

Draft

Date: 5 February 2014

Precedent Flower Market Licence

Melbourne Market Authority (**Licensor**)

[#] (**Licensee**)

[Notes to Licensees – the Licence currently provides for the following to be inserted prior to execution

- (a) the Licensee's particulars on the front page, the details' page, the Schedule and the signing page;***
- (b) a description of the Stand in the Schedule;***
- (c) the Licensee's Trading Days in the Schedule;***
- (d) the Licence Fee in the Schedule; and***
- (e) a plan of the Stand in Annexure A]***

Flower Market Licence

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Details

Date

Parties

Name **Melbourne Market Authority**, a body corporate established under section 4 of the *Melbourne Market Authority Act 1977* (Vic)

Short form name **Licensor**

Notice details [#]
Facsimile [#]
Attention [#]

Name [#]

ABN [#]

Short form name **Licensee**

Notice details [#]
Facsimile [#]
Attention [#]

Background

- A The Landlord is the registered proprietor of the Market Land.
- B The Licensor occupies the Market Land as tenant under the Lease.
- C The Licensor has agreed to grant the Licensee a licence to occupy the Stand described in this licence on the terms and conditions contained in this licence.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this licence:

Act means the *Melbourne Market Authority Act 1977* (Vic) as amended from time to time.

Centre Trading Days means Monday, Tuesday, Wednesday, Thursday, Friday and Saturday.

Claim includes:

- (a) an objection;
- (b) a claim or demand against the Licensor;
- (c) the purported rescission or termination of this licence; and
- (d) an adjustment to money due to the Licensor under this licence.

Commencement Date means the commencement date specified in the Schedule.

Common Areas means those areas of the Market Land provided by the Licensor from time to time for the common use of occupants of the Market Land and includes without limitation the entrances, lobbies, corridors, toilets, stairways, parking areas, driveways, access and egress roads and other common amenities other than those reserved to the Licensor or to any person claiming through or authorised by the Licensor.

Common Service Charge means the cost of maintenance and repair of the cool room (if any) including replacement of any parts as considered reasonable and appropriate by the Licensor.

Cool Room means the cool room erected on the Stand (if any), which shall at all times remain the property of the Licensor.

CPI means the consumer price index published by the Australian Bureau of Statistics under the heading 'All Groups - Eight Capital Cities', or if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia Limited as the index that most appropriately replaces the CPI.

CPI Rate means the change in the CPI, measured from the CPI for the quarter ending immediately before the last date on which the Licence Fee was reviewed (or the Commencement Date if there has been no intervening Licence Fee review) to the CPI for the quarter ending immediately before the relevant CPI Review Date, expressed as a percentage.

CPI Review Date means each 1 July.

Expiry Date means the date this licence ends pursuant to clause 10 or 11.

Flower Selling Floor means the selling area comprising the Stand and the other stands designated by the Licensor from time to time for the sale of the flowers in the National Flower Centre.

Landlord means the Secretary to the Department of Business and Innovation, a body corporate established under section 41A of the *Project Development and Construction Management Act 1994* (Vic), and includes any successors and assigns.

Lease means the lease dated 4 April 2013 between the Landlord as landlord and the Licensor as tenant in respect of Market Land and includes any further lease or proprietary interest in the Market Land granted by the Landlord to the Licensor.

Licence Fee means the licence fee amount specified in the Schedule as review from time to time pursuant to clause 5.

Licensee means the person or corporation described in the Schedule and includes the permitted assigns of the Licensee and if the Licensee is a corporation includes its successors and if the Licensee is a natural person includes the heirs, executors and administrators of the Licensee.

Licensee's Employees means the Licensee's employees, agents, contractors, invitees or others allowed by the Licensee to be in or on the Stand.

Licensee's Trading Days means the Centre Trading Days specified in the Schedule.

Licensor means the Melbourne Market Authority as established under the Act and includes any person claiming through or under the Licensor.

Licensor's Employees includes the Licensor's employees, agents, contractors, invitees or others who may at any time be authorised by the Licensor to be in the Trading Floor Complex or the Market Land.

Market Land means the land coloured red and shown cross-hatched and hatched, and described as the 'Market Land', 'Carriageway Access' and 'First Flush Facility', on the plan in Annexure B.

National Flower Centre means the flower market located on the Market Land containing the Flower Selling Floor.

Nominee means where the Licensee is a corporation, the natural person who is nominated by the Licensee to be responsible to the Licensor for performance of the obligations and covenants of the Licensee under this licence and who is described in the Schedule and may only be changed with the Licensor's prior written consent.

Operating Rules means any rules, guidelines or policies issued by the Licensor in respect of the Market Land from time to time, to the extent that they have been made available to the Licensee.

Permitted Use means the permitted use specified in the Schedule.

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

Roller Door means a roller door giving external access and egress to the Stand (if any).

Schedule means the schedule attached to this licence.

Services means all plant, equipment, pipes, services and apparatus (including, without limitation, air-conditioning plant, fire detection, prevention and protection equipment, wires, cables, conduits, other electronic communication equipment, gas and electrical fittings, toilets, sewerage, plumbing, grease traps and wash basins) at or servicing the Market Land.

Specified Rate means interest at the rate of two percent higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

Stand means the stand described in the Schedule.

State means the State of Victoria.

Term means the period from and including the Commencement Date to and including the Expiry Date.

Trading Floor Complex means the market trading floor complex and administration offices occupied by the Licensor constructed on part of the Market Land and includes:

- (a) all structures, Services and Common Areas situated on the Market Land owned, occupied or controlled by the Licensor; and

- (b) any additions and alterations to the Trading Floor Complex.

Trading Hours means the trading hours permitted by the Act, the Operating Rules or as prescribed by the Licensor from time to time.

1.2 Interpretation

Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) 'person' includes a firm, a body corporate, an unincorporated association or the Licensor;
- (c) an agreement, representation or warranty:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally; and
- (d) a reference to:
 - (i) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - (ii) a document includes any variation or replacement of it;
 - (iii) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iv) a thing includes the whole and each part of it collectively and each of them individually;
 - (v) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually; and
 - (vi) the president of a body or the Licensor includes any person acting in that capacity;
- (e) 'including' (in any form) or 'such as' when introducing an item or a list of items does not limit the meaning of the words to which the item or list relates to that item or those items or to items of a similar kind.

2. Grant

2.1 Licence

In consideration of the Licence Fee and of the terms, covenants and conditions contained in this licence, the Licensor grants and the Licensee accepts a non-exclusive licence for the Term:

- (a) to occupy the Stand during the Trading Hours on the Centre Trading Days; and
 - (b) to use the Common Areas in common with other persons entitled to use them,
- on the terms and conditions contained in this licence.

2.2 No exclusive possession or interest in Stand

The Licensee acknowledges and agrees that:

- (a) this licence does not grant exclusive possession of the Stand; and
- (b) any and all rights of the Licensee in relation to the Stand rest in contract alone and that the Licensee has no estate or leasehold interest of any description whatsoever in the Stand or any rights referred to in section 42 of the *Transfer of Land Act 1958* (Vic).

3. Licence Fee, expenses and payment requirements

3.1 Licence Fee

The Licensee agrees to pay quarterly in advance the Licence Fee to the Licensor on the Commencement Date and then on the first day of each successive quarter. Notwithstanding this clause 3.1, the first quarterly payment of the Licence Fee is due on the signing of this Licence and will be applied to the Licence Fee payable by the Licensee for the first quarter of the Term.

3.2 Common Service Charge

The Licensee agrees to pay to the Licensor the Common Service Charge levied by the Licensor from time to time.

3.3 Expenses

The Licensee must pay to the Licensor or as the Licensor directs all expenses, costs, fees and charges:

- (a) due to the Licensee's use or occupation of the Stand; and
- (b) incurred by the Licensor to any third party due to the act, omission, negligence or default of the Licensee or the Licensee's Employees.

3.4 Payment requirements

- (a) The Licensee must make payments under this licence without any deduction, withholding, set-off or counterclaim.
- (b) The Licensee must make payments under this licence to the Licensor (or to a person nominated by the Licensor in a notice to the Licensee) by electronic transfer or by any other method the Licensor reasonably requires.
- (c) If the Licensee pays an amount and it is found later that the amount was not correct, then even if the Licensor has given the Licensee a receipt, the Licensee must pay to the Licensor (or the Licensor must credit the Licensee with) the difference between what the Licensee has paid and what the Licensee should have paid.
- (d) The Licensor need not make a demand for any amount payable by the Licensee unless this licence says that a demand must be made.
- (e) Expiry or termination of this licence does not affect the Licensee's obligations to make payments under this licence for periods before then.
- (f) If the Licensee does not pay any amount payable by the Licensee under this licence on time, the Licensee must pay interest on that amount to the Licensor from when the amount becomes due for payment until the amount is paid. Interest is calculated on daily balances at the Specified Rate.

4. Occupation

- (a) The Licensee must subject to clause 4(d) occupy the Stand on the Licensee's Trading Days during the Trading Hours.
- (b) The Licensor reserves the right to refuse access to the Stand when monies are owed by the Licensee to the Licensor, whether or not a formal demand has been made.

- (c) The Licensor reserves the right to temporarily or permanently relocate the Licensee to another stand, and the Licensee may not make any Claim against the Licensor in relation to any relocation.
- (d) The Licensor reserves the right to deny the Licensee access to the Stand at any time and from time to time in its sole discretion, and the Licensee must continue to pay the Licence Fee and may not make any Claim against the Licensor in relation to access to the Stand.

5. Review of Licence Fee

5.1 CPI review

- (a) The Licence Fee is changed by the CPI Rate on each CPI Review Date.
- (b) If the Licence Fee to apply from a CPI Review Date is not determined before that date, then:
 - (i) until it is determined, the Licensee must continue paying the Licensee Fee at the rate applicable before the relevant CPI Review Date; and
 - (ii) within 14 days after the reviewed Licence Fee is determined, the Licensee must pay any shortfall for the period from the relevant CPI Review Date until the date on which the next instalment of Licence Fee is due to be paid.

5.2 Licence Fee minimum increase

Despite clause 5.1:

- (a) following the CPI Review Date on the first, second and third anniversary of the Commencement Date, the Licence Fee must not be less than 104% of the Licence Fee payable immediately before the relevant CPI Review Date; and
- (b) following the CPI Review Date in any year of the Term (other than on the first, second and third anniversary of the Commencement Date), the Licence Fee must not be less than 102.5% of the Licence Fee payable immediately before the relevant CPI Review Date.

6. Dealings

6.1 Transfers and Dealings

Except as permitted under clause 6.2, the Licensee must not assign, sub-licence, transfer, dispose of or otherwise deal with all or any part of its rights, benefits or obligations under this licence or in favour of any other person.

6.2 Assignment

- (a) The Licensee may only assign this licence if the following conditions are satisfied:
 - (i) the Licensee has notified the Licensor in writing of its wish to assign this licence;
 - (ii) the Licensee has remedied any breach of this licence, notice of which has been given to the Licensee;
 - (iii) the Licensee has paid the costs and disbursements incurred by the Licensor of and incidental to its consent including any reasonable legal costs associated with giving its consent or giving effect to its consent;
 - (i) the Licensee and the proposed new assignee have signed any documents required by the Licensor, including an agreement with the Licensor in the form required by the Licensor that the assignee comply with the provisions of this licence; and

- (iv) the Licensee has obtained the Licensor's written consent to the assignment (which consent may be withheld in the Licensor's absolute discretion).
- (b) If the Licensee assigns the licence under this clause 6.2, the Licensee will remain liable under this licence and will not be released from its obligations whether in respect of past, present or future breaches of the Licensee's obligations under this licence.

6.3 Change in control of the Licensee

If:

- (a) the Licensee is a company which is neither listed nor wholly owned by a company which is listed on the Australian Securities Exchange; and
- (b) there is a proposed change in:
 - (i) the membership of the Licensee or its holding company;
 - (ii) the beneficial ownership of the shares in the Licensee or its holding company; or
 - (iii) the beneficial ownership of the business or assets of the Licensee,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,

then:

- (c) that proposed change in control is treated as a proposed assignment of this licence which requires satisfaction of the conditions for assignment in clause 6.2; and
- (d) the person or group of persons acquiring control is treated as the proposed new licensee.

7. Licensee's covenants

7.1 Positive covenants

The Licensee must:

- (a) use the Stand for the Permitted Use and for no other use;
- (b) keep the Stand including the cool room clean, tidy and in good condition and not to make any alterations or carry out any building or other works to the Stand, the Trading Floor Complex, the Market Land or the Services, or erect any structure whatsoever whether permanent or temporary upon the Stand, the Trading Floor Complex or the Market Land;
- (c) promptly report to the Licensor all damage (including any pollutants or contamination) to the Stand and reimburse the Licensor's costs of repairing or rectifying damage caused by or contributed to by the Licensee or the Licensee's Employees;
- (d) observe and comply with all:
 - (i) Operating Rules and the Act; and
 - (ii) other statutes and regulations, including the relevant occupational health and safety legislation, regulations and standards;
- (e) obtain all necessary consents and approvals for the conduct of the Licensee's business and the use of the Stand for the Permitted Use;
- (f) remove from the Stand at the end of Trading Hours on each Trading Day all property of the Licensee and any property left on the Stand at the end of trading on each Trading Day shall be abandoned and become the property of the Licensor;

- (g) remove from the Stand at the end of Trading Hours on each Trading Day all waste and dispose of it in the receptacles designated by the Licensor from time to time and ensure that the Stand is left in a clean and tidy condition and otherwise in a condition required by the Licensor (acting reasonably);
- (h) if the Licensee is a company, ensure that the Nominee is present at the Stand at all times during the Trading Hours;
- (i) produce to the Licensor upon demand evidence of its right to hold this licence ;
- (j) provide to the Licensor on demand a list of the names and addresses of all persons selling goods from the Stand including the Licensee's Employees;
- (k) give the Licensor written notice within seven days of any change of its employees;
- (l) take out and maintain a public risk insurance policy in respect of the Licensee's occupation of the Stand and the indemnities given by the Licensee in this licence in the name of the Licensee and noting the interest of the Licensor for any single event for the amount of \$20 million, or such other amount as required by the Licensor from time to time, and upon request, produce to the Licensor such policies of insurance and receipts for payment of premiums;
- (m) repair and maintain the Roller Door and cool room (if any) in good order and condition and if lockable, to keep it locked when the Licensee is not occupying the Stand;
- (n) if an office has been erected on the Stand, the Licensee will remove the office from the Stand at the date of termination or assignment (unless otherwise agreed with the Licensor) of this Licence; and restore the Stand to its condition as it existed at the commencement date of the Licence;
- (o) if the Stand has a cool room, to pay all charges connected with the maintenance and operation of the cool room and all licence, permit and inspection fees and all excess water and all gas, telephone, electricity and power charges assessed or charged on or in respect of the cool room or the Licensee's use of the cool room as and when they become due;
- (p) pay all charges connected with the maintenance and operation of the Stand and all licence, permit and inspection fees and all excess water and all gas, telephone, electricity and power charges assessed or charged on or in respect of the Stand or the Licensee's use of the Stand as and when they become due;
- (q) any damage to stock or goods stored on the Stand (whether inside the cool room or not) howsoever caused, is the responsibility of the Licensee and the Licensee shall have no claim against the Licensor regardless of whether the damage arises out of the cool room failing to operate efficiently or at all;
- (r) report immediately to the Licensor any damage to or fault with the cool room, in order that the Licensor may carry out any necessary repair works, and recover the cost of same from the Licensee, and in no circumstances is the Licensee to carry out any works or repairs to the cool room;
- (s) observe and comply with all directions given and notices displayed by the Licensor in connection with the day to day use and operation of the Stand; and
- (t) comply with at its cost and expense all reasonable directions, requirements and conditions that may from time to time be made or imposed on the Licensee or the Licensee's Employees.

7.2 Negative covenants

The Licensee must not:

- (a) use or allow anyone else to use the Stand for any purpose other than the Permitted Use, and in particular must not use or allow anyone else to use the Stand for temporary or permanent parking of vehicles or for storage purposes;
- (b) occupy the Stand at any time other than during the Trading Hours on the Centre Trading Days;
- (c) change the Nominee without the Licensor's prior written consent (which will not be unreasonably withheld where the replacement nominee executes a licence in the form of this licence and deliver this to the Licensor);
- (d) use the Stand in a manner that may cause the Licensor to breach an obligation to a third party;
- (e) use or allow anyone else to use the Stand for any illegal, noxious, offensive or unpleasant trade or business;
- (f) do anything in the Stand which is or may become an annoyance, nuisance, grievance or disturbance to anyone in the Market Land or any owner or occupier of adjacent premises;
- (g) use materials or substances which may be detrimental to the quality of the air inside the Market Land or to the health or comfort of people in the Market Land;
- (h) use any Services contrary to their intended purpose;
- (i) do anything that may overload any Services;
- (j) obstruct or permit the obstruction of any part of the Common Areas;
- (k) bring or cause to be brought into or left within the National Flower Centre during the Trading Hours any motor vehicle, trailer, forklift, motorised or mechanical trolley or wheeled apparatus of any description except, where the Licensee has obtained the specific prior approval of the Licensor, flower display trolleys which do not exceed 2.7 metres in height;
- (l) store or place any item or goods whatsoever on the roof of the office (if any);
- (m) store or place any plants, flowers and/or foliage directly on the floor of the Stand;
- (n) erect or place any structure whatsoever whether permanent or temporary on the Stand;
- (o) merchandise, display or trade beyond the boundary of the Stand;
- (p) use the Common Areas for any purpose other than as permitted by the Licensor;
- (q) create any actual or potential fire hazard in the Stand, the Trading Floor Complex or the Market Land;
- (r) dispose of any interest in this licence or part with possession of the Stand other than as set out in clause 6; or
- (s) use the Stand or allow anything to be done so as to render payable any increased or extra premiums for insurance or so as to make void or voidable any policy for such insurance.

7.3 Waste

- (a) The Licensor may, at the Licensee's cost, remove any waste left by the Licensee or the Licensee's Employees in:
 - (i) the Stand outside the Trading Hours; or

- (ii) any part of the Trading Floor Complex,
(other than in an area designated for the collection of waste).
- (b) The Licensee acknowledges and agrees that:
 - (i) the Licensor will use a CCTV system to determine who deposited waste in the Trading Floor Complex; and
 - (ii) the Licensor's determination as to:
 - (A) who deposited waste in the Trading Floor Complex; and
 - (B) the costs incurred by the Licensor in removing the waste,

is final.

8. Risk, release and indemnity

8.1 Risk

The Licensee accepts the condition of the Stand on the Commencement Date and occupies the Stand at the Licensee's own risk.

8.2 Release

- (a) The Licensee releases the Licensor and the State from all actions, liabilities, penalties, Claims or demands for any damage, loss, injury or death occurring in the Stand or the Market Land, except to the extent that they are caused by the Licensor's negligence.
- (b) The Licensor is not liable for any acts or omissions of any other person lawfully claiming through the Licensor.

8.3 Indemnity

The Licensee indemnifies and will keep indemnified the Licensor, the State and their employees, agents, successors and assigns from and against any actions, Claims, costs, liabilities and other expenses whatsoever or howsoever arising out of or in connection with:

- (a) the use or occupation of the Stand (including the Permitted Use) or the Market Land by the Licensee or the Licensee's Employees;
- (b) the Licensee's breach of any one or more terms and conditions of this licence;
- (c) the Licensee's breach of any law, regulation or other order or any omission by the Licensee or the Licensee's Employees in relation to the use of the Stand or the Market Land; or
- (d) interference by persons (other than the Licensor's Employees) with the lawful activities of the Licensor's Employees, except to the extent the Licensee can demonstrate who caused such interference and the Licensor can (and does) recover the loss or damage from such person or persons.

8.4 Indemnities are independent

Each indemnity is independent from the Licensee's other obligations under this licence and continues during this licence and after this licence ends. The Licensor may enforce an indemnity before incurring expense.

8.5 Liability for customers

Despite anything else in this licence, the Licensee acknowledges and agrees that:

- (a) the Licensee must ensure that any potential or actual customers do not enter or remain on or in the Stand; and
- (b) despite clause 8.5(a), if any potential or actual customer enters or remains on or in the Stand:
 - (i) for the period that the potential or actual customer remains on or in the Stand, the Licensee is responsible for the safety and welfare of that potential or actual customer; and

to the extent that the potential or actual customer causes any damage to the Stand, the Licensee will be responsible for the repair or rectification of such damage.

9. Licensor's rights

9.1 Licensor's rights

Despite anything else in this licence, the Licensor reserves the right to:

- (a) transfer, dedicate, dispose of or otherwise deal with the Market Land or any interest in the Market Land and/or the Lease;
- (b) grant any other lease or licence of space in the Market Land for the same purpose as the Permitted Use or any other purpose or use;
- (c) use the walls and the roof of the Trading Floor Complex;
- (d) install, maintain, use, repair, alter or replace any Services through, contiguous or adjacent to the Stand;
- (e) subdivide the Market Land or any part of it; and
- (f) grant easements to or enter into any arrangement or agreement with any third party (as the Licensor considers appropriate) for the provision of public or private access to and egress from the Stand, the Trading Floor Complex or the Market Land or the support of structures or Services on the Market Land, in which case this licence will be deemed to be subject to those easements, arrangements or agreements.

9.2 Emergency

If the Licensor believes there is an actual or anticipated emergency or threat to persons or property in or near the Market Land, the Licensor may close the whole or any part of the Market Land and require all persons to vacate. If the Licensor does this the Licensee must:

- (a) vacate the Stand and the Market Land as expeditiously as possible; and
- (b) follow all directions of the Licensor.

The Licensee must not make any Claim against the Licensor and releases the Licensor to the fullest extent permitted by law if the Licensor closes the whole or any part of the Market Land under this clause 9.2.

9.3 Additions and alterations to Market Land

The Licensor may at any time:

- (a) add to, reduce, vary, extend, modify, redesign or build additional storeys on any building in the Trading Floor Complex or the Market Land or otherwise deal with the Trading Floor Complex or the Market Land (other than the Stand) in any other manner;
- (b) construct additional buildings or improvements in the Trading Floor Complex or the Market Land;

- (c) alter, modify, resume, relocate, add to, increase or decrease the size of, or alter the configuration of, the Common Areas; and
- (d) change the area, level, location, entries, exits and arrangements of car parking facilities including constructing multi deck parking facilities.

9.4 Works

In relation to any works carried out by the Licensor under clause 9.3:

- (a) the Licensor must endeavour to cause a minimum of inconvenience to the Licensee as is reasonably practical in the circumstances; and
- (b) the Licensee consents to the works even though the works may alter or inhibit the flow of the Licensee's customers to the Stand (provided that reasonable pedestrian access to the Stand is maintained during Trading Hours).

9.5 Common Areas

The Licensor will at all times have complete control over the Common Areas including, without limitation, the right to:

- (a) alter, modify, resume, relocate, add to, increase or decrease the size of, or alter the configuration of, the Common Areas;
- (b) construct, maintain and operate lighting facilities in the Common Areas;
- (c) police the Common Areas;
- (d) close, lock off or otherwise control all or any part of the Common Areas for as long as the Licensor considers necessary to:
 - (i) repair and maintain any part of the Market Land (including any Services);
 - (ii) carry out any works to the Market Land in accordance with clause 9.3 and 9.4 (provided that pedestrian access to the Stand is maintained during Trading Hours);
 - (iii) prevent a dedication of, or the accrual of any rights to any person or the public in, the Common Areas; or
 - (iv) allow the Licensor to carry out any other rights it has under this licence; and
- (e) do any other things the Licensor considers appropriate to improve the amenity and use of the Common Areas and the Market Land (provided that reasonable pedestrian access to the Stand is maintained during Trading Hours).

9.6 Sale of Market Land

- (a) If the Licensor transfers or otherwise deals with all or part of its interest in the Lease and/or of the Market Land, the Licensor may transfer the Licensor's rights under this licence.
- (b) If the Licensor transfers its rights under this licence the Licensee must:
 - (i) comply with its obligations under this licence in favour of the transferee;
 - (ii) release the Licensor from complying with the Licensor's obligations under this licence on and from the date of the transfer; and
 - (iii) enter into any agreement required by the Licensor documenting the transfer.

10. Termination

- (a) Either party may terminate this licence by one month's written notice to the other party.

- (b) In addition to the rights of the Licensor in accordance with clause 10(a) the Licensor may:
 - (i) immediately terminate this licence by written notice to the Licensee if the Licensee is in breach of its obligations under clause 6.1; and
 - (ii) terminate this licence by seven days' written notice to the Licensee in any of the following circumstances:
 - (A) the Licence Fee or any part is in arrears;
 - (B) in the event of any failure omission or breach by the Licensee in performing or observing the terms and conditions of this licence;
 - (C) the Licensee breaches the Act, the Operating Rules or contravenes any direction given by the Licensor; or
 - (D) the Licensee being a corporation goes or is put into liquidation voluntary or compulsory (save for the purposes of reconstruction) or has a receiver, a receiver and manager, an official manager or administrator appointed or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or execution is levied against the Licensee and not discharged within thirty days or the Licensee becomes bankrupt.
- (c) The Licensor's right to terminate this licence in accordance with clauses 10(a) and 10(b) is in addition and without prejudice to any other rights and remedies that it may have arising out of or in connection with any breach by the Licensee of any term or condition of this licence.
- (d) If the Stand is damaged or destroyed so that the Licensee's use of the Stand is adversely affected, either party may terminate this licence by giving 14 days notice to the other party. The Licensor is not obliged to restore or reinstate the Stand in any circumstances.

11. Lease

- (a) This licence will end automatically if the Lease ends for any reason. It will end at the same time as the Lease ends.
- (b) The ending of this licence under clause 11(a) does not affect the Licensor's or the Licensee's rights relating to any breach of this licence that happens before this licence ends.
- (c) Despite anything else in this licence, if the Lease ends for any reason, the Licensee must, if requested by the Licensor or the Landlord, enter into a direct licence with the Landlord for the Stand for the remainder of the then remaining term of this licence on the same terms of this licence.
- (d) If there is inconsistency between this clause 11 and any other provision in this licence, this clause 11 prevails.

12. Costs

- (a) The Licensee must pay the Licensor's costs of and incidental to:
 - (i) any consent required under this licence, including any consent for a proposed or actual change of control under clause 6;
 - (ii) any change, surrender or ending of this licence except where the change occurs at the Licensor's request;

- (iii) the exercise or attempted exercise by the Licensor of any right or remedy against the Licensee; and
 - (iv) any breach of this licence by the Licensee.
- (b) The Licensee must pay any duty payable on this deed.

13. Representations and warranties

The Licensee acknowledges that the Licensor has made no representations nor given any warranties that:

- (a) the Stand is or will remain suitable or adequate for the Permitted Use;
- (b) the Permitted Use may lawfully be carried on in the Stand;
- (c) the Licensee will be granted a further licence or any other form of occupancy agreement in relation to the Stand when this licence ends; or
- (d) the Licensee will be granted a licence or any other form of occupancy agreement in relation to the Market Land,

and the Licensee is deemed to have satisfied itself in this regard.

14. Goods and Services Tax (GST)

14.1 Interpretation

Words or expressions used in this clause 14 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

14.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this licence, unless specifically described in this licence as 'GST inclusive', does not include an amount on account of GST.

14.3 Gross up of consideration

Despite any other provision in this licence, if a party (**Supplier**) makes a supply under or in connection with this licence on which GST is payable (not being a supply the consideration for which is specifically described in this licence as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this licence but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clause 14.5, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

14.4 Reimbursements (net down)

If a payment to a party under this licence is a reimbursement or indemnification or otherwise calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that the party is a member of (as the case may be), is entitled in respect of that loss, cost or expense.

14.5 Tax invoices

The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with this licence until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

15. Privacy

- (a) The Licensor is bound by the Information Privacy Act 2000 (Vic) (**IP Act**) including the Information Privacy Principles (**IPPs**) in the IP Act.
- (b) Any Personal Information collected by the Licensor will be handled by the Licensor in accordance with its obligations under the IP Act and the IPPs and with the Licensor's privacy policy as amended from time to time.
- (c) 'Personal Information' has the meaning given to it in the IP Act and may include information about the Licensee, if the Licensee is an individual, and about the Licensee's Employees. Personal Information may be collected directly from the individual, from a third party and by way of surveillance cameras installed in or around the Stand and the Common Areas for the purpose of administering this licence and the exercise of any rights or compliance with any obligations under this licence.

16. Notices

A notice given under this licence may be given by post or delivery to:

- (i) the party's last known address;
- (ii) the party's registered office; or
- (iii) if to the License Stand:
 - (A) the post box at the Market Land nominated by the Licensor, from time to time, for the Licensee's use; or
 - (B) the Nominee.
- (b) Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
- (c) Notices delivered after 5.00pm will be taken to have been received at 9.00am on the next business day at the place where it is received.

17. Retail Act

17.1 No application

The parties agree that the Retail Act does not apply to this licence.

17.2 Licensee not to cause Retail Act to apply

The Licensee must not do anything or allow anything to be done on the Stand that will cause the Retail Act to apply and the Licensee indemnifies the Licensor against any loss it may suffer as a result of the breach of this clause by the Licensee.

18. Miscellaneous

18.1 Compliance by others

The Licensee must ensure that the Licensee's Employees comply, if appropriate, with the Licensee's obligations under this licence.

18.2 Licensee not to permit or suffer prohibited matters

Wherever in this licence the Licensee is prohibited from doing any act, matter or thing, the Licensee is also prohibited from permitting or suffering such act matter or thing.

18.3 Waiver and variation

- (a) A provision of or a right under this licence must not be waived or varied except in writing signed by whoever is to be bound.
- (b) If the Licensor:
 - (i) accepts the Licence Fee or other money under this licence (before or after termination);
 - (ii) does not exercise or delays exercising any right under clause 10;
 - (iii) gives any concession to the Licensee; or
 - (iv) attempts to mitigate the Licensor's loss,

that act is not a waiver of any breach or of the Licensor's rights under this licence. An attempt by the Licensor to mitigate the Licensor's loss is not a surrender of this licence.

18.4 Approvals

In this licence, unless the contrary intention appears:

- (a) the Licensor may withhold any consent or approval in its absolute discretion and in giving its consent or approval, the Licensor may do so conditionally or unconditionally; and
- (b) no consent or approval is valid unless it is in writing and signed by the party giving the consent or approval.

18.5 Prior breaches

Expiry or termination of this licence does not affect any rights in connection with a prior breach of this licence.

18.6 Whole Agreement

This licence contains the entire agreement of the parties with respect to its subject matter. No verbal statements made or written documents given by the Licensor to the Licensee form part of this licence. This licence sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

18.7 Caveats

The Licensee must not:

- (a) lodge a caveat on the title to the Market Land; or
- (b) allow a caveat lodged by a person claiming through the Licensee to remain on the title to the Market Land.

18.8 Warranties and undertakings

- (a) The Licensee warrants that the Licensee has relied only on the Licensee's own enquiries in connection with this licence and not on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf.

- (b) The Licensee must comply on time with undertakings given by or on behalf of the Licensee in connection with this licence.

18.9 Counterparts

This licence may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

18.10 Severability

If the whole or any part of a provision of this licence is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this licence has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 18.10 has no effect if the severance alters the basic nature of this licence or is contrary to public policy.

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Schedule

Stand:	[#] [Note to Licensees: Stand size and location to be identified by an attached plan]
Licensee:	[#] of [#]
Trading Days:	The Centre Trading Days indicated below: <input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday
Commencement Date:	The first day of trading in the National Flower Centre as directed by the Licensor to the Licensee in writing
Expiry Date:	12 months from the Commencement Date
Licence Fee:	[\$#] per quarter, payable quarterly in advance (excluding GST) comprising of: [\$#] per quarter for the Stand (excluding GST) [\$#] per quarter for the Roller Door (excluding GST) [\$#] per quarter for the cool room (excluding GST)
Permitted Use:	Wholesale sale of flowers and such other uses as the Licensor may from time to time permit.

Signing page

EXECUTED as a deed.

The Common Seal of Melbourne Market Authority was affixed by authority of the Board in the presence of:

Chief Executive/Secretary



Member



Name (please print)

Name (please print)

[If the Licensee is an individual]

Signed by **[name of signatory]** in the presence of

Signature of witness



[Name of signatory]



Name of witness (print)

[If the Licensee is a company]

Executed by **[Name of company]** in accordance with Section 127 of the *Corporations Act 2001* in the presence of

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

Annexure A

Stand Plan

Annexure to Flower Market licence

Annexure B

Market Land

Annexure to Flower Market licence

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MinterEllison

L A W Y E R S



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LAWYERS