the Landlord.
- (3) The Landlord must give the Tenant a GST tax invoice for each taxable supply made in connection with this Lease.
- (4) The amount of each Outgoing excludes the amount of any input tax credit that the Landlord receives from the Australian Taxation Office on that Outgoing.

3. Rent Review

3.1 Rent Review

The Rent is reviewed in accordance with the requirements in the Rent Review section of the Reference Schedule.

3.2 Payment of Rent Prior to Review

- (1) Until a determination of Rent is made, the Tenant must pay the Rent payable before the date of the relevant review.
- (2) Any variation in Rent resulting from a review takes effect on the relevant review date.
- (3) Within fourteen (14) days of a determination, the Landlord must refund any overpaid Rent or the Tenant must pay any shortfall.

4. Use of the Leased Area

4.1 Use of Leased Area

- (1) The Tenant must bring the Leased Area into active and bona fide use for the Permitted Use

- (2) The Tenant must not use the Leased Area for any purpose other than the Permitted Use without the prior written consent of the Landlord which may be granted or withheld in the Landlord's absolute discretion.
- (3) The Landlord does not warrant the Leased Area Landlord Supplied Buildings or the Landlord Property is suitable for any purpose or may be used for the Permitted Use.
- (4) The Tenant must not allow any part of the Leased Area to be used for the sale or consumption of liquor without, at the Tenant's expense, obtaining a liquor license under the Liquor Act 1991 Qld, as amended, authorising that consumption or sale and obtaining the Landlord's consent to that liquor license. The Landlord will not unreasonably withhold its consent to the Tenant's application for a restricted club permit, but may withhold its consent in its absolute discretion, to any other form of liquor license.

4.2 Conduct

The Tenant must not:

- (a) allow the Leased Area to be used for annoying, offensive or illegal acts which cause annoyance, nuisance, grievance, damage or disturbance to the occupants of adjacent Leased Area or to the Landlord
- (b) hold or permit to be held any auction or similar sale in the Leased Area
- (c) use any form of power other than gas or electric current or gas supplied through meters
- (d) overload the Services
- (e) damage the Landlord's Property
- (f) alter the Leased Area, install any partitions or equipment or do any building work
- (g) do anything that may invalidate the Landlord's insurance or increase the Landlord's premiums
- (h) display, paint or erect any signs,
- (i) knowingly use or allow the Landlord's Property to be used for any purpose other than those for which they were designed
- (j) interfere with the Services, any drains, water supply, gas, electrical, plumbing, airconditioning equipment or other services or any of the Landlord's Property
- (k) prepare or cook for sale or other commercial purpose any food on the Leased Area unless the preparation and sale of food is related to the Permitted Use and the Tenant strictly complies with all of the statutory requirements and policies of the Fraser Coast Regional Council in relation to the preparation and sale of food from the Leased Premises.
- (l) use any apparatus which radiates heat
- (m) bring any heavy machinery, plant or equipment into a Building on the Leased Area unless it is reasonably necessary for the Permitted Use and in any case must not overload the floors, walls or ceilings
- (n) make holes, deface or damage floors, walls or ceilings or other parts of Buildings on the Leased Area
- (o) install any gaming vending or amusement machines
- (p) use or install any product or property on the Leased Area likely to cause damage

4.3 Consent

The Tenant may seek the Landlord's written consent to any of the matters in Clause 4.2 which can be granted or refused in the Landlord's absolute discretion.

4.4 Tenant's Obligation

The Tenant must:

- (a) obtain and maintain all permits or consents required from any government authority to carry on the Permitted Use in the Leased Area
- (b) keep the Leased Area free from vermin
- (c) obey all reasonable directions and rules given by the Landlord relating to use of the Common Areas
- (d) obey any rules made by the Landlord relating to the operation, safety, use, occupation and management of the Building
- (e) immediately notify the Landlord of any damage to, defect or disrepair in the Services or the Landlord's Property
- (f) immediately notify the Landlord of any infectious diseases notifiable to the relevant Health Authority occurring on the Leased Area of which it is aware
- (g) immediately provide the Landlord with copies of all notices, which it is required to serve on or receive pursuant to any legislation relating to the Leased Area
- (h) lock all exterior doors and windows in the Building when the Building is not being used
- (i) pay all charges, assessments or impositions which may be levied in respect of the Leased Area during the Term and arising as a result of the use and occupation of the Leased Area by the Tenant
- (j) comply with the Special Rules in the Reference Schedule.

4.5 Contamination

(1) Definitions

In this Clause 4.5:

- (a) "**Act**" means *The Environmental Protection Act 1994 (Qld)* and includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such Act;
- (b) "**Complaint**" means any notice, communication or complaint alleging non-compliance with any Law or Requirement;
- (c) "**Compliance Costs**" means costs, expenses, liabilities, fines and penalties;
- (d) "**Comply**" means to take any action specified in any Law or Requirement or considered reasonably necessary by the Landlord in order to comply with any Law or Requirement and **Complied** has a corresponding meaning;
- (e) "**Contamination**" means anything which causes land to be or become contaminated for the purpose of Contamination Laws and **Contaminate** has a corresponding meaning;

- (f) “**Contamination Laws**” means all laws, whether present or future and whether federal, state or local, which deal with pollution or the contamination of land including, but without limitation, the Act;
- (g) “**Environment**” has the meaning given to that term as defined in *The Environmental Protection Act 1994*;
- (h) “**Environmental Harm**” has the meaning given to that term in *The Environmental Protection Act 1994*;
- (i) “**Environmental Authority**” means any authority or government agency dealing with assessment, identification or remediation of land affected by a Harmful Substance;
- (j) “**Harmful Substance**” means any substance which, at the date of contamination or a later date, is determined by an Environmental Authority to be harmful to human health or the Environment;
- (k) “**Law**” means a Contamination Law or law relating to protection of the Environment, workplace health and safety or town planning;
- (l) “**Licence**” means any licence, permit, authority, approval or consent relating to the Leased Area or required in connection with its use by the Tenant; and
- (m) “**Requirement**” means a requirement relating to the Environment, prevention of pollution, workplace health and safety or town planning and includes a condition of any Licence.

(2) Tenant’s Obligation Regarding Contamination

The Tenant must:-

- (a) not Contaminate or allow the Leased Area or the Land or any adjoining Leased Area to be Contaminated by anything done in or upon the Leased Area or the Land;
- (b) comply with and observe all Laws and Requirements concerning:-
 - (i) the Land and or the Leased Area; or
 - (ii) any other land which is affected by a Law or Requirement because of the Tenant’s use of the Leased Area,

whether the Law or the Requirement is addressed to, or required to be complied with by either the Tenant or Landlord or both or by any other person;

- (c) if any Requirement or Complaint is notified to or served upon the Tenant, promptly provide a complete copy to the Landlord;
- (d) it is lawful to do so, obtain the Landlord’s consent, such consent not to be unreasonably withheld, before Complying with any Law or Requirement under Clause 4.5(2)(b);
- (e) yield up the Land at the expiration or sooner determination of the Term free from all Contamination and substances, which may cause Environmental Harm.

(3) Landlord’s Rights

The Landlord may:-

- (a) If the Tenant fails to comply with Clause 4.5(2)(b):-
 - (i) without prejudice to any of its other rights, elect to Comply (wholly or partially) with any Law or Requirement at the Tenant’s expense; and

- (ii) if the Landlord elects to partially Comply with any Law or Requirement, elect to have the balance of the Law of the Requirement Complied with by the Tenant;
- (b) inspect the Leased Area for the purpose of ascertaining whether the Tenant is Complying with all Laws and Requirements or for the purpose of investigating any Complaint.

(4) Tenant's Warranties

Except as disclosed to the Landlord prior to the execution of this Lease, the Tenant warrants to the Landlord that the Tenant:-

- (a) has been issued with and, if required, will apply for and maintain, at its own expenses, all Licences;
 - (b) has Complied with and will continue to Comply with the terms and conditions of all Licences; and
 - (c) has supplied and will continue to supply the Landlord with copies of all Licences.
- (5) Other Contamination

Notwithstanding the previous provisions of this Clause 4.5, the Tenant shall not be responsible for the remediation of any Contamination which the Tenant can prove:-

- (a) occurred prior to the Tenant first occupying the Land, whether pursuant to this Lease or any previous lease or agreement or arrangement; or
 - (b) was caused by the Landlord.
- (6) Tenant to Indemnify

The Tenant indemnifies the Landlord against all reasonable Compliance Costs and other Costs incurred or paid by the Landlord as a result of any breach by the Tenant under this Clause 4.5.

5. Maintenance and Cleaning

5.1 Repair & Cleaning

The Tenant must comply with the Tenant's Maintenance and Cleaning Obligations in the Reference Schedule.

5.2 Landlord's Right to Inspect and Repair

- (1) Upon giving the Tenant two (2) days notice in writing, the Landlord may inspect or carry out repairs, maintenance, or building work in or around the Leased Area at any reasonable time. In an emergency, the Landlord may enter at any time without giving the Tenant notice.
- (2) The Landlord may carry out any of the Tenant's obligations under this Lease if the Tenant does not carry them out on time or as reasonably directed by the Landlord. If the Landlord does so, then the Tenant must pay the Landlord's expenses.

6. Landlord Property and Tenant Property

6.1 Landlord Property

- (1) The Landlord Property identified in the Reference Schedule is and remains owned by the Landlord.
- (2) The Tenant must not damage or alter any of the Landlord Property without the consent of the Landlord which must not be unreasonably withheld.

6.2 Tenant Property

The Tenant Property identified in the Reference Schedule is and remains owned by the Tenant.

7. Building Work

7.1 Definitions

For the purpose of this Lease and this clause in particular, "Building Work" means any building work on the Leased Area, or to the Landlord Supplied Buildings & Improvements, or to the Tenant Supplied Buildings & Improvements and includes, without limitation, the following work –

- (1) Building repairing, altering, underpinning (whether by vertical or lateral support) moving or demolishing a building or other structure;
- (2) Work regulated under Standard Building Regulation 1993;
- (3) Excavating or filling –
 - (a) for or incidental to the activities mentioned in this definition, or;
 - (b) that may adversely affect the stability of the Leased Area, Building or other structure on the Land or adjoining land.
- (4) Supporting (whether vertically or laterally) any land for activities mentioned this clause 7.1;
- (5) Painting or plastering or altering the appearance of a building, improvement structure or fixture;
- (6) Renovations, alterations or additions;
- (7) Excavations, disturbances or changes to the landscape or natural features of the Land that alters the appearance of the Land;
- (8) Work on any fixtures or fittings on the Leased Area regardless of whether they are Tenant Property or Landlord Property.

7.2 Prohibition on Building Work

The Tenant must not carry out any Building Work without the Landlord's consent which the Landlord may give or withhold in its absolute discretion.

7.3 Procedure for Approval of Building Work

If the Tenant wishes to seek the Landlord's approval for Building Work, the Tenant must submit to the Landlord any material or information reasonably requested by the Landlord and including, without limitation –

- (1) Construction plans for the Building Work;
- (2) Specifications for the Building Work including the type, quality, colour and size of materials to be used in the Building Work;
- (3) Samples for the materials for the Building Work;
- (4) The name of the builder and any other contractors to be engaged to carry out the Building Work;
- (5) The timetable for carrying out the Building Work.

7.4 Landlord's Approval of Building Work

- (1) If the Tenant seeks the Landlord's approval to carry out Building Work, the Landlord may –

- (a) give its approval;
- (b) withhold its approval;
- (c) give its approval on conditions,

in its absolute discretion. The Landlord must respond to the Tenant's request within a reasonable time of the request being made. The Landlord must respond in writing.

(2) The Tenant must comply with the following regulations in relation to any Building Work carried out on the Leased Area –

- (a) the Building Work must be carried out in a proper workmanlike manner;
- (b) the Building Work must be carried out strictly in accordance with the plans, specifications and materials approved by the Landlord pursuant to this clause 7;
- (c) the Building Work must be carried out by the contractors approved by the Landlord pursuant to this clause 7 and those contractors must hold any applicable statutory licences for carrying out the Building Work;
- (d) the Tenant must before any Building Work is commenced, obtain building approval from the local authority under the *Building Act 1975 Qld*;
- (e) the Tenant must ensure its contractors carrying out the building work have, during the entire time in which the Building Work is undertaken, contractors or risk insurance for the reasonable construction value of the Building Work being undertaken by the Tenant and must on request by the Landlord provide the Landlord with copies of the insurances policies, Certificate of Currency for the insurance and receipt for payment of premiums;
- (f) the Tenant must ensure that in carrying out the Building Work, the Tenant, its contractors, employees and agents comply at all times with all statutes, regulations and other laws applicable to the Building Work;
- (g) the Tenant and its contractors and agents must comply with the reasonable directions of the Landlord from time to time as to the manner in which the Building Work is undertaken;
- (h) the Tenant must not carry out any Building Work outside of the hours of 7:00am to 5:00pm Monday to Friday without the approval of the Landlord and must take all reasonable steps to minimise disruption to any occupiers or users of property in the vicinity of the Leased Area;
- (i) the Tenant carries out the Building Work at its own risk;
- (j) the Tenant indemnifies the Landlord and the agents, contractors and employees of the Landlord from and against all claims, demands, losses, damages, costs, liabilities and expenses which the Landlord or its agents, contractors or employees may sustain, incur or become liable in respect of or arising from the Building Work being carried out by the Tenant
- (k) The Tenant must not alter the Building Work approved by the Landlord without it first obtaining the written consent of the Landlord which may be granted, withheld or granted subject to conditions in the absolute discretion of the Landlord. The Landlord's approval must be in writing.

8. Assignment, Subletting and Charging

8.1 Prohibited Dealings

The Tenant must not

- (1) assign this lease,

- (2) sublet the Leased Area,
- (3) grant a mortgage over this Lease
- (4) license or otherwise part with possession of the Leased Area
- (5) if the Tenant is a company, change the shareholding company so that a different person or group of persons will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings

without the prior written consent of the Landlord which may be granted or refused or granted subject to conditions in the absolute discretion of the Landlord.

9. Common Areas

9.1 Common Areas

- (1) Common Areas means the areas of the Land designated for common use by the Landlord
- (2) The Landlord may from time to time add or remove areas of the Land or Buildings from the designated Common Areas.

9.2 Rules

The Landlord may make rules relating to the Land, Building and Common Areas dealing with:

- (1) their use, care and cleanliness
- (2) the preservation of good order
- (3) the comfort of persons
- (4) the location of garbage and refuse pending its removal
- (5) the closure of any part outside normal business hours
- (6) the external appearance.

9.3 Licenses For Use of Common Areas

The Landlord, can grant to any person a licence to use any part of the Common Areas (other than toilets) provided such licence must not substantially adversely effect the Tenant's rights under this Lease.

10. Landlord Rights and Obligations

10.1 Quiet Enjoyment

Provided the Tenant complies with the terms of this Lease, the Tenant can peaceably hold and enjoy the Leased Area during the continuance of this Lease without any interruption by the Landlord or any other person lawfully claiming under the Landlord.

10.2 Maintenance

The Landlord must comply with the Landlord Maintenance Obligations in the Reference Schedule.

10.3 Rights in relation to Building

For all Landlord Supplied Buildings and Improvements, the Landlord:-

- (1) has the exclusive right to use of the exterior of the Building, but the Landlord must not interfere with or adversely impact upon the Tenant's use of the Leased Area
- (2) may name or rename the Building
- (3) may alter or build additions to the Building and in so doing interrupt the Services provided any interruption is minimised.

10.4 Landlord May Rectify

If the Tenant does not perform any obligation under this Lease the Landlord may perform that obligation as agent of the Tenant and the full cost to the Landlord of performing that obligation is payable by the Tenant to the Landlord on demand.

11. Risk

11.1 Own Risk

The Tenant occupies and uses the Leased Area at its own risk.

11.2 Release

The Tenant releases to the fullest extent permitted by Law, the Landlord and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the Leased Area or in any part of the Building or the Land except to the extent that it is caused by a deliberate act, negligence or default by the Landlord or its agents, employees or contractors or from structural defects.

11.3 Indemnity

Without limiting the generality of Clause 11.2 the Tenant indemnifies and holds indemnified the Landlord and its agents, employees and contractors from and against all actions, claims, losses, damages and costs for or in respect of which the Landlord may sustain or incur or for which the Landlord or its agents, employees and contractors shall or may be or become liable whether during or after the Term in respect of or arising from:

- (1) Breach of Covenant - Loss, damage or injury to property or person from or contributed to by the neglect or default of the Tenant to observe or perform any of the covenants, conditions and restrictions on the part of the Tenant whether positive or negative expressed or implied
- (2) Misuse - Negligent use or misuse, waste or abuse by the Tenant or any servant, agent or sub-tenant of any Services to the Leased Area or to the Building or the Land
- (3) Escape of Harmful Agent - Overflow or escape of water, fire, gas, electricity or any other harmful agent whatsoever in or from the Leased Area caused or contributed to by any act or omission on the part of the Tenant its servants, agents or sub-tenants
- (4) Failure to Notify - Failure of the Tenant to notify the Landlord of any defect of which it is aware in the Leased Area whatsoever
- (5) Use of Leased Area - Loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Leased Area by the Tenant or any servant, agent or sub-tenant
- (6) Personal Injury - Any personal injury sustained by any person in or about the Leased Area or the Building or the Land howsoever caused other than the wilful or negligent act or omission of the Landlord or its servants or agents.

12. Insurance

12.1 Lease Insurance Requirements

The designated party in the Lease Insurance Requirements section of the Reference Schedule must at all times for the duration of this Lease effect and keep current insurance policies for the Risk and the Amount of Cover in that section of the Reference Schedule.

12.2 Tenant Requirements

The Tenant must comply with the Conditions of Insurance to be arranged by Tenant section of the Reference Schedule for all of the insurance policies required to be taken out by the Tenant under the terms of this Lease.

12.3 Notice of Accident

The Tenant must give the Landlord prompt notice in writing of any accident in or want of repair to the Leased Area or defect in any Services which it is aware.

12.4 Conduct Voiding Insurance

The Tenant must not knowingly do or permit to be done or omit to do any act in the Leased Area or on the Common Areas which may render void or voidable any insurances on the Building or that may cause the rate of premium on any such insurance policies to be increased or be liable to be increased and the Tenant must do or permit to be done immediately upon request by the Landlord, everything necessary to ensure the continuance of any insurances effected by the Landlord.

13. Default and Termination

13.1 Essential Terms

The essential terms are:

- (1) Rent and other Payments Clause 2
- (2) Use of Leased Area Clause 4.1
- (3) Conduct Clause 4.2
- (4) Tenant's Obligations Clause 4.4
- (5) Contamination Clause 4.5
- (6) Maintenance & Cleaning Clause 5
- (7) Landlord Property Clause 6
- (8) Building Work Clause 7
- (9) Assignment, subletting and charging Clause 8
- (10) Insurance Clause 12
- (11) Any Special Conditions

13.2 Default

The Tenant is in default of this Lease if:

- (1) it breaches an essential term of this Lease

- (2) it repudiates its obligations under this Lease
- (3) it is insolvent
- (4) its interest under this Lease is attached or taken in execution under any legal process, or
- (5) it does not comply with any other term of this Lease within a reasonable time after receiving notice from the Landlord to do so.

13.3 Termination of Tenancy

- (1) If the Tenant is in default and does not remedy the default within the time stated in any notice from the Landlord, the Landlord may do any one or more of the following without prejudice to any other right which it may have against the Tenant:
 - (a) by notice to the Tenant, convert this Lease to a month to month tenancy on the terms of this Lease as far as they can be applied to a monthly tenancy
 - (b) by notice to the Tenant, terminate the Lease and take possession of the Leased Area
 - (c) recover from the Tenant any loss suffered by the Landlord due to default of the Tenant
 - (d) exercise any of its other legal rights.
- (2) The Landlord must take reasonable steps to mitigate its loss.

14. End of Lease

14.1 Tenant's Obligations

On expiry of the Term or earlier termination the Tenant must comply with the Tenant Obligations in the End of Lease section of the Reference Schedule.

14.2 Failure to Remove Tenant's Property

If the Tenant does not remove the Tenant's Property on expiry or earlier termination, the Landlord may:

- (1) remove and store the Tenant's Property at the Tenant's risk and expense, or
- (2) treat the Tenant's Property as being abandoned, in which case title in the Tenant's Property passes to the Landlord who may deal with it as it thinks fit without being liable to account to the Tenant.

14.3 Tenant Property transferred to Landlord

On the expiry or earlier termination of the Lease, the Tenant Property identified in the End of Lease section of the Reference Schedule is transferred to the Landlord without any compensation and must not be removed from the Leased Area by the Tenant.

14.4 Power of Attorney

- (1) The Tenant irrevocably appoints the Landlord and its Chief Executive Office for the time being to be the true and lawful attorney of the Tenant to act at any time after the power to take back possession of the Leased Area has been exercised.
- (2) The attorney is empowered to:
 - (a) execute and register (if necessary) a Transfer or Surrender of the Lease or a Withdrawal of any Caveat lodged by the Tenant affecting the Land together with any other documents needed to effect those dealings

- (b) do all things which the Tenant is required to do under this Lease.
- (3) The Tenant undertakes to ratify and confirm anything the attorney lawfully does and to pay the Landlord's reasonable expenses incurred in exercising the powers under Clause 14.4 on demand.

15. Monthly Tenancy

15.1 Monthly Tenancy

If the Tenant continues to occupy the Leased Area after the Expiry Date in accordance with this Lease:

- (1) The Tenant does so as a monthly tenant on the same conditions as at the last day of the Term, and
- (2) either party may terminate the monthly tenancy by giving to the other one (1) month's notice expiring on any day.

16. Damage and Destruction

16.1 Application of this Clause 16

This Clause only applies if the Leased Area is contained in or partly in a building and the building is not Tenant Property.

16.2 Rent Reduction

If the Building is damaged or destroyed and the Tenant or its employees have not caused or contributed to such damage or destruction and as a result the Leased Area is wholly or partially unfit for use or the Tenant cannot gain access to the Leased Area then from the date that the Tenant notifies the Landlord of the damage or destruction until the date that the Leased Area is again fit for use and accessible the Landlord:

- (a) must reduce the Rent, Agreed Proportion of Outgoings and any other money payable to the Landlord by a reasonable amount depending on the type and extent of damage or destruction, and
- (b) cannot require the Tenant to clean, repair or maintain until the Leased Area is fit for use and accessible.

16.3 Tenant May Terminate

The Tenant may terminate this Lease by thirty (30) days notice to the Landlord unless:

- (1) within three (3) months of the event causing damage or destruction, the Landlord notifies the Tenant that the Leased Area will be reinstated, and
- (2) carries out reinstatement works within a reasonable time having regard to the extent of the damage.

16.4 Landlord May Terminate

If the Landlord considers the damage to the Leased Area renders it impractical or undesirable to reinstate the Leased Area, it may terminate this Lease by giving to the Tenant notice in writing.

16.5 No Obligation to Rebuild

The Landlord is not obliged to restore the Building or Leased Area according to the former specifications so long as the layout and dimensions of the Leased Area and Services are not substantially different.

16.6 Dispute Resolution

- (1) The Tenant is entitled to dispute the reasonableness of any increase or reduction of rent and other moneys
- (2) Any dispute as to the extent and reasonableness of any increase or reduction in rent and other moneys must be determined by an independent Valuer appointed by the president of the API at the request of either party
- (3) In making the determination, the appointed Valuer acts as an expert and the determination is final and binding on both parties
- (4) The cost of the determination must be paid by the parties equally unless otherwise decided by the appointed Valuer.

16.7 Antecedent Rights

Termination under this clause or any other provision of this Lease does not effect either party's accrued rights before termination.

17. Sale by Landlord

Before transferring any interest in the Land, the Landlord must obtain a signed deed from the transferee containing covenants in favour of the Tenant that the transferee will be bound by the terms of this Lease and will not transfer its interest in the Land unless it obtains a similar deed from its transferee.

18. General

18.1 Notices

To be valid or effective a notice or document must be:

- (1) in writing, and
- (2) left at or posted by registered post to the address of the party in the Reference Schedule or the address last notified by the receiving party.

18.2 Waiver Negatived

Failure by the Landlord or Tenant to exercise any power or right under this Lease can not be such to be construed or deemed a waiver of the relevant power or right unless it is in writing.

18.3 Entire Agreement

This Lease:

- (1) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease, and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

18.4 Severability

If any provision of this Lease or its application to any person or circumstance is or becomes unenforceable, illegal or void the remaining covenants are not effected and each covenant of this Lease is enforceable to the greatest extent permitted by Law.

18.5 Obligations of Parties

The respective covenants and obligations of the parties as set out in this Lease whether positive or negative must be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the Term and for so long as it remains to be performed.

18.6 Statutes and Regulations

Reference to statutes regulations ordinances or by-laws are deemed to extend to all statutes regulations ordinances or by-laws amending consolidating or replacing the same.

18.7 Governing Law

This Lease must be governed by and construed in accordance with the law of the State of Queensland.

18.8 Saturdays, Sundays and Public Holidays

If under this Lease the day on or by which any act, matter or thing must to be done is a Saturday, Sunday or a public holiday that act matter or thing must be done on the next succeeding day which is not a Saturday, Sunday or Public holiday.