

Management Agreement

[Roma Airport Cafe]

[#Note: This Management Agreement is drafted in the basis that Council will pay the Manager a Management Fee for management of the Roma Airport Café, and the Manager will retain all profits in connection with the café. As noted in the tender documents.

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Management Agreement

[Roma Airport Cafe]

PART 1 REFERENCE INFORMATION

Item 1 Inception of Agreement

Formation Date:, 2022

Item 2 Parties

Name: Maranoa Regional Council (ABN 99 324 089 164).
Description in Agreement: Council.

Address for Notices:

Delivery: Cnr Bungil & Quintin Streets
Roma, Qld 4455.

Post: PO Box 620
Roma, Qld 4455.

Email:

Name:
Description in Agreement: Manager.

Address for Notices:

*Delivery
& Post:*

Item 3 Duration and Fees

Term:

Commencement Date: XX July 2022

Expiry Date: XX July 202X

Management Fee: \$XX, XXX.00 per annum (inclusive of GST), as adjusted in accordance with clause 7.2.
Payable to the Manager.

PART 2 BACKGROUND

- 2.1 Council is the owner of the land on which the Roma Airport Café is situated (the *Cafe*).
- 2.2 Council accepted a tender submitted by the Manager to operate the Cafe on its behalf, as its contracted manager.
- 2.3 Council is to enter the management contract with the Manager.

2.4 This instrument records the terms of the agreement.

PART 3 INTERPRETING THE AGREEMENT

3.1 General Interpretation

- (1) This Agreement is to be interpreted by reference to the provisions of this Part 3.
- (2) However, each such provision applies only to the extent that:
 - (a) a given context does not require otherwise; or
 - (b) a contrary intention is not apparent.

3.2 Definitions

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross-referenced provision shown opposite:

Act

- (1) A legislative enactment of the Queensland Parliament or the Commonwealth Parliament.
- (2) Subordinate legislation made under the enactment.
- (3) A direction or requirement made by a competent entity under the enactment or subordinate legislation.
- (4) A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.
- (5) A planning instrument.
- (6) A local law.

Act of Insolvency

- (1) For a natural person:
 - (a) committing an act of bankruptcy;
 - (b) presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition;
 - (c) signing under the *Bankruptcy Act* an authority to appoint a controlling trustee;
 - (d) becoming bankrupt upon a debtors petition or a creditors petition;
 - (e) failing to secure the return of an asset within 21 days after a creditor or an encumbrancee lawfully seizes it.
- (2) For a corporation:
 - (a) suffering the appointment of a Receiver, which appointment is not terminated, postponed, or enjoined within 14 days after it is made;
 - (b) entering voluntary administration;
 - (c) entering a composition or scheme of arrangement for the benefit of creditors;
 - (d) failing to satisfy a statutory demand under the *Corporations Act*;
 - (e) passing a voluntary winding up resolution, voluntarily applying to be wound up, or suffering presentation of an application for its winding up;
 - (f) suffering the appointment of a provisional liquidator;

(g) being wound up or being deregistered.

(3) For any entity:

- (a) failing to pay a judgment debt, or to have the judgment set aside, within 21 days after the judgment is given against it;
- (b) failing to secure the return of an asset within 21 days after a creditor or an encumbrancee lawfully seizes it.

Address for Notices

For each Party:

- (1) its address or email address number shown in Part 1; or
- (2) such other address or email address as it has notified to the Party giving it a notice as its address or email address for notices under this Agreement.

Agreement

This instrument and the agreement it evidences.

Appendix

An appendix to this Agreement.

Bankruptcy Act

Bankruptcy Act 1966 (Cwlth).

Business Day

- (1) For giving notice: a day other than a Saturday, a Sunday, or another public holiday in the locality to which the notice is to be sent.
- (2) For making a payment: a day, other than a Saturday, a Sunday, or another public holiday, upon which banks are open for business in the locality of the recipient's Address for Notices.
- (3) For trading hours: Monday to Sunday (inclusive).
- (4) For this definition, a bank is a trading bank licensed to conduct banking business, and conducting banking business, under a Commonwealth Act or a Queensland Act regulating banking.

Café

The café known as "Roma Airport Cafe".

Chief Executive Officer

Council's Chief Executive Officer, including:

- (1) a person acting in the position at a relevant time; and
- (2) a person to whom the chief executive officer's power has been relevantly delegated concerning this Agreement.¹

Clause

A numbered clause, sub-clause, or paragraph in this Agreement other than in an Appendix.

Commencement Date

Refer to Part 1 – Reference Information.

¹ Local Government Act section 259 details the chief executive officer's delegation powers.

Confidential Information	<ol style="list-style-type: none">(1) Financial information concerning the Cafe and this Agreement.(2) Information stated by or on behalf of a Party to be confidential.(3) Information that a reasonable person in the position of a Party acquiring it would consider:<ol style="list-style-type: none">(a) commercially or politically sensitive; or(b) otherwise not intended for dissemination to any third person.(4) However, information is not confidential if it is already public knowledge.
Corporations Act	<i>Corporations Act 2001 (Cwlth).</i>
Cost	Includes loss, liability, and expense.
Council	Maranoa Regional Council. Refer to Item 2.
Council Damage Policy	Refer to Clause 14.1.
Council Property	Refer to Clause 14.1.
Council Risk Policy	Refer to Clause 14.1.
Councillor	At any given time, an elected member of Council.
Cross-liability Provision	Refer to Clause 13.1.
Default Notice	Refer to Clause 20.1.
Electricity Charge	Refer to Clause 7.4(2)
Expiry Date	Refer to Clause 6.1.
Force Majeure	Refer to Clause 18.1.
Formation Date	Refer to Part 1 – Reference Information.
GST Act	Refer to Clause 8.1(2).
Harm	All or any of: <ol style="list-style-type: none">(1) property loss, including loss of use (complete or partial) and loss through misplacement and theft;(2) property damage;(3) damage to reputation;(4) death;(5) personal injury, including shock, fright, and mental distress;(6) illness, including mental illness; and(7) (for clarity) disablement, whether through personal injury or illness.

Impacted Obligation	Refer to Clause 18.1.
Impacted Party	Refer to Clause 18.1.
Item	A numbered item of information in Part 1.
LGM Pool	Refer to Clause 14.1.
Local Government Act	<i>Local Government Act 2009</i> (Qld).
Maintenance	Includes repairing damage and replacing items that require replacement.
Management Fee	Refer to Part 1 – Reference Schedule.
Management Services	The food and beverage services to be provided by the Manager in the Roma Airport Café and all other obligations of the Manager under this Agreement, including any incidental services that can reasonably be inferred as forming part of the Management Services.
Manager	Refer to Item 2.
Manager Damage Policy	Refer to Clause 13.1.
Manager Property	Refer to Clause 13.1.
Manager Risk Policy	Refer to Clause 13.1.
Officer	<ol style="list-style-type: none">(1) For the Manager, if a corporation: a director, a company secretary, or an attorney.(2) For the Manager, if a natural person: that person.(3) For Council, when concerning the signature of a document (<i>for example, a notice or an agreement</i>):²<ol style="list-style-type: none">(a) its mayor;(b) a councillor or Council employee authorized in writing by its mayor to sign the document or to sign documents of a class that encompasses the document;(c) a person to whom Council has delegated the power to sign the document or to sign documents of a class that encompasses the document; or(d) (for clarity, if the delegate is the Chief Executive Officer) the Chief Executive Officer's lawful sub-delegate for the purpose.³(4) For Council, when concerning the performance of an act other than the signature of a document:

² Refer to Local Government Act section 236 concerning persons who may sign documents on behalf of a local government.

³ Refer to Local Government Act section 259 concerning Chief Executive Officer sub-delegation.

	(a) a person to whom Council has delegated the power to perform the act;
	(b) if Council has delegated the power to the Chief Executive Officer: The Chief Executive Officer's lawful sub-delegate for the purpose.
	(5) For either Party: its solicitor.
Operating Expenses	Refer to Clause 7.4(2).
Part	A numbered part or division of this Agreement, other than an Appendix, containing: (1) one or more Items; or (2) one or more Clauses.
Party	(1) Each or either of: (a) Council; and (b) the Manager.
Queensland Court	Refer to Clause 25.11(1).
Receiver	A receiver, or a receiver and manager, of the assets and undertaking of the Manager deployed in operating the Cafe pursuant to this Agreement.
Registered Insurer	Refer to Clause 13.1.
Roma Airport Complex	situated at Hanger Drive, Roma QLD 4455.
Services	(1) The utility services from time to time appurtenant to the Cafe, including: (a) electronic services, including telecommunications apparatus; (b) lifts; (c) fire, sprinkler, and air conditioning; (d) lighting, gas, fuel, and other energy; (e) water, sewerage, and drainage. (2) The infrastructure via which those utility services are delivered, including fittings, fixtures, appliances, plant, and equipment.
Agreed Operating Hours	Refer to Appendix 2. Excludes Christmas Day, Boxing Day & New Year's Day.
Structural	Load-bearing and/or supportive, or otherwise essential to the integrity of fabric or a building or other structure.
Term	The period beginning on the Commencement Date and ending (unless extended) on the Expiry Date.

Third Person	A person who is not a Party, including a person who is a Party but is acting in a non-Party capacity.
WHS Act	Refer to Clause 10.1.
WorkCover	Insurance under the <i>Workers Compensation Act</i> .
Workers Compensation Act	<i>Workers Compensation and Rehabilitation Act 2003 (Qld)</i> .

3.3 Cognate Expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

3.4 Parties

- (1) Reference to a Party who is a natural person includes the person's personal representatives and permitted assigns (transferees).
- (2) Reference to a Party that is a legal entity other than a natural person includes the entity's successors and permitted assigns (transferees).

3.5 Concurrent Responsibility

For a Party composed of two or more persons, each item of agreement by the Party binds:

- (1) all of those persons collectively; and
- (2) each of them as an individual.⁴

3.6 Repair Obligations

An obligation to repair an item or a component includes an obligation to replace it if:

- (1) the item or component is irreparable; or
- (2) replacement is prudent as an economic or safety measure.

3.7 Inclusive References

- (1) "Include" and its derivatives are not expressions of limitation.
- (2) "In particular" and "particularly" are not expressions of limitation.

3.8 References to Acts/Statutory Provisions

- (1) Reference to an Act includes an Act that amends, consolidates, or replaces an Act.
- (2) Reference to a section or other provision of an Act includes a section or provision that amends, consolidates, or replaces the section or provision.
- (3) Reference to an Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is to an Act of the Queensland Parliament.

3.9 Miscellaneous References

- (1) Reference to the singular includes the plural, and vice-versa.
- (2) Reference to a gender includes each other gender.
- (3) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.
- (4) Reference to an entity that has ceased to exist, or has reconstituted, amalgamated, reconstructed, or merged, is to be treated as a reference to the entity:

⁴ This collective and individual responsibility is otherwise known as joint and several responsibility.

- (a) established or constituted in its stead; or
- (b) succeeding, as nearly as may be, to its power or function.
- (5) Reference to an office or a position includes an office or a position:
 - (a) established or constituted in lieu of that office or position; or
 - (b) as nearly as may be, succeeding to its power or function.
- (6) Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.
- (7) Reference to money is a reference to Australian dollars and cents.
- (8) Reference to a time of day is a reference to Australian Eastern Standard Time.
- (9) Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

3.10 Headings and Notes

The table of contents, the headings, and any notes (including footnotes and endnotes):

- (1) appear for convenience only; and
- (2) are not operative provisions of the Agreement.

3.11 Actions

- (1) Reference (direct or indirect) to person's act encompasses an act of commission and an act of omission; and
- (2) A provision that obliges a person not to do something obliges the person also to prevent others over whom he has control or dominion from doing that thing.
- (3) An obligation to use its best endeavours, or to use reasonable endeavours, does not require a Party to act against its own interests.

3.12 Contra Proferentem Interpretation

A provision of the Agreement is not to be interpreted against the interest of a Party merely because the Agreement or provision was drawn by or on behalf of that Party.

3.13 Severance

A provision is to be treated as omitted from the Agreement if:

- (1) the provision is void, unenforceable, or incomprehensible; or
- (2) retaining the provision would render the Agreement or part of the Agreement void, unenforceable, or incomprehensible.

3.14 Legislative Intrusion

A provision in an Act, purporting to exclude or amend a provision of the Agreement, is inapplicable to the Agreement to the extent that the Act or another law permits the Parties to exclude by agreement the application of that provision.

PART 4 PRELIMINARY ASSURANCES

4.1 Parties' Assurances

- (1) Each Party assures the other Party that:
 - (a) it possesses the capacity and power to enter this Agreement;
 - (b) it possesses the power to perform all of its obligations under the Agreement;

- (c) all necessary authorizing action has been taken to enable it to enter the Agreement and to perform its obligations (*for example, the passage of any necessary resolutions*);
 - (d) entering the Agreement does not contravene, and performing its agreed obligations will not contravene, any law by which it is bound.
- (2) Each Party acknowledges that the other enters this Agreement in reliance upon those assurances.

4.2 Representatives' Assurances

Each person signing the Agreement as an Officer or other representative of a Party assures the other Party that he possesses unrestricted authority to sign in that capacity.

PART 5 APPOINTMENT AND STATUS OF MANAGER

5.1 Appointment

Council appoints the Manager to operate the Cafe throughout the Term, and the Manager accepts the appointment.

5.2 Disclosure of Status

The Manager must not, whether in the course of operating the Cafe or otherwise, represent that:

- (1) it possesses any proprietary or other interest in the Cafe; or
- (2) that it is other than the contracted operator of the Cafe.

5.3 Agency/Authority

The Manager acknowledges that:

- (1) this Agreement alone does not constitute it as Council's agent for any purpose; and
- (2) it possesses no authority to incur any obligation or liability on Council's behalf, or in Council's name.

5.4 Liabilities Incurred by Manager

- (1) Obligations that the Manager incurs in operating the Cafe must be incurred in its own name and on its own account.
- (2) Any agreement, letter, order, or other document to which the Manager is a party, or that the Manager uses, in operating the Cafe must display the Manager's name prominently, identifying it as the operator of the Cafe, whether or not the document also bears the name of the Cafe.

PART 6 DURATION OF AGREEMENT

6.1 Term

- (1) Irrespective of the Formation Date, the Term begins on the Commencement Date.
- (2) Subject to clause 6.2, the Term ends on the Expiry Date.

6.2 Options to Extend Term

- (1) The Manager may, at least 30 Business Days prior to the expiry of the Term, request that the Term be extended.
- (2) Council may, in its absolute discretion (regardless of whether it has received a request from the Manager) extend the Term (and therefore the Expiry Date) twice for up to one year at a time on the same terms as this Agreement. If Council wishes to extend the Term and Expiry Date it will give the Manager written notice prior to the expiry of the Term.

6.3 Variation of Agreement

If the Term is extended in accordance with clause 6.2, the parties will act reasonably to agree to any adjustment to the Management Fee and, failing agreement, Council will determine a reasonable adjustment to the Management Fee having regard to any change in management costs and inflation.

PART 7 MANAGEMENT FEE PROFITS, AND OPERATING EXPENSES

7.1 Management Fee

- (1) Council must pay the Manager the Management Fee.
- (2) The Council must pay the Management Fee:
 - (a) monthly in advance on the first Business Day of each month;
 - (b) by equal consecutive instalments, each being one-twelfth of the annual Management Fee;
 - (c) to the Manager's nominated account.

7.2 Apportionment for Broken Periods

- (1) Clauses 7.2(2) and 7.2(3) apply if the Term:
 - (a) begins on a day other than the first of a Month; or
 - (b) expires on a day other than the last day of a Month.
- (2) Council must pay for the broken period:
 - (a) preceding the first complete Month; and
 - (b) following the last complete Month,
a proportionate part of the Monthly instalment payable on account of the Management Fee (calculated at a pro rata daily rate).
- (3) Council must make the payment not later than the 1st day of the broken period.

7.3 Profits

The Manager will retain all profit and income from the operation of the Café.

7.4 Operating Expenses

- (1) The Manager will meet the Operating Expenses
- (2) *Operating Expenses* are the expenses incurred, day-to-day and at wider intervals, in the use and operation of the Cafe, including all:
 - (a) charges for gas and electricity (if separately metered);
 - (b) water consumption charges (if separately metered);
 - (c) service and equipment supply charges for installed telephones;
 - (d) charges for telephone and data usage by the Manager;
 - (e) Maintenance costs (including painting and plumbing expenses) incurred in keeping the Cafe (including all of its plant and equipment) in good operational order and condition;
 - (f) cleaning expenses;
 - (g) rubbish and waste removal expenses (above those provided by Council as per s10.6); and
 - (h) pest control expenses.

7.2 Adjustment to Management Fee

On each anniversary of the Commencement Date during the Term (including as extended) (Review Date), the Management Fee will be reviewed and adjusted such that it will be the value of 'A' as calculated using the following:

$$A = \frac{B \times C}{D}$$

where:

- B = being the Management Fee payable immediately before the relevant Review Date;
- C = the Consumer Price Increase published by the Australian Bureau of Statistics (**Index Number**) for the quarter which ended immediately before the relevant Review Date; and
- D = the Index Number published for the quarter which ended immediately before the previous date on which the Management Fee was reviewed under this Agreement or if there has not been a previous review of the Management Fee, the date of this Agreement.

PART 8 GOODS & SERVICES TAX

8.1 Interpretation of Terms

(1) Each of the following expressions bears the meaning the *GST Act* ascribes to it:

- (a) adjustment event;
- (b) adjustment note;
- (c) Commissioner;
- (d) consideration;
- (e) creditable acquisition;
- (f) GST;
- (g) GST group;
- (h) input tax credit;
- (i) recipient;
- (j) recipient created tax invoice;
- (k) registered;
- (l) representative member;
- (m) supplier;
- (n) taxable supply;
- (o) tax invoice.

(2) The GST Act is A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

8.2 GST Grouping

Also, references to a supplier, a recipient, a payer, or a payee who is a member of a GST group⁵ include the representative member for that person's GST group.

8.3 Character of Payments

- (1) Non-monetary consideration for a taxable supply under this Agreement is GST-inclusive.
- (2) However, unless the Agreement states otherwise, monetary consideration for a taxable supply under the Agreement is GST-exclusive.

⁵ Companies within a 90%-owned group, and in some cases other entities (such as non-profit bodies), can be approved by the Commissioner as a GST group. One member of the group then deals with all the GST liabilities and entitlements of the group (excepting GST on most taxable importations), and (in most cases) intra-group transactions are excluded from GST.

8.4 Responsibility for Payment

The recipient must:

- (1) bear the GST upon a taxable supply under the Agreement;
- (2) pay the tax to the supplier with the consideration for the supply.

8.5 Input Credits Adjustment (Reimbursements)

- (1) If the Agreement requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.
- (2) If the Agreement requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input tax credit to which the supplier is entitled for the cost.
- (3) If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.
- (4) If the Agreement obliges a Party to indemnify the other Party against a Cost the other incurs or sustains, the Cost will be net of all input tax credits the payee is entitled to claim concerning that Cost.
- (5) For clarity, if the net Cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

8.6 Adjustments

- (1) This Clause 8.6 applies if an adjustment event occurs concerning a taxable supply made under this Agreement.
- (2) The consideration for the supply will be recalculated to reflect the adjustment event.
- (3) As the case requires:
 - (a) the recipient must pay the resultant GST shortfall to the supplier; or
 - (b) the supplier must refund the resultant GST overpayment to the recipient.

8.7 Tax Invoices and Adjustment Notes

- (1) The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Agreement if:
 - (a) the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipient created tax invoice for the supply; and
 - (b) the recipient gives the supplier a recipient created tax invoice or an adjustment note (as the case requires) for that supply.
- (2) Otherwise, however, the supplier must give the recipient, when it makes the taxable supply or in exchange for the consideration, a tax invoice for the supply.
- (3) The supplier also must give the recipient an adjustment note:
 - (a) in exchange for payment of a GST shortfall; or
 - (b) in conjunction with the payment of a GST refund.
- (4) If the consideration for a taxable supply is non-monetary, the tax invoice for the supply, and a relevant adjustment note, must state as the consideration the GST-inclusive market value of the supply.
- (5) A Party that has been issuing recipient created tax invoices for taxable supplies under the Agreement must notify the other Party promptly if it loses its entitlement to issue such invoices.

8.8 Registration

- (1) Each Party declares that it is registered.
- (2) A Party must notify the other promptly if it ceases to be registered.

PART 9 EXPENSES AND ACCOUNTS

9.1 Accounts and Records

- (1) Irrespective of its obligations under any Act concerning maintenance of accounts and other financial records, the Manager must maintain at all times during the Term complete and accurate accounts and records concerning operation of the Cafe pursuant to this Agreement.
- (2) In particular, the Manager must maintain and retain complete and accurate accounts and records of all income and expenditure, Operating Expenses, and other charges paid by it and payable to it concerning use and operation of the Cafe. These records must be supplied to Council at the end of each financial year.
- (3) The Manager must take all reasonable steps to ensure that every relevant transaction is recorded (where appropriate upon serially numbered invoices or receipts, or electronically) in accordance with recommendations made by Council from time to time.
- (4) The Manager must keep its financial records at a place Council approves, the approval not to be unreasonably withheld or delayed.
- (5) Upon receipt of not shorter than 2 Business Days' notice of Council's desire to inspect them, the Manager must give Council unrestricted access to:
 - (a) the financial records; and
 - (b) all other records,
of the performance of its obligations under this Agreement.
- (6) In particular, though without limitation:
 - (a) Council may inspect, request a copy and audit at any time all of the Manager's financial records concerning operation of the Cafe;
 - (b) the Manager must ensure its availability, and the availability of its staff, for interview by Council concerning operation of the Cafe; and
 - (c) if an audit or enquiry on behalf of Council has revealed an irregularity that, in Council's opinion (reasonably formed), is material, the Manager must reimburse Council upon demand the cost of the audit or enquiry.

9.2 Accounting Standards

The Manager must maintain its financial records in conformity with the requirements of all relevant Acts, and otherwise in conformity with generally-accepted accounting practices in Australia for businesses similar to the business the subject of this Agreement.

PART 10 GENERAL MANAGEMENT OF CAFE

10.1 Part-specific Definition

For this Part 10, the *WHS Act* is the *Work Health and Safety Act 2011*.

10.2 Principal Obligations

- (1) Unless otherwise required under a specific provision of this Agreement, or lawfully directed by Council, the Manager must keep the Cafe open for use by members of the public during the Agreed Operating Hours.
- (2) The Manager may open the Café during hours outside of the Agreed Operating Hours if it is lawful to do so.
- (3) The Manager is not required to open the Café on Christmas Day, Boxing Day and New Year's Day.
- (4) The Manager must not open the Café during the stipulated Anzac Day non- trading hours for Queensland.

- (5) The Manager must pay its creditors and employees promptly and collect without delay money owing by its debtors.
- (6) The Manager also must comply promptly and diligently with the requirements of all Acts regulating use of the Cafe, particularly those of the *WHS Act*, as well as with any applicable Council policies and plans notified to the Manager from time to time.

10.3 Operational Standard

The Manager must operate the Cafe honestly, competently and in a professional manner:

- (1) to preserve and enhance the amenity (including aesthetic appeal) and the goodwill (reputation) of the Cafe; and
- (2) to optimize the benefit of the Agreement to each Party.

10.4 Dangerous Items and Activities

The Manager must not use or store dangerous goods at the Cafe or permit their storage there.

10.5 Refuse Bins

Council will supply the bins reasonably necessary for collection and disposal of refuse from the Cafe via the weekly refuse service Council operates as local government.

10.6 Damage to/Misuse of Cafe

- (1) The Manager must not damage, overload or otherwise misuse Services and other Cafe facilities.
- (2) The Manager must ensure that its personnel, patrons, and other visitors do not damage, overload, or otherwise misuse those Services and facilities.

10.7 Manager's Equipment

The Manager must provide at its own expense the equipment it requires (above and beyond what equipment is provided by Council under this agreement) to enable it to operate the Cafe in accordance with this Agreement.

10.8 Improvements

- (1) The Manager must not make or permit improvements, alterations, or additions to the Cafe without Council consent.
- (2) Council may grant or withhold consent at its discretion.
- (3) Council may grant consent conditionally.

10.9 Council-owned Property

- (1) Council has provided property (as listed in Appendix 1) for use by the Manager.
- (2) Council is responsible for replacing this property if deemed unusable and/or unsafe, except to the extent caused or contributed to by any act or omission of the Manager in breach of this Agreement (in which case Council may recover the costs incurred in replacing the property as a debt due and payable from the Manager).
- (3) The Manager must maintain at the Cafe an inventory of all Council-owned property within the Cafe and must keep the inventory current.
- (4) Without limitation, the inventory must detail for each item:
 - (a) its condition;
 - (b) its Maintenance dates;
 - (c) its recommended replacement date; and
 - (d) its location.
- (5) The Manager must make the inventory available to Council upon request.

- (6) Council may require the Manager to amend any detail in the inventory (for example, the condition, of an item or its recommended replacement date).
- (7) If an item on the inventory is damaged or destroyed:
 - (a) the Manager must inform Council of the cause;
 - (b) Council then may approve removal of the item from the inventory; and
 - (c) Council then may approve the replacement of the item to inventory.
- (8) Appendix 1 details the inventory at the Commencement Date.

10.10 Public Relations/Courtesy

The Manager must conduct itself, and ensure that its personnel conduct themselves, in a manner that maintains or enhances good relations with persons attending, using, or seeking to use the Café.

10.11 Noxious/Illegal Uses

- (1) The Manager must operate the Cafe competently and reputably.
- (2) In particular, the Manager must not engage in or permit anything that:
 - (a) might or does affect adversely, or reflect unfavourably upon, Council's business or reputation or that of the Cafe;
 - (b) might or does confuse, mislead, or deceive the public;
 - (c) is unlawful; or
 - (d) is annoying, noxious, or offensive.

10.12 Assumption of Risk by Manager

The Manager will operate the Cafe at its own risk, and Council will not be liable to the Manager for Cost borne of Harm arising upon or about the Cafe, occasioned other than by Council negligence.

10.13 Use of Services

- (1) The Manager must not use or permit to be used for a purpose other than that for which it was constructed, any water closet, drain or other water apparatus, or any other Service, in or about the Cafe.
- (2) In particular, the Manager must not place or permit to be placed in water closets or drains any sweepings, rubbish, rags, ashes or other deleterious substances for which they were not designed.

10.14 Interference with Services

Except to the extent permitted under this Agreement, the Manager must not interfere with a Service without Council consent.

10.15 Amusement and Vending Machines

- (1) The Manager must not operate an amusement, gaming or vending machine within the Café, the eating/dining area for the café or the Restricted Waiting Lounge or permit one to operate there, without Council consent.
- (2) Council may withhold or withdraw consent at its discretion.
- (3) The Manager will be solely responsible for every cost associated with the installation, operation, Maintenance, and removal of amusement or gaming machines installed (with or without Council consent) at the Cafe.

10.16 Operation of Audio/Vision Equipment

- (1) Subject to Clause 10.16(2), the Manager must not operate or allow to operate within the Cafe without Council consent:
 - (a) a musical instrument; or

- (b) audio or visual equipment.
- (2) Clause 10.16(1) applies only if the sound is audible or the picture is visible beyond the Cafe to an extent likely, in Council's opinion (reasonably formed):
 - (a) to disturb occupants near the Cafe; or
 - (b) to breach an Act.

10.17 Signs

- (1) No sign or hoarding may be painted, erected or otherwise placed in or upon the Cafe without Council consent.
- (2) Council must not withhold consent unreasonably for any sign or hoarding customary for or incidental to proper management of the Cafe if the item strictly complies with the lawful requirements (if any) imposed by relevant Acts.
- (3) Upon termination of this Agreement, if Council requires, the Manager must:
 - (a) remove forthwith any sign or hoarding painted or placed upon the Cafe; and
 - (b) restore the relevant area to the condition in which it existed immediately before the sign or hoarding was painted or installed.

10.18 Damage/Defacement

- (1) The Manager must not deface, mark, or insert nails, screws or hooks into any part of the Cafe without Council consent, which consent Council must not withhold unreasonably where the work is reasonably necessary to enable the Manager to decorate or otherwise fit the Cafe for operation under this Agreement.
- (2) The Manager must pay to Council upon demand the reasonable Cost of reinstating to its former condition any part of the Cafe defaced, marked, or otherwise damaged by the Manager or its agent in breach of Clause 10.18(1).

10.19 Preservation of Insurance Protection

- (1) Other than in the ordinary course of operating the Cafe under this Agreement, the Manager must not do or permit to occur upon the Cafe anything it knows, or ought reasonably to know:
 - (a) will or might render void or voidable any insurance Council holds concerning the Cafe, or property kept there; or
 - (b) will or might increase a premium payable upon the insurance.
- (2) Without prejudice to Council's entitlement to terminate this Agreement for breach of Clause 10.19(1), the Manager must pay Council upon demand every premium increase occasioned through contravention of the requirements of that clause.

10.20 Staff

- (1) The Manager must ensure that the work necessary to discharge its obligations under this Agreement is:
 - (a) performed by the Manager; or
 - (b) performed by the Manager's staff under Manager supervision; or
 - (c) With Council approval, which must not be unreasonably withheld or delayed but is subject to the other provisions of this Agreement) performed by consultants or contractors engaged by the Manager and supervised by the Manager.
- (2) Where necessary, the Manager must appoint sufficient full-time and casual staff, with appropriate expertise, to enable it to discharge its obligations under this Agreement.
- (3) The Manager alone is responsible for its staff's leave, including:
 - (a) annual leave;

- (b) sick leave
 - (c) maternity and parental leave;
 - (d) bereavement leave; and
 - (e) its staff's rostered days off.
- (4) The Manager must keep Council fully informed of industrial negotiations, disputes, or matters that occur or are likely to occur from time to time, affecting or likely to affect its operation of the Cafe under this Agreement.

10.21 Assistance to Injured or Ill Patrons

- (1) Immediately upon becoming aware that a person has been injured or has become ill at the Cafe, the Manager must ensure the provision of first aid to that person as a priority.
- (2) If it appears that the person requires further or more specialized medical attention, the Manager must arrange for the person:
- (a) to receive that attention at the Cafe; or
 - (b) to be transported by ambulance or other appropriate means to a medical practitioner or a hospital, where that attention can be provided.
- (3) After discharging its obligations under Clauses 10.21(1) and 10.21(2), the Manager must notify Council promptly of:
- (a) how the injury or illness was sustained or detected; and
 - (b) how the Manager responded.

10.22 Compliance with Acts

- (1) Regardless of other provisions in this Agreement, the Manager must comply (by itself, its employees, its agents, and its service providers) with the relevant requirements of all Acts relating to the exercise of its entitlements and the discharge of its obligations under this Agreement.
- (2) The Manager must indemnify Council against all Cost borne of any breach of that obligation.
- (3) For clarity, though without limitation, the Manager must ensure that, where required, work upon the Cafe is performed by persons licensed under a relevant Act (for example, the *Queensland Building and Construction Commission Act 1991*, the *Electrical Safety Act 2002*, the *Plumbing and Drainage Act 2002*) to undertake the work.
- (4) The Manager will be, for the purposes of the *WHS Act*, the principal contractor and the person in control of the Cafe.
- (5) Irrespective of this Clause 10.22, the Manager is not obliged to make a Structural alteration or addition to the Cafe unless that alteration or addition is necessitated by Manager negligence, or Manager default under this Agreement, or a wilful act of the Manager or one or more of its personnel.

10.23 Consultation between Parties

- (1) Whenever Council requests it to do so, the Manager must consult with Council concerning:
- (a) operations at the Cafe; and
 - (b) the Parties' objectives for the Cafe.
- (2) The Manager must consult with Council fully and openly.
- (3) The Manager must work with and assist Council in formulating concepts for development of the Cafe.
- (4) The Manager must co-operate in good faith to ensure that the Cafe is operated to achieve Council's objectives for it from time to time.

10.24 Public Criticism

- (1) Neither Party, nor its personnel, may publicly criticize the other or the Cafe.

- (2) Clause 10.24(1) does not prohibit a Councillor from participating in good faith in political debate concerning the Cafe.

10.25 Theft/Loss of Property

- (1) The Manager must take all reasonable precautions to prevent theft or loss of property from the Cafe, whether the private property of the Manager, its personnel, or patrons.
- (2) The Manager must report promptly to the police and to Council every theft or unexplained loss of property from the Cafe.

10.26 Changing Locks

- (1) The Manager must not change locks upon the Cafe without Council consent.
- (2) The Manager also must ensure that additional locks installed upon the Cafe are keyed into the master key system for the Cafe.

10.27 Name of Cafe

- (1) The Manager must operate the Cafe under whatever name Council lawfully requires.
- (2) If it requires the Manager to operate the Cafe, or not to operate it, under a particular name:
- (a) Council must notify the Manager of the requirement; and
 - (b) the Manager will be bound by the requirement upon receiving the notice.

10.28 Licences

- (1) The Manager must obtain all licences (including a food licence and liquor licence) required to operate the Café.
- (2) The Manager must comply with the terms of those licences.

10.29 Social Media

- (1) The Manager acknowledges that Council is the owner of any Facebook or other internet site relating to the Café
- (2) The Manager must not make any public announcements in respect of Council or any aspect of this Agreement (including its terms) via social media such as Facebook or Twitter without the prior written approval of Council.
- (3) The Manager must moderate social media in respect of the Café by:
- (a) regularly monitoring official social media applications administered by the Manager;
 - (b) exercising responsible management of external comments prior to them being made public.
 - (c) removing any derogatory comments immediately on the Manager becoming aware of such comments; and
 - (d) ensuring all of the Manager's comments involving Council are approved by Council prior to posting on social media.
- (4) The Manager may not access internet sites relating to the Café after the expiration or termination of this Agreement.

10.30 Safety obligations

The Manager must:

- (1) ensure that all of its personnel attend any inductions required by Council or any other person who has responsibility for health and safety under the *WHS Act* at the Roma Airport Complex (**Site Safety Officer**);
- (2) carry out the Management Services and all obligations under the Agreement safely, so as to prevent harm to persons or property;

- (3) do all things necessary to assist Council, and refrain from doing anything that may impede Council, in discharging its obligations under the *WHS Act*;
- (4) at all times have documented safe work practices and procedures for the Management Services;
- (5) ensure that there are processes in place to identify, assess and proactively control risks at the workplace at which the Management Services is being undertaken;
- (6) carry out the Management Services and all obligations under the Agreement in accordance with lawful directions of Council and any Site Safety Officer, to the extent those directions relate to issues of health and safety; and
- (7) consult, cooperate and coordinate with Council to ensure, so far as reasonably practicable, that the health and safety of persons is not put at risk by the performance of the Management Services (including promptly providing all notices from, and correspondence with, any health and safety authority or representative).

PART 11 MAINTENANCE, CLEANING, AND HEALTH

11.1 Cleaning / Hygiene

The Manager must:

- (1) keep the Cafe (including operating equipment) clean and tidy,
- (2) ensure regular removal of all garbage, litter, and other waste;
- (3) maintain all food preparation and storage areas and facilities free from grease, spillage, and pests, to ensure the highest practical standards of cleanliness and hygiene;
- (4) take all reasonable measures to prevent the incidence and spread of disease within the Cafe; and
- (5) without limiting the effect of any other provision in this Clause 11.1), promptly remove graffiti, and otherwise repair damage⁶ caused by vandals, within the Cafe and upon external walls.

11.2 Blockages and Cleansing

The Manager must:

- (1) keep clean and flowing to optimum capacity, all pipes, drains, and other apparatus at the Cafe;
- (2) keep clean and disinfected all surfaces of the Cafe that are subject to fouling, including particularly toilets and concourses, by regular and effective use of soap, cleansers, and disinfectants; and
- (3) notify Council of blockages occurring beyond the Cafe, in pipes, drains, and other water conduits that serve the Cafe, so that Council may clear the blockages.

11.3 Maintenance

- (1) The Manager is responsible for the maintenance and repair of any equipment, fittings and fixtures supplied by it.
- (2) Council is responsible for maintaining and repairing the building, fixtures, fittings and the Council-owned property specified in Appendix 1 in proper and functional repair, working order, and condition.
- (3) In particular, the Manager must
 - (a) engage a reputable qualified electrician to rectify electrical problems of its equipment;
 - (b) Engage a reputable qualified plumber to rectify plumbing problems within the café;
- (4) The Manager must notify Council promptly of Maintenance that is the responsibility of Council.

⁶ Refer to Clause 3.6 (*Repair Obligations*).

11.4 Excepted Damage

- (1) The Manager's obligations to Maintain the Cafe do not extend to oblige it (absent its negligence, default, or wilful act, or the wilful act of any of its personnel) to repair:⁷
 - (a) inherent defects;
 - (b) Structural damage; and
 - (c) damage resulting from Harmful occurrences.
- (2) Harmful occurrences are occurrences that precipitate Harm against which Council possesses insurance protection, such as:
 - (a) fire;
 - (b) entry of water;
 - (c) storm and tempest;
 - (d) lightning;
 - (e) flood;
 - (f) earthquake;
 - (g) explosion and concussion from it;
 - (h) impact of vehicles, aircraft, and articles escaping from them;
 - (i) malicious acts;
 - (j) civil commotion;
 - (k) theft;
 - (l) force majeure;
 - (m) inevitable accident.

11.5 Light Bulbs

- (1) The Manager must replace promptly all defective, worn, or broken light tubes or bulbs upon the Cafe.
- (2) Council will provide replacement light bulbs and tubes.

11.6 Notice of Damage

The Manager must promptly notify Council upon becoming aware of:

- (1) damage to the Cafe; or
- (2) the defective operation of Services.

11.7 Toilets

Council must clean and maintain the toilets serving the Airport Complex.

PART 12 COUNCIL RIGHTS AND OBLIGATIONS

12.1 Airport Complex

- (1) Council (and its representatives) will have the sole right to operate any attractions at the Airport Complex and operate any merchandise outlet at the Airport Complex.

⁷ Refer again to Clause 3.6.

12.2 Structural Repairs

- (1) Save where the repairs⁸ are necessitated by the negligence or default of the Manager, or the wilful act of the Manager or one or more of its personnel, Council must undertake at its own cost all necessary Structural repairs for the Cafe.
- (2) For repairs necessitated by the negligence or default of the Manager, or the wilful act of the Manager or one or more of its personnel, Council may:
 - (a) require the Manager to arrange or undertake the repairs; or
 - (b) undertake the repairs itself, and the cost in doing so shall be a debt due and payable by the Manager to Council.

PART 13 MANAGER INSURANCE

13.1 Part-specific Definitions

For this Part 13, each of the following expressions in bold to the left bears the meaning shown opposite:

Cross-liability Provision

An insurance policy provision, or collection of provisions, that:

- (1) covers each person constituting the insured (each a *co-insured*) against liability upon claims by each or any co-insured as though a separate insurance policy were issued to each of them; and
- (2) correlatively waives the insurer's right of recovery (its right of subrogation) against each co-insured where:
 - (a) that person incurs liability to a co-insured; and
 - (b) the insurer indemnifies that co-insured.

Manager Risk Policy

An insurance policy that indemnifies against Cost borne of liability for Harm caused by or arising from occurrences upon or about the areas of the Cafe for which the Manager is responsible under this Agreement.

Non-imputation Provision

An insurance policy provision or collection of provisions whereby:

- (1) the knowledge of one insured person will not be imputed to another insured person for assessing compliance with duties of disclosure; and
- (2) the insurer may exercise a remedy for policy breach only against the insured Party that actually commits the breach; not against an innocent co-insured.

Personnel

- (1) For each insured Party: its service providers engaged from time to time upon Agreement-related activities.
 - (2) Its *service providers* include employees, contractors and subcontractors, suppliers, and gratuitous providers.
-

⁸ Refer to Clause 3.6.

Registered Insurer

- (1) For general insurance: a body corporate authorized under the *Insurance Act 1973 (Cwlth)* to conduct insurance business in Australia, and conducting insurance business in Australia accordingly; and
- (2) For WorkCover: an insurer licensed under the *Workers Compensation Act* to provide accident insurance.

13.2 Types of Manager Insurance

- (1) The Manager must maintain:
 - (a) WorkCover for all persons it employs at the Cafe; and
 - (b) Manager Risk Policy (Public Indemnity Insurance).
- (2) The Manager must maintain those insurances throughout this Agreement.

13.3 Insured Persons

- (1) The Manager Risk Policy must cover severally the Manager, Council, and their respective personnel engaged upon operational activities upon the Cafe areas for which the Manager is responsible.
- (2) For that purpose, the policy must accept at least that the named insured comprises the Manager and Council as if a separate insurance policy were issued to each.

13.4 Indemnity Levels

The Manager Risk Policy must provide indemnity for not less than \$20,000,000.00 per individual occurrence.

13.5 General contents of Policies

Generally, each policy the subject of Clause 13.2:

- (1) must be issued by a Registered Insurer approved by Council; and
- (2) must contain no exclusions, endorsements or alterations that Council disapproves.
- (3) otherwise, must contain provisions acceptable to or required by Council (acting reasonably).

13.6 Particular Contents of Risk Policy

In particular, the Manager Risk Policy:

- (1) must be a Composite Policy;
- (2) must cover the insured Parties and their Personnel for their respective rights, interests, and liabilities connected with their engagement under this Agreement;
- (3) must contain a Cross-liability Provision and a Non-imputation Provision;
- (4) must cover the Manager upon the indemnities it gives in this Agreement;
- (5) must entitle the insurer to avoid the policy for breach (including the breach of a disclosure obligation) only against an insured that actually commits the breach; not against an innocent co-insured;
- (6) must be occurrence-based: it must provide indemnity upon a claim made after the policy has expired if the event precipitating the claim occurs while the policy is current.

13.7 Notices from Insurer

If it receives a notice from the insurer under a policy that also covers Council, the Manager must give Council promptly a copy of that notice.

13.8 Policy Changes

The Manager must not pursue or agree, without Council consent, a change to any policy the subject of this Part 13.

13.9 Acting Reasonably

Council may not:

- (1) delay or withhold unreasonably an approval under this Part 13; or
- (2) require unreasonably the inclusion, retention, modification or exclusion of a provision in the Manager Risk Policy.

13.10 Excesses

If the Manager Risk Policy requires the insured to pay a claims excess, the Manager will indemnify Council against whatever Cost Council incurs because of the requirement.

13.11 Payment of Premiums

The Manager must pay promptly all premiums, duty, GST, and other money due to any person or authority upon or concerning the insurance this Agreement obliges it to maintain.

13.12 Proof of Insurance

The Manager must give Council, whenever reasonably asked to do so a certificate of currency of each policy this Agreement obliges it to maintain.

13.13 Failure to Insure

If the Manager fails to maintain an insurance policy that this Agreement obliges it to maintain:

- (1) Council may obtain and maintain the insurance; and
- (2) the Manager must reimburse Council upon demand whatever expenditure Council incurs in the exercise of that entitlement.
- (3) Alternatively, Council may terminate this agreement.

13.14 Settlement of Claims

- (1) The Manager must not pursue a claim under the Manager Risk Policy, if Council elects, by notice to the Manager, to pursue the claim on the Manager's behalf.
- (2) If it elects to pursue the claim, Council must:
 - (a) pursue the claim diligently; and
 - (b) make a reasonable effort to ensure the Manager receives from the insurer no less than its entitlement under the policy.

PART 14 COUNCIL INSURANCE

14.1 Part-specific Definitions

For this Part 14, each of the following expressions in bold to the left bears the meaning shown opposite:

Council Damage Policy

An insurance policy providing indemnity against Cost borne of:

- (1) Harm to Council Property; and
 - (2) Harm to persons resulting from use of that property (to the extent that the Council Risk Policy does not cover the Harm).
-

Council Property

All of Council's buildings, fixtures, plant, equipment, and fittings situated within the Cafe, including:

- (1) furnishings;
- (2) floor coverings (including carpets);
- (3) air-conditioning apparatus;
- (4) security equipment;
- (5) fire alarm and response equipment; and
- (6) items forming components of the Services.

Council Risk Policy

An insurance policy that indemnifies insured against Cost borne of liability for Harm caused by or arising from occurrences upon or about the Cafe for which Council is responsible.

LGM Pool

The *Queensland Local Government Mutual Liability Pool*, a mutual scheme established by Local Government Association of Queensland (Incorporated)⁹ to manage, and provide a pooled fund for meeting, public liability and professional indemnity claims:

- (1) affecting member local governing bodies and related entities; and
 - (2) arising in connection with exercise of the members duties, powers, and functions.
-

14.2 Types of Council Insurance

- (1) Council must maintain a:
 - (a) Council Damage Policy; and
 - (b) Council Risk Policy.
- (2) Council must maintain the policies throughout this Agreement.

14.3 Insured Persons

The Council Risk Policy must cover severally Council and the Council personnel engaged upon operational activities at the Cafe.

14.4 Indemnity Levels

- (1) The Council Risk Policy must provide indemnity for not less than \$600,000,000.00 in aggregate.
- (2) The Council Damage Policy must cover the insured property to reinstatement or replacement value.

14.5 Substantial Compliance

Council complies with its public risk insurance obligation if:

- (1) it is a member of the LGM Pool; and
- (2) it holds a certificate of currency of that membership.

⁹ The predecessor of Local Government Association of Queensland Ltd.

PART 15 ASSIGNMENT, SUBCONTRACTING, MORTGAGING

15.1 Prohibition (Transfer by Manager)

The Manager may not transfer its interest in this Agreement without Council consent, which consent Council may grant (absolutely or conditionally) or may refuse, at its discretion.

15.2 Change in Shareholder Control

If the Manager is a corporation, a change in its directorate or membership that alters its effective control will be deemed a transfer of its interest in the Agreement.

15.3 Security over Agreement

The Manager must not mortgage or otherwise encumber its interest in this Agreement without Council consent, which consent Council may grant (absolutely or conditionally) or refuse, at its discretion.

PART 16 TERMINATION OF AGREEMENT

16.1 Destruction of or Damage to Cafe

Subject to Part 18, if the Cafe is so damaged that it is unfit for use by the public, Council may terminate this Agreement upon 24 hours' notice to the Manager.

16.2 Vacation of Possession

When the Term ends (by expiry or otherwise), the Manager must:

- (1) vacate the Cafe, leaving it in the condition required under this Agreement (after severance and removal of its property); and
- (2) reinstate each part of the Cafe damaged or defaced in the course of the severance and removal, to the condition in which the part existed before the damage or defacement occurred.

16.3 Benefit of Contracts and Arrangements

- (1) When the Term ends, Council may elect to acquire the benefit of, or otherwise to enforce, continue or extend, any agreement or arrangement entered by the Manager in operating the Cafe. The Manager must provide copies of all documentation relating to any such agreement or arrangement upon to Council upon request.
- (2) Upon receipt of the notice of election, the Manager will be deemed to have assigned to Council, or to a person nominated by Council, the Manager's interest under the relevant agreement or arrangement.
- (3) The Manager must sign all documents necessary to record formally, or to register, the assignment of an agreement or arrangement.
- (4) The Manager must do whatever Council reasonably requires to enable Council or its nominee to acquire and enjoy all benefits of and entitlements under an assigned arrangement or agreement.
- (5) Each of the Manager irrevocably appoints the Chief Executive Officer and the Chief Executive Officer's lawful delegate its attorney:
 - (a) to exercise in the name of the Manager, or the appointee's own name, all of the Manager's entitlements under an assigned agreement or arrangement; and
 - (b) to sign all documents necessary to record formally, or to register, the assignment.

16.4 Acquisition of Manager Equipment

- (1) Council may elect, before the end of the Term, to acquire the Manager's interest in any item of equipment the Manager owns or leases and uses at the Cafe in connection with this Agreement.

- (2) If the Manager owns a relevant item, Council and the Manager must negotiate in good faith for sale of the equipment to Council at a reasonable price.
- (3) Failing agreement upon the purchase price or Council's election to acquire the item or equipment, Council may give the Manager notice to remove the equipment from the Cafe, and the Manager must remove the equipment not later than 7 days after the later of:
 - (a) the date upon which the notice is given; and
 - (b) the date upon which the Agreement ends.
- (4) Equipment not removed in compliance with Clause 16.4(3) will become Council property.
- (5) If the equipment is leased or hired, the Manager must assign the leasing or hiring agreement if Council agrees to assume all lessee/hirer obligations under the agreement from the date of assignment.

PART 17 INDEMNITIES

17.1 Manager Indemnity

The Manager will indemnify Council against all Cost borne of Harm arising from or connected with:

- (1) acts of the Manager and its personnel concerning the Cafe, for which Council becomes liable or responsible;
- (2) acts of persons it admits to the Café; and
- (3) any breach of this Agreement by the Manager.

PART 18 FORCE MAJEURE

18.1 Part-specific Definitions

For this Part 18, each of the following expressions in bold to the left bears the meaning shown opposite:

<hr/> Force Majeure	<p>An exceptional event or circumstance:</p> <ol style="list-style-type: none">(1) that impacts a Party;(2) that is beyond the Party's control;(3) against which the Party could not reasonably have guarded before entering this Agreement;(4) that the Party could not have avoided or overcome by the exercise of reasonable care; and(5) that is not substantially attributable to the other Party. <p><i>Examples (assuming the foregoing criteria are met):</i></p> <ol style="list-style-type: none">(a) <i>war, civil commotion, terrorist action;</i>(b) <i>natural disaster (such as flood, bushfire, earthquake, major cyclone, viral epidemic);</i>(c) <i>non-natural disaster (such as explosion, contamination, aviation or maritime disaster);</i>(d) <i>strike, work ban, blockade, embargo;</i>(e) <i>failure or non-availability of essential systems, facilities, equipment, or supplies.</i>
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Impacted Obligation	An Obligation under the Agreement, which Force Majeure prevents a Party performing.
Impacted Party	A Party impacted by Force Majeure, who claims the benefit of this Part 18 in accordance with Clause 18.2.

18.2 Notice of Occurrence

- (1) A Party unable to perform an obligation under the Agreement because of Force Majeure must give the other Party prompt notice of the occurrence.
- (2) To ameliorate the effect of the Force Majeure, the Party may claim the benefit of this Part 18.
- (3) It may claim the benefit in its notice of the occurrence or in a separate notice.
- (4) In any event, the claim notice must:
 - (a) give full particulars of the Force Majeure;
 - (b) specify the Impacted Obligation and the reason the Force Majeure precludes its performance;
 - (c) specify the estimated duration of the preclusion; and
 - (d) detail the steps that the claimant has taken, and proposes to take, to mitigate or remedy the preclusion;
 - (e) detail the insurance proceeds (if any) that the Impacted Party might receive to facilitate rectification or remedy of the damage the Force Majeure causes.

18.3 Mitigation of Effect

- (1) The Impacted Party must:
 - (a) take all reasonable steps to minimize or remedy the notified preclusion; and
 - (b) report its progress weekly to the other Party.
- (2) For clarity, a weekly report must detail at least:
 - (a) the minimization or remedial steps taken during the week the subject of the report; and
 - (b) any change to the Impacted Party's estimate of the duration of the notified preclusion.

18.4 Suspension of Obligations

- (1) If the Impacted Party has complied with Clauses 18.2 and 18.3, the Impacted Obligation will be suspended until the Force Majeure ceases to preclude its performance.
- (2) For clarity, this Clause 18.4:
 - (a) does not operate to suspend an obligation to make a payment that is due under the Agreement; and
 - (b) does not operate to prevent discharge of the Agreement by frustration.

18.5 Notice of Cessation

- (1) The Impacted Party must notify the other Party promptly when the Force Majeure ceases to preclude performance of the Impacted Obligation.
- (2) The notice must specify the cessation date.

18.6 Resumption of Performance

When the Force Majeure ceases to preclude performance of a suspended obligation, the Impacted Party must promptly resume performance.

18.7 Absorption of Losses

- (1) Each Party must bear whatever Cost it sustains or incurs through Force Majeure.
- (2) That obligation does not apply, however, to a damages entitlement that one Party acquires against the other for breach of this Part 18.

PART 19 SUSPENSION

19.1 Council's right to suspend the Management Services

The Manager must suspend the whole or any part of the Management Services that Council directs it in writing to suspend, in Council's sole and unfettered discretion, for such periods directed by Council from time to time, and must re-commence the Management Services as soon as reasonably possible after receiving a written direction from Council to do so.

19.2 Consequences of suspension

If a suspension directed by Council was caused or contributed to by any act or omission of the Manager, then the Manager will have no claim in connection with the suspension. In all other circumstances, the Manager's only claim in connection with the suspension will be for its verifiable costs necessarily and reasonably incurred as a direct result of the direction to suspend, provided that the Manager has used reasonable endeavours to mitigate all such costs. For the avoidance of doubt, the Manager will not be liable to pay the Management Fee during a period of suspension, except to the extent the suspension was caused or contributed to by an act or omission of the Manager.

PART 20 DEFAULT

20.1 Part-specific Definitions

For this Part 20, a *Default Notice* is a notice from Council to the Manager:

- (1) specifying in reasonable detail a default by the Manager under this Agreement; and
- (2) directing the Manager to remedy the default within the period specified in the notice.

20.2 Termination for Convenience

- (1) Either Party may terminate this Agreement at any time in its sole and unfettered discretion during the Term by giving the other Party 90 days' notice. Where the Agreement is terminated under this clause, the Manager will be required to pay the Management Fee (pro rata) to the date of termination and will remain liable for the Operating Costs up to, and including, the date of termination.
- (2) If Council terminates, or purports to terminate, under Clause 20.6 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for Council's convenience under Clause 20.2 as at the same date and time as the original notice of termination. The Manager waives any claim the Manager has or would have had, but for this Clause 20.2(2), arising out of or in connection with any termination, or purported termination, by Multicom under Clause 20.6, or otherwise at law being subsequently held to be invalid, void or otherwise.

20.3 Events of Default

- (1) The Manager defaults under this Agreement if:
 - (a) the Manager fails to pay an instalment of the Management Fee on the due date; or
 - (b) in Council's reasonable opinion the Manager has been negligent in the provision of the Management Services or the performance of the work necessary to perform the Management Services; or
 - (c) it commits or suffers the occurrence of an Act of Insolvency.
 - (d) It breaches any Act in the course of the provision of the Management Services or which, as a result of the breach, will limit the Manager's ability to lawfully provide the Management Services;

- (e) the Manager breaches a term of this Agreement;
 - (f) in Council's opinion the conduct of the Manager damages or is likely to damage Council's relationship with a contractor or supplier or Council's reputation.
- (2) An Act of Insolvency by the Manager is taken as an Act of Insolvency committed or suffered by the Manager.
- (3) The Manager also defaults under this Agreement if a statement or assurance it has made or given to Council in or concerning the Agreement (including a statement or assurance in the accepted tender to which the Agreement gives effect):
- (a) was materially incorrect or misleading when made; or
 - (b) is rendered materially incorrect or misleading by an act of the Manager.

20.4 Remedy of Default

- (1) If a Manager default under the Agreement is the failure to pay money or to discharge an obligation to a Third Person, Council may:
- (a) pay the money or discharge the obligation on behalf of the Manager; and
 - (b) recover from the Manager as a debt the money it expends in doing so.

20.5 Default by Council

If a Council default under this Agreement is remediable, Council will not be treated as having defaulted unless it fails to remedy the default within a reasonable period (being not less than 20 days) after receiving a Default Notice.

20.6 Termination by Council

- (1) Council may terminate the Agreement by notice to the Manager if the Manager fails to remedy the default within the time set out in the Default Notice.
- (2) Council may not terminate the Agreement if the Manager remedies the default before Council gives a termination notice pursuant to Clause 20.6(1).
- (3) Irrespective of Clause 20.6(2), if a Manager default is constituted by breach of the same provision of the Agreement for a third or subsequent time, Council may terminate the Agreement by notice to the Manager:
- (a) without having given the Manager a further Default Notice; and
 - (b) irrespective of whether the Manager has complied with Default Notices concerning the earlier breaches.
- (4) If terminates the Agreement pursuant to Clause 20.6(3), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the Agreement had the Manager repudiated the Agreement and Council elected to treat the Agreement as at an end and recover damages.

20.7 Irremediable Defaults

- (1) Council need not give a Default Notice for a default that is irremediable.
- (2) If an irremediable default constitutes a material breach of the Agreement, Council may terminate the Agreement by notice to the Manager.
- (3) For clarity:
- (a) a breach of Clause 15.1, constituted by a change in directorate or membership that alters the effective control of the Manager; or
 - (b) a serious breach of safety obligations,
- will be taken as an irremediable default constituting a material breach of the Agreement.

- (4) Council may terminate the Agreement for an irremediable default that does not constitute a material breach or repudiation of the Agreement only if Council cannot be adequately compensated for the Harm the default causes it, or:
 - (a) it can be adequately compensated for the Harm the default causes it, and
 - (b) the Manager fails to comply with a compensation demand within a reasonable period (in which event the Manager will be taken as having repudiated the Agreement).
- (5) A compensation demand must:
 - (a) particularize Council's loss in reasonable detail; and
 - (b) demand no more than a reasonable sum in compensation of the particularized loss.

PART 21 VARIATIONS

21.1 Council directed variations

- (1) Council may direct the Manager at any time to vary, amend, increase, decrease, omit (including omission for the purpose of completing the Management Services itself, or engaging a third party to complete the Management Services), change the timing of (including to accelerate), or change the quality, character or extent of the Management Services (**Variation**).
- (2) Unless Council and the Manager agree on the price for a Variation, Council must determine the value of a Variation in accordance with Clause 21.2.
- (3) If the Manager is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Manager must notify Council within 3 Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Manager fails to notify Council in accordance with this clause, the Manager will not be entitled to make any claim with respect to the instruction or direction.

21.2 Valuation

If the Agreement states that a valuation is to be made under this clause, then the valuation for the adjustment to the Management Fee must be made by Council using reasonable rates and prices, except that if the Variation was caused or materially contributed to by the Manager's breach of the Agreement, then the Manager will have no claim for its performance of the Variation.

PART 22 NOTICES

22.1 Formal Requirements

- (1) This Part 22 governs notices under the Agreement save to the extent another provision of the Agreement expressly provides otherwise.
- (2) A notice must be in writing, and is ineffective unless given in writing.

22.2 Service of Notices

A Party must give a notice:

- (1) by delivering it to the intended recipient's Address for Notices; or
- (2) by posting it to the intended recipient at its Address for Notices; or
- (3) by email, except for notices under Part 20 and Part 24.

22.3 Receipt of Notices

- (1) A notice delivered or posted is deemed received:
 - (a) if delivered at or before 4:30pm: at the moment of delivery;
 - (b) if delivered after 4:30pm: at 8:30am on the Business Day following the day of delivery;
 - (c) if posted to an address in Australia: 2 Business Days after posting;

- (d) if posted to an address outside Australia: 5 Business Days after posting.
 - (e) if sent by email: when the email is sent to that person's email address, but for the purposes of this clause an email is not sent to a person's email address if the sender receives any communication not the effect that the email is undeliverable or undelivered to the recipient's email address.
- (2) A notice received upon a day that is not a Business Day is deemed received at 8:30am on the Business Day following the day of receipt.

PART 23 INFORMATION AND INTELLECTUAL PROPERTY

23.1 Information to be kept confidential

- (1) The Manager must keep confidential, and not use for any purpose other than performing its obligations under the Agreement, any Confidential Information of Council, except for the following disclosures:
- (a) to its personnel to the extent necessary to complete the Management Services;
 - (b) to its professional advisors;
 - (c) as required by law; or
 - (d) with Council's prior written consent, which may be given subject to reasonable conditions, and the Manager agrees to comply with those conditions.
- (2) If Confidential Information is disclosed in accordance with Clauses 23.1(1)(a), 23.1(1)(b) or 23.1(1)(d), the Manager must ensure that the person agrees to keep the information confidential, and if requested by Council, have that person execute a legally binding agreement to keep the information confidential.

23.2 Intellectual Property Rights

- (1) The Manager grants Council a transferable, irrevocable, royalty free licence, including the right to sublicense, to use and exploit the Intellectual Property Rights in any material provided to Council in connection with the Agreement for use and enjoyment of the Management Services (including the right to sublicense and transfer such licence).
- (2) The Manager warrants that the Management Services will not infringe any third party Intellectual Property Rights.

23.2 Survival

The obligations in this Part 23 survive the termination or expiry of the Agreement.

PART 24 DISPUTE RESOLUTION

24.1 Dispute resolution process

Either Party may by prior written notice refer any disagreement or dispute relating to this Agreement or its subject matter (**Dispute**) for resolution in accordance with this Part 24, in which case the Dispute must be referred for resolution by a representative of Council and the Manager (each with authority to resolve the Dispute), who must use their best endeavours to resolve the Dispute within 21 days of receipt of the notice of Dispute.

24.2 Termination of the dispute resolution process

If the Dispute is not resolved by the parties in accordance with Clause 24.1 then either Party may by notice in writing commence litigation.

24.3 Continued performance required

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

24.4 Urgent interlocutory relief

Despite Clause 24.1, a Party may commence court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory or interim relief.

PART 25 MISCELLANEOUS

25.1 Partnership / Joint Venture

- (1) Irrespective of any other provision of this Agreement, and of any provision of an Act or rule of general law, this Agreement does not:
 - (a) create a partnership, joint venture or agency relationship between the Parties; or
 - (b) grant the Manager an estate or interest in the Cafe.
- (2) Nothing in the Agreement, or in the manner of its discharge, creates between the Parties a relationship other than that of proprietor and licensed operator.

25.2 Communications between Parties

- (1) Neither an approval nor a consent or permission given under the Agreement binds the person giving it unless that person gives it in writing.
- (2) An appointment or direction made or given under the Agreement is ineffective unless made or given in writing.
- (3) A statement the Agreement obliges a Party to give is ineffective unless given in writing.
- (4) A request made under the Agreement is deemed neither made nor received if not made in writing.

25.3 Honest Refusals

- (1) Although an obligation not to refuse its consent unreasonably obliges a Party to consider honestly a request for the consent:
 - (a) it does not oblige the Party to act against its own interests in deciding the request;
 - (b) it does not oblige the Party to pursue the applicant for material that the applicant must or should provide to obtain the consent;
 - (c) it does not oblige the Party to grant the request despite the applicant having failed to satisfy consent prerequisites that the Agreement specifies;
 - (d) it does not oblige the Party to grant the request merely because the applicant has satisfied the consent prerequisites the Agreement specifies.
- (2) Similarly, if its acquisition of an entitlement or the receipt of a benefit is conditional upon a Party (the *beneficiary*) satisfying specified prerequisites:
 - (a) the other Party (the *obligor*) is not obliged to pursue the beneficiary for material, or to take other action, necessary for ensuring or establishing satisfaction of the prerequisites;
 - (b) whether it is reasonable for the obligor to refuse to permit the acquisition or receipt, or to recognize it, is irrelevant if the beneficiary fails to satisfy the prerequisites; and
 - (c) irrespective of whether it wishes to deny the beneficiary the entitlement for another reason, the obligor does not act dishonestly (or unreasonably) in declining to permit or recognize the acquisition or receipt if beneficiary fails to satisfy the prerequisites.

25.4 Entirety of Agreement

- (1) This instrument details the entire arrangement between the Parties concerning this Agreement:
 - (a) irrespective of negotiations or discussions preceding its execution and delivery; and
 - (b) irrespective of the content of any brochure, report, correspondence, or other document produced by or on behalf of a Party.

- (2) Each Party acknowledges that no representation, verbal or written, made by or on behalf of the other Party but not detailed in this instrument has induced it to enter the Agreement.

25.5 Cumulative Entitlements

- (1) The remedies and other entitlements the Agreement gives a Party are cumulative, not alternative.
- (2) Moreover, no remedy or entitlement is exclusive of other remedies or entitlements that the Party possesses (whether under an Act or at general law).

25.6 Withholding Tax

- (1) If an Act obliges a Party (the *payer*) to withhold from a payment to the other Party (the *payee*) under this Agreement a sum representing tax or prospective tax, the payer may withhold the sum and pay it to the taxation authority.
- (2) Withholding and paying the sum as the Act requires will discharge the payer's obligation to pay the sum to the payee.
- (3) The payer undertakes to give the payee all reasonable assistance:
- (a) to recover the sum from the taxation authority; or
 - (b) to ensure the taxation authority acknowledges receipt of the sum in discharge or reduction of the payee's taxation liability.

25.7 Waiver/Abandonment of Entitlement

- (1) The mere fact that a Party does not exercise an entitlement under or concerning this Agreement when the entitlement accrues:
- (a) does not deprive it of the entitlement; and
 - (b) does not deprive it of similar entitlements that accrue at other times.
- (2) The mere fact that a Party grants an indulgence under or concerning the Agreement on a given occasion does not entitle the recipient to the same or a similar indulgence on another occasion.
- (3) The mere fact that a Party grants an indulgence under or concerning the Agreement in a given circumstance does not entitle the recipient to the same or a similar indulgence in a similar circumstance.
- (4) The waiver of an entitlement under the Agreement is not binding unless effected in writing.

25.8 Variation of Agreement

A purported variation of this Agreement is ineffective unless encapsulated in a deed.

25.9 Survival of Provisions

A provision of the Agreement capable of continued application after the Agreement has terminated will remain enforceable despite termination.

25.10 Governing Law

- (1) Queensland law governs the Agreement.
- (2) For clarity, Queensland law includes Commonwealth Acts to the extent that they bind Queensland.

25.11 Jurisdiction (Adjudication of Disputes)

- (1) For this Clause 25.11, a *Queensland Court* is:
- (a) a court or tribunal, constituted under Queensland legislation and empowered to adjudicate a dispute arising under this Agreement; and
 - (b) the High Court of Australia (as the final forum of appeal from the decision of any such court or tribunal).

- (2) The Parties submit exclusively to the jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under the Agreement.
- (3) Each Party waives all entitlement to object to a Party bringing action upon the Agreement before a Queensland Court, including entitlement to claim that:
 - (a) the Queensland Court is an inconvenient forum; or
 - (b) no Queensland Court has jurisdiction.
- (4) Each Party undertakes to refrain from bringing action upon the Agreement in a forum other than a Queensland Court.

25.12 No fetter and statutory authority

- (1) Unless otherwise expressly provided in the Agreement, nothing in the Agreement gives rise to any duty on the part of Council to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the Agreement.
- (2) Notwithstanding anything expressly provided or implied in the Agreement to the contrary, the Parties agree that:
 - (a) Council is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Authority in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (b) nothing has the effect of constraining Council or placing any fetter on Council's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (3) The Manager is not entitled to make any claim, demand, action, proceeding or suit against Council relating to any exercise or not to exercise any of its executive or statutory rights or duties.
- (4) Any statement or requirement in the Agreement providing that Council shall act in 'good faith' or use or exercise 'reasonable endeavours' or 'act reasonably' in relation to any matter or outcome, means that the Principal:
 - (a) shall take steps to deal with the relevant matter, or bring about the relevant outcome, so far as it is reasonably able to do so having regard to its resources and other responsibilities;
 - (b) does not guarantee the relevant matter or outcome shall be brought about; and
 - (c) is under no obligation to:
 - (i) exercise a right of any Government Authority, or to influence, over-ride, interfere with or direct any other Government Authority in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion in a manner that Council regards as not in the public interest;
 - (iii) develop or implement new policy or a change in policy;
 - (iv) procure any new legislation or a change in legislation (including by-laws); or
 - (v) act in any way that Council regards as not in the public interest.
- (5) For the purposes of this clause, 'Government Authority' means any government or governmental, semi-governmental, judicial, quasi-judicial or administrative entity, agency or authority.

[Appendices and Attestations follow]

APPENDIX 1

[Inventory of Council-owned Property]

[Clause 10.9]

- 1 x Double door display fridge
- 1 x Single door display fridge
- 1 x Double spout coffee machine
- 1 x Coffee grinder
- 1 x Industrial type microwave
- 1 x Large sandwich press
- 1 x Cold display counter
- 1 x Hot display counter
- 1 x Sink
- 1 x Storage cupboards

APPENDIX 2 – AGREED TRADING DAYS AND TIMES

ATTESTATIONS

Council

Executed by **Maranoa Regional Council** by its duly authorised officer in the presence of:

..... Authorised Officer Witness
..... Full name [Print] Full name [Print]

Manager

[#Use only the relevant signature panel]

Executed by **[#insert individual signatory]** by:

..... Signatory Witness
 Full name [Print]

..... [End of Instrument]

Executed by **[#insert company and ACN]** by:

.....
Signature of **[#insert name of sole director and company secretary]** who signs in the capacity of sole secretary and sole director

..... [End of Instrument]

Executed by **[#insert company and ACN]**

..... Director Director/Secretary
..... Full name [Print] Full name [Print]

