Licence of public cemetery land under 36 of the *Cemeteries and Crematoria Act 2003*

[Insert name of cemetery trust] (ABN [Insert ABN of cemetery trust])

and

[Insert Licensee name] (ABN [Insert Licensee ABN if applicable])

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[Insert name of cemetery trust] (ABN [Insert ABN of cemetery trust])

of [Insert address of cemetery trust]

(Licensor)

and

[Insert Licensee name] (ABN [Insert Licensee ABN if applicable])

of [Insert Licensee address]

(Licensee)

Background

1. Pursuant to s 34 of theAct, the Land is permanently reserved under s 4 of the *Crown Land (Reserves) Act 1978* for cemeteries and crematoria purposes.
2. The Licensor is established under s 5 of the Act and is empowered under s 36 of the Act to grant a licence of the Land for any purpose approved by the Minister.
3. The Licensor, with the approval of the Minister, has agreed to grant to the Licensee a licence to use the Licensed Area in accordance with the terms and conditions set out in this Licence.
   1. Definitions and Interpretation
      1. Definitions

In this Licence, unless the context otherwise requires:

**Act** means the *Cemeteries and Crematoria Act 2003.*

**Associates** means any officer, employee, agent, contractor, subcontractor, consultant, advisor, invitee, licensee or servant to the extent that such person or entity is performing an act or a function directly related to the Licence.

**Authorised Representative** means the person, whose details are set out at Item 13, authorised by a party to give and receive Notices on its behalf.

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in Melbourne, Victoria appointed under the *Public Holiday Act 1993 (Vic)*.

**Change in Control** means, if the Licensee is a corporation (other than an incorporated association), any change in any of the following which results in a change in the effective control of the Licensee:

* + - 1. the membership of the corporation or any holding company of the corporation;
      2. the beneficial ownership of any shares in the capital of the corporation or any holding company of the corporation; or
      3. the beneficial ownership of the business or assets of the corporation or part of it.

**Claim** includes any claim, demand, remedy, suit, injury, damage, Loss, Cost, Liability, action, proceeding and right of action.

**Commencement Date** means the commencement date of this Licence set out in Item 5.

**Contaminant or Contamination** means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration or radiation) which makes or may make the Licensed Area, the Land or the Environment:

(a) unsafe or unfit for humans or animals;

(b) degraded in any way including in its capacity to support plant life;

(c) materially diminished in value; or

(d) assessable as being in a condition that contravenes the *Environment Protection Act 1970*.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature.

**Dispute Notice** means a notice in writing given by either party to the other where a dispute in relation to this Licence arises between the Licensor and Licensee.

**Environment** means the physical factors of the surroundings of, human /non‑human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscapes.

**Expert** means an expert appointed by the President of the Law Institute of Victoria.

**Expiry Date** means the last day of the Term.

**Government Agency** means any government or any public, statutory, governmental, semi-governmental, local governmental or judicial body, entity or authority (whether of Victoria or any other State or Territory of Australia) and includes a Minister of the Crown or the Commonwealth of Australia and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

**GST** means the Goods and Services Tax as defined in the GST Act.

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

**Insolvency Event** means if the Licensee:

* + - 1. unlawfully stops or suspends payment of all or a class of its debts;
      2. is insolvent within the meaning of section 95A(2) of the Corporations Act;
      3. fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure or the statutory demand is set aside;
      4. has an administrator appointed over all or any of its assets or undertakings;
      5. has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
      6. has an application or order made, proceedings commenced, a resolution passed, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
      7. has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings,

or any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

**Item** means an item of Schedule 1.

**Land** means the land described in Item 4 and includes all rights, easements and appurtenances usually enjoyed with that land.

**Law** means:

* + - 1. principles of law or equity established by decisions of courts within the Commonwealth of Australia;
      2. statutes, regulations, by-laws, ordinances, orders, awards, proclamations and local laws of the Commonwealth, State of Victoria, any local government or a Government Agency;
      3. the Constitution of the Commonwealth;
      4. binding requirements and mandatory approvals (including conditions) of the Commonwealth, the State of Victoria or a Government Agency which has the force of law; and
      5. guidelines of the Commonwealth, the State of Victoria or a Government Agency which have the force of law.

**Liability** means any debt, obligation, Cost, expense, Loss, damage, compensation, charge or liability of any kind, including those that are prospective or contingent and those which are not yet ascertainable.

**Licence** means this licence and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

**Licence Fee** means the licence fee specified in Item 8.

**Licence Money** means the Licence Fee, Outgoings, Rates and Taxes and all other money payable by the Licensee to the Licensor under this Licence.

**Licensed Area** means the licensed area as described in Item 3, being part of the Land.

**Licensee** means the licensee specified in Item 2 and includes, where appropriate, its employees, agents, contractors and/or other authorised persons and invitees.

**Licensor** means the licensor specified in Item 1 and, where appropriate, the employees or agents of the Licensor or other authorised persons.

**Loss** means any liability (including legal expenses) of any kind whatsoever and includes but is not limited to direct and indirect, consequential or special damage, loss of profits, loss of use, loss of revenue, anticipated revenue, interest or other Claim arising from any cause whatsoever whether or not the Loss, damage or Claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

**Market Licence Fee** means the amount of the Licence Fee determined for the Licensed Area by the Valuer‑General at the Review Date.

**Minister** means the Minister for Health or any other Minister for the time being responsible for the administration of the Act.

**Notice** means a notice, consent, approval or other communication given under this Licence, which meets the requirements in clause 29.

**Outgoings** means all charges made for the supply and use of gas, electricity, water and excess water, telecommunications and other similar services on the Licensed Area and other utilities exclusively used in or charged against the Licensed Area.

**Permitted Use** means use of the Licensed Area as specified in Item 9.

**Plan** means the plan attached to this Licence as Annexure A.

**Rates and Taxes** means all existing and future rates (including any special rates or levies), taxes (including land tax on a single holding basis but excluding any income based tax), duties, charges, assessments, impositions and Outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or in connection with the Land.

**Requirement** includes any lawful notice, order or direction received from or given by any Government Agency or pursuant to any Law, in writing or otherwise which is relevant to the Licensed Area and/or a party to this Licence.

**Review Date** means the review date(s) specified in Item 10.

**Review Notice** means a notice setting out the Market Licence Fee given by the Licensor to the Licensee.

**Review Period** means the period following each Review Date until the next Review Date or until the end of this Licence.

**Schedule** means any schedule(s) to this Licence.

**Security Deposit** means the security deposit referred to in clause 16 for the amount specified in Item 11.

**State** means the Crown in right of the State of Victoria.

**Supplier** means the party who gives a *taxable supply* under this Licence (where the expression in italics has the meaning given in the GST Act).

**Term** means the period specified in Item 6, including any extension of it or any further period during which the Licensee has possession of the Licensed Area.

* + 1. Interpretation

In this Licence, unless the context otherwise requires:

* + - 1. a reference to this Licence or any other document referred to in this Licence includes any variation or replacement of any of them;
      2. a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re‑enactments or replacements of any of them;
      3. the singular includes the plural and vice versa;
      4. headings are for guidance only and are to be ignored in interpreting this Licence;
      5. a reference to a person includes a firm, a body corporate, an unincorporated association or a Government Agency, as constituted from time to time;
      6. a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, servants, agents, consultants, contractors, advisers, financiers, subcontractors, licensees and invitees;
      7. an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
      8. a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
      9. a reference to a recital, clause, item, schedule or annexure is to a recital, clause, item, schedule or annexure in or to this Licence, unless a contrary intention is expressed;
      10. day means the period of time commencing at midnight and ending 24 hours later;
      11. the payment of money within a specified time is a reference to the full clearance of any personal cheque into the account of the payee within that time;
      12. words or phrases derived from a defined word have a corresponding meaning;
      13. ‘dollars’ or ‘$’ refers to Australian currency;
      14. a reference to any professional body, association or institute includes any succeeding body, association or institute with similar objects;
      15. a covenant, promise, undertaking or agreement by the Licensee to perform or to refrain from performing some act or thing, includes a covenant by the Licensee to procure that its employees, officers, agents, contractors and servants also perform or refrain from performing such act or thing;
      16. no rule of construction will apply to disadvantage a party because that party proposed a provision of this Licence or the Licence itself;
      17. if anything to be done under this Licence falls on a day which is not a Business Day, it must be done on the next Business Day; and
      18. in respect of any warranty given by the Licensee under this Licence, the Licensee indemnifies the Licensor and the Licensor’s Associates for any reasonably foreseeable Loss, damage or expense arising out of or associated with a breach of that warranty.
  1. Grant of Licence
     + 1. The Licensor grants a non-exclusive licence to the Licensee and the Licensee's Associates to use and occupy the Licensed Area for the Term beginning on the Commencement Date, subject to the terms and conditions of this Licence, in common with the Licensor and the Licensor's Associates.
       2. The rights given by this Licence are solely contractual and nothing in this Licence creates or gives to the Licensee any proprietary estate or interest in the Licensed Area.
  2. Moratorium

To the extent permitted by law, the application to this Licence or to any party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of the Licence Fee or any part of it or otherwise affecting the operation of the terms of this Licence or its application to any party is excluded and negatived.

* 1. Licensor’s Reservations and Exercise of Rights
     + 1. The Licensor reserves the right for the Licensor and the Licensor’s Associates to:
          1. view the state of repair of the Licensed Area;
          2. carry out any works that may be required to comply with any applicable Law or Requirement;
          3. grant a contractual right in the nature of an easement or other right over the Land or Licensed Area, as long as it does not materially derogate from the Licensee’s rights under this Licence; and/or
          4. enter the Land and the Licensed Area for the purposes set out in clause 4(a) and for any other purpose deemed appropriate by the Licensor.
       2. Except in an emergency, the Licensor must:
          1. give the Licensee reasonable notice of the Licensor’s intended exercise of the rights set out in clause 4;
          2. only exercise the rights set out in clause 4 at reasonable times; and
          3. take reasonable steps to minimise interference to the Licensee when exercising the rights set out in clause 4.
  2. Licence Fee

The Licensee must pay the Licence Fee to the Licensor:

* + - 1. at the Licensor’s address specified in Item 1 (or to any other address or in any other way that the Licensor Notifies to the Licensee); and
      2. without demand by the Licensor, at the times and in the manner set out in Item 8.
  1. Reimbursement of Costs

The Licensee must reimburse the Licensor within seven (7) days of demand for all Costs (including legal expenses) incurred in relation to the following on a full indemnity basis:

* + - 1. preparation, negotiation and execution of this Licence;
      2. any request for consent made by the Licensee under this Licence;
      3. any variation, extension, surrender or termination of this Licence otherwise than by effluxion of time; and
      4. the Licensee's breach of this Licence, including lawful enforcement action.
  1. Rates and Taxes and Outgoings
     + 1. This clause applies if Item 7 states that 'Clause 7 applies'.
       2. The Licensee must pay the Rates and Taxes for the Licensed Area:
          1. to the assessing Government Agency or the supplier on time if assessed directly against the Licensee or the Licensed Area; or
          2. to the Licensor 10 Business days from the later of the:

due date for payment; or

date of receipt of a copy of the notice from the Licensor.

* + - 1. If the Licensed Area has not been separately assessed, the Licensee must reimburse the Licensor for its share of the Rates and Taxes and the Outgoings:
         1. in the proportion that the area of the Licensed Area bears to the total area of land that is the subject of the assessment notice; or
         2. as determined by the Licensor using some other method acting reasonably,

within 10 Business Days of receipt of demand from the Licensor.

* + - 1. If necessary, the Rates and Taxes and the Outgoings will be apportioned on a pro rata daily basis at the beginning and end of the Term.
  1. Market Review of Licence Fee
     + 1. The Licensor may give, not earlier than six months before a Review Date, the Licensee a Review Notice specifying the Market Licence Fee to apply for the Review Period.
       2. The Valuer General’s determination of the Market Licence Fee is final and binds the parties.
       3. In determining the Market Licence Fee, the Valuer‑General must:
          1. have regard to the terms of this Licence including the Permitted Use;
          2. disregard the value of the Licensee's fixtures and fittings (except where the Licensor has contributed to the cost of any such fixtures and fittings in which case the extent of the Licensor's contribution must be recognised) and the goodwill of the Licensee's business; and
          3. determine a Market Licence Fee which is not less than the Licence Fee payable immediately before the relevant Review Period.
  2. Use of Licensed Area
     + 1. The Licensee and the Licensee's Associates must not use or allow the Licensed Area or the Land to be used for:
          1. any purpose other than the Permitted Use; or
          2. a purpose that is inconsistent with the Permitted Use.
       2. The Licensee at its Cost must at all times carry out the Permitted Use in a business like and reputable manner.
  3. Compliance with Laws
     + 1. The Licensee must at its own expense in all respects observe and comply with all Laws that apply to this Licence and all directions, notices and Requirements relating to the Permitted Use.
       2. The Licensee must keep in force and available for inspection by the Licensor upon request, all licences, permits and registrations required for the carrying on of the Permitted Use in or upon the Licensed Area.
  4. Improvements
     + 1. The Licensee must not, and must not permit any other person to, construct any improvements on the Land without the Licensor’s prior written consent.
       2. In seeking the Licensor’s consent, the Licensee must submit any plans and specifications for the proposed improvements to the Licensor for approval. If the Licensor initially declines to grant consent, the Licensee may re-submit revised plans and specifications for the Licensee's consideration.
       3. The Licensor may give consent subject to the Licensee satisfying the following requirements:
          1. in carrying out any improvements, the Licensee must comply with all reasonable directions of the Licensor in accordance with the consent given by the Licensor;
          2. any improvements must be executed promptly and continuously in a proper and workmanlike manner, in accordance with all Laws and Requirements;
          3. the Licensee must pay on demand all Costs incurred by the Licensor in considering or inspecting the improvements, including the fees of consultants reasonably engaged by the Licensor;
          4. the Licensee must hold and comply with all approvals or permits needed to carry out the improvements, and produce copies of same for inspection upon request;
          5. within 30 days of completion, the Licensee must obtain and produce to the Licensor, copies of any unconditional certificates of compliance or satisfactory completion issued by relevant Authorities and a certificate issued by a consultant approved by the Licensor confirming that the improvements have been carried out in accordance with the plans and specifications approved by the Licensor; and
          6. the improvements must be completed within the time period (if any) reasonably specified by the Licensor.
       4. The Licensee acknowledges that:
          1. during the Term, all improvements constructed by the Licensee on the Licensed Area will be owned by and be the responsibility of the Licensee;
          2. the Licensee must reinstate the Licensed Area in the manner and to the standard required under clause 24, at or before the determination of this Licence;
          3. at the end of this Licence, all improvements constructed on the Licensed Area by the Licensee will be owned by the Licensor; and
          4. the Licensor may instruct the Licensee to remove such improvements upon the expiration or earlier determination of the Licence and reinstate the Licensed Area to its previous condition at the Licensee's expense.
  5. Licensee’s Obligations

The Licensee must:

* + - 1. not use the Licensed Area for any illegal purpose;
      2. ensure the Licensed Area is kept secure, clean and free from debris and rubbish;
      3. not do anything in or near the Licensed Area or the Land which is noxious, offensive or a nuisance and not cause any injury or nuisance to neighbours;
      4. not keep or use chemicals, inflammable liquids, acids or other hazardous things on the Licensed Area except to the extent necessary for the Permitted Use, or create fire hazards;
      5. comply with all policies or guidelines of the Licensor which deal with the safety or health of persons on the Licensed Area or otherwise under its control;
      6. not affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Licensed Area except with the prior written consent of the Licensor which is not to be unreasonably withheld but may be given conditionally;
      7. not erect, display, affix or exhibit on or at the Licensed Area any signs except for signs that comply with all Laws and then only after obtaining the Licensor’s approval and any necessary planning and building permits from the relevant Government Agency;
      8. observe fire precautions and permit the Licensor or the Licensor's Associates with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes;
      9. not install any fixtures or fittings, except those necessary for the Permitted Use, without the Licensor’s prior written consent; and
      10. at all times exercise due care, skill and judgement and act with the utmost good faith.
  1. Repairs
     + 1. Except for fair wear and tear, the Licensee must keep the Licensed Area in good order and condition and in the same condition that it was in at the start of this Licence or any earlier date that the Licensee began occupation of the Licensed Area and properly repaired and maintained.
       2. The Licensee must promptly repair damage to the Licensed Area to the extent that it is caused or contributed to by the Licensee.
       3. The Licensee is not responsible for structural or capital repairs to the Licensed Area, except where such repairs are required:
          1. to improvements constructed on the Licensed Area by the Licensee; or
          2. due to the negligent or unlawful act or omission or breach of the Licensee.
       4. The Licensor is responsible for all other repairs to the Licensed Area.
  2. Insurance, Release and Indemnity
     1. Insurance
        1. The Licensee must keep the insurance set out in Item 12 in force during the Term.
        2. The Licensee must not do, or permit to be done, anything which may invalidate any insurance, make any insurance void or voidable or increase the rate of premium of any insurance of the Licensor or any other person.
        3. If the Licensee causes an insurance premium to increase, the Licensee must pay the amount of that increase.
     2. Release

The Licensee uses and occupies the Licensed Area at the Licensee's risk and releases to the full extent permitted by law, the Licensor and its Associates from all Claims and demands of any kind for or resulting from any accident, damage, Loss or injury occurring in or on the Licensed Area except to the extent caused or contributed to by the Licensor or the Licensor's Associates.

* + 1. Indemnity
       1. The Licensee must indemnify and keep indemnified the Licensor and its Associates against all Claims that the Licensor or its Associates suffer or incur (except to the extent caused or contributed to by the Licensor or the Licensor's Associates) in respect of or arising from:
          1. any act or omission of the Licensee or the Licensee's Associates in connection with this Licence or the Licensed Area;
          2. any Loss, injury, illness or damage to persons (including death) including any member of the public or any third party to the extent that it is caused by the act or omission of the Licensee in connection with this Licence or the Licensed Area;
          3. any loss of or damage to property of any kind to the extent that it is caused or contributed to by the act or omission of the Licensee in connection with this Licence or the Licensed Area; or
          4. the Licensee’s breach or a breach by the Licensee's Associates of this Licence.
       2. The Licensee will not be liable under the indemnity in clause 14.3(a) to the extent that a Claim or liability results from:
          1. any fraudulent, negligent or unlawful act or omission of the Licensor or its Associates;
          2. any breach of this Licence by the Licensor or its Associates; or
          3. the condition of the Licensed Area or the Land before the commencement of the Licence or any earlier date that the Licensor commenced occupation of the Licenced Area.
       3. The obligations of the Licensee under clauses 14.2 and 14.3(a) will continue after the expiration or termination of this Licence in respect of any act, deed, matter or thing happening during the Term but before such expiration or termination.
  1. Assignment and Subletting
     + 1. Subject to clause 15(c), the Licensee must not dispose of, deal with or assign its interest, rights or powers as Licensee under this Licence.
       2. The acceptance by the Licensor of any Licence Fee or other payment from any person other than the Licensee does not constitute an acknowledgment by the Licensor that it recognises that person as the authorised assignee or sub-licensee.
       3. The Licensee may, in its absolute discretion, effect a Change in Control.
  2. Security Deposit
     + 1. In order to secure the performance of the Licensee under this Licence the Licensee must pay the Security Deposit to the Licensor on or before the Commencement Date.
       2. The Licensee must ensure that the Security Deposit is maintained at the required level for the Term.
       3. If the Licensee does not comply with any of the Licensee’s obligations under this Licence and the Licensor suffers any Costs, Loss, damage or Liability (or other entitlement to payment from the Licensee), the Licensor may, after giving 10 Business Days' Notice to the Licensee to remedy the default, draw on the Security Deposit without notice to the Licensee to the extent of such Costs, Loss, damage or Liability.
       4. If the Licensor draws on the Security Deposit, the Licensee must within 10 Business Days give to the Licensor a replacement Security Deposit or reinstate the amount that the Licensor has drawn from the Security Deposit so that the Security Deposit is restored to the required level.
       5. Subject to any right the Licensor has to draw on the Security Deposit, the Licensor must return the Security Deposit to the Licensee within 60 days of the later of:
          1. the expiry of this Licence;
          2. the Licensee returning vacant possession of the Licensed Area to the Licensor in accordance with this Licence; or
          3. the Licensor being satisfied (acting reasonably) that the Licensee has complied with all its obligations under this Licence.
  3. Termination Events
     + 1. The Licensor or the Licensee may terminate this Licence by written notice to the other party in the event that the Licensed Area is damaged or destroyed or there is interruption to access to the Licensed Area so as to render the Licensed Area or any part thereof, wholly or substantially unfit for the Permitted Use and otherwise unfit for the occupation or use of the Licensee or inaccessible by any usual means of access.
       2. The Licensee cannot exercise its right to terminate under clause 17(a) where the Licensee has caused or materially contributed to the event giving rise to the right of termination.
  4. Right of Re-Entry
     + 1. If:
          1. any Licence Money remains in arrears 14 days after the Licensor gives the Licensee Notice requiring that non‑payment to be remedied;
          2. the Licensee commits some other breach of this Licence and fails to remedy the breach within 14 days after receiving written notice from the Licensor giving particulars of the breach and requiring it to be remedied; or
          3. an Insolvency Event occurs,

then, the Licensor may do any one or more of the following:

* + - * 1. re‑enter and take possession of the Licensed Area. Re-entry by the Licensor ends this Licence, but the Licensor retains the right to sue the Licensee for unpaid money or for damages for breaches of its obligations under this Licence for the remainder of the Term;
        2. terminate this Licence;
        3. recover from the Licensee all loss suffered by the Licensor because of the Licensee's default, including, but not limited to any loss of Licence Fee for the entire Term; and
        4. exercise any of its other legal rights and remedies.
      1. The Licensor's right of re‑entry is subject to the provisions of any statute from time to time in force, to the extent that such statute binds the Licensor.
  1. Essential Terms

The following clauses are essential terms of this Licence:

* + - 1. clause 5 - Licence Fee;
      2. clause 7 - Rates and Taxes and Outgoings;
      3. clause 9 - Use of Licensed Area;
      4. clause 10 - Compliance with Laws;
      5. clause 12 - Licensee's Obligations;
      6. clause 13 - Repairs;
      7. clause 14 - Insurance, Release and Indemnity; and
      8. clause 15 - Assignment and Subletting.
  1. Licensor's Rights to Damages
     + 1. The Licensor may sue the Licensee for damages for loss of the benefits which performance of this Licence by the Licensee for the Term would have conferred on the Licensor.
       2. The Licensor must use reasonable endeavours to mitigate the Licensor's Loss.
  2. Licensor's Right to Remedy Licensee's Default
     + 1. If the Licensee fails to pay any Licence Money or do anything which under this Licence it is obliged to do after the Licensor has given the Licensee a notice specifying the breach and the time period available to remedy that failure (which will be such period as is reasonable in the circumstances) then the Licensor may, but need not, pay such money or do such thing and:
          1. for the purpose of doing any such thing the Licensor may enter and remain on the Licensed Area; and
          2. the Licensor may recover on demand from the Licensee the Costs incurred together with all incidental expenses.
       2. The Licensor’s exercise of any right under clause 21 is without prejudice to any other right or remedy which it has or may have for any non‑payment or non‑performance by the Licensee.
       3. If the Licence terminates under this clause 21, it is without prejudice to any right or liability of either party for any cause of action accruing before the termination.
  3. Disputes
     + 1. A party claiming that a dispute or disagreement has arisen under this Licence may give the other party a Dispute Notice.
       2. A Dispute Notice may be withdrawn at any time by the party that gave the Dispute Notice.
       3. Within 10 Business Days of the date of issue of the Dispute Notice, the parties must enter into good faith discussions in an attempt to resolve the issues between them.
       4. If the parties have not resolved the dispute within 20 Business Days of the date of issue of the Dispute Notice, either party may refer the dispute for expert determination.
       5. If a dispute is referred for expert determination, the Expert will be appointed by the party giving the Dispute Notice.
       6. The Expert:
          1. will fix and inform the parties of a time and place to present their respective positions to the Expert. Unless otherwise agreed between the parties, the parties must present their respective positions to the Expert no later than 10 Business Days after the Expert’s appointment;
          2. must make a determination or finding in respect of the dispute within 10 Business Days after the parties have presented their respective positions. Any determination of a dispute by the Expert will include a determination as to the award of costs and will be binding on all parties; and
          3. will act as an expert and not an arbitrator.
       7. The Licensor and Licensee will continue to perform their respective obligations under this Licence pending the resolution of a dispute under this clause 22.
       8. The Licensor and Licensee will not oppose any application for interlocutory relief pending resolution of a dispute by the Expert under this clause 22.
  4. Interest
     + 1. The Licensee must pay interest on any money payable by it under this Licence from the due date until the date that amount is paid on demand or at times notified by the Licensor, calculated on daily balances.
       2. The rate of interest to be applied to each daily balance is 2% per annum above the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*.
  5. Licensee’s Obligations on the Expiry or End of Licence

At the end of this Licence, the Licensee must:

* + - 1. vacate the Licensed Area and return it to the Licensor in a condition consistent with the Licensee having complied with its obligations under this Licence;
      2. remove any improvements constructed by the Licensee on the Licensed Area during the Term if requested to do so by the Licensor and the reinstate the Licensed Area to the condition that it was in prior to construction of these improvements;
      3. remove the Licensee's property (including all signs and lettering) and reinstate the Licensed Area to the condition it was in prior to the installation of the Licensee's property, including making good and damage caused by the removal of the Licensee's property; and
      4. give to the Licensor all keys and other security devices used for the purposes of obtaining access to the Licensed Area.
  1. Licensee's Property left in Licensed Area

Any items of the Licensee's property left in the Licensed Area more than 7 days after the end of this Licence:

* + - 1. will be deemed to be abandoned by the Licensee;
      2. will become the property of the Licensor for dealing with in the Licensor's discretion; and
      3. may be removed by the Licensor at the Licensee's cost and sole risk.
  1. Holding Over
     + 1. If the Licensee continues to occupy the Licensed Area after the end of the Term with the Licensor’s consent, it does so as a monthly Licensee:
          1. under the terms and conditions of this Licence with any changes necessary to convert this Licence into a monthly licence; and
          2. at a licence fee equal to one month's proportion of the annual Licence Fee payable under this Licence immediately before the end of the Term, payable monthly in advance, and the Licensor may increase the Licence Fee at any time by giving one month's notice to the Licensee.
       2. Either party may end the monthly Licence by giving to the other party at any time one month’s Notice.
  2. Disclosure

If the *Financial Management Act 1994* applies, then, for the purposes of the supply policies of the Victorian Government Purchasing Board:

* + - 1. this Licence may be published in accordance with the State’s “Contract management and contract disclosure policy” except to the extent that the Licensor is satisfied that the relevant term should be exempt from publication.
      2. the Licensor may disclose to any Government Agency the terms and conditions of this Licence, provided that prior to making any disclosure the Licensor notifies the Licensee of the proposed recipient and the extent of the proposed disclosure.
  1. Confidentiality
     + 1. Subject to clause 28(b), the Licensee must keep confidential:
          1. the terms and conditions of this Licence; and
          2. any information provided to the Licensee by the Licensor in connection with this Licence.
       2. The Licensee may make disclosures as it, acting reasonably, considers necessary to:
          1. its professional advisers, bankers, financial advisers, financiers, investors and potential investors if those persons undertake to keep information disclosed confidential;
          2. comply with Laws; and
          3. any of its employees requiring access to the information, if those employees undertake to keep the information confidential.
  2. Notices
     + 1. A Notice given under this Licence must be in writing and signed by or on behalf of the party giving it and may be given to a party's Authorised Representative;
          1. by post;
          2. by facsimile; or
          3. by hand delivery,

to the party's:

* + - * 1. last known address; or
        2. registered office; or
        3. if to the Licensee, to the Licensed Area.
      1. Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
      2. Notices delivered or sent by facsimile after 5:00p.m. will be taken to have been received at 9:00a.m. on the next business day at the place where it is received.
      3. A party:
         1. may, from time to time, nominate a replacement Authorised Representative by Notice given in writing to the other party; and
         2. must give Notice in writing to the other party within seven days of any change to the details of its Authorised Representative set out in Item 13.
  1. Special Conditions

Any special condition set out in Item 14:

* + - 1. binds the parties; and
      2. prevails over any other provision of this Licence, to the extent of any inconsistency.
  1. Environmental Matters
     + 1. The Licensee acknowledges that:
          1. the Licensee will occupy the Licensed Area in its present condition and has entered into this Licence on that basis; and
          2. the Licensor is not obliged to:

remove, encapsulate or otherwise treat any asbestos which may be present in or on the improvements or any fixtures, fittings or installation in, to or on the Licensed Area; or

remove, empty, clean or take any action in relation to any underground storage tank or tanks or associated pipes, valves or appliances or any Contamination in, on, or under the Licensed Area.

* + - 1. The Licensee releases and discharges the Licensor and its successors, assigns, employees and agents from all Claims, arising after the date of occupation under this Licence or any earlier date that the Licensee commenced occupation of the Licensed Area, which the Licensee has, may have, or which may accrue in the future or which, but for the execution of this Licence, the Licensee would or might have had against the Licensor as a result of the presence of any asbestos or other Contamination in, on or under the Licensed Area.
      2. From the date of occupation, the Licensee indemnifies and holds harmless the Licensor and the Licensor’s successors, assigns, employees and agents against all Claims, resulting or arising after the date of occupation, from the presence of any asbestos or other Contaminant in, on or under the Licensed Area (including, without limitation, any Costs or expenses incurred in relation to any notice, direction or order issued or made under the *Environment Protection Act 1970* or any other Act or Regulation in force in Victoria relating to the protection of the Environment).
      3. Clauses 31(b) and 31(c) do not apply to Claims by any person arising from their exposure before the date of this Licence or any earlier date that the Licensee commenced occupation of the Licensed Area to asbestos or any other Contaminant on the Licensed Area.
  1. Waiver

The non exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right operate to preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

* 1. Entire Agreement

This Licence is the entire agreement of the Licensor and Licensee on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Licence.

* 1. Negation of Warranties
     + 1. The Licensee acknowledges that it has entered into this Licence solely on the basis of the terms and conditions herein and that no other warranties, representations or promises have been made by the Licensor or its agents.
       2. Without limiting clause 34(a) the Licensee acknowledges that:
          1. no promise, representation, warranty or undertaking has been given by or on behalf of the Licensor regarding the suitability of the Licensed Area for the conduct of the Permitted Use otherwise than as expressly contained in this Licence, or for any other use; and
          2. subject to the terms and conditions of this Licence, the Licensee must do all things required, including obtaining all permits and approvals, to enable the Licensed Area to be used for the Permitted Use.
  2. Severability

Any provision of this Licence which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Licence or affecting the validity or enforceability of that provision in any other jurisdiction.

* 1. No Counterparts

This Licence may not be executed in counterparts.

* 1. Further Assurance

Each party must do, sign, execute and deliver and must procure that each of its Associates does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by Notice from another party to effectively carry out their obligations under this Licence.

* 1. Governing Law

This Licence is governed by the law of the State of Victoria.

* 1. Submission to Jurisdiction

The parties submit to the jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Licence.

* 1. Service of Process
     + 1. The Licensor appoints the person nominated in Item 13 to receive service of process in connection with any proceedings, and any process served on that person is taken to be served on the Licensor.
       2. The Licensee appoints the person nominated in Item 13, to receive service of process in connection with any proceedings, and any process served on that person is taken to be served on the Licensee.
  2. Variations

No addition to or variation of this Licence will be of any force or effect unless in writing signed by or on behalf of all parties.

* 1. GST
     + 1. In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.
       2. An amount payable under this Licence by a party to the other party, in respect of a supply which is a *taxable supply*, represents the GST exclusive value of the *supply*.
       3. The party who receives a *taxable supply* under this Licence from the Supplier must, upon receipt of a *tax invoice* from the Supplier, pay GST to the Supplier in addition to the GST exclusive value of the *supply*.
       4. Any penalty or interest payable as a result of late payment of any GST payable under this Licence is payable by the party who causes the late payment.
       5. If the Supplier is entitled to an *input tax credit* for any GST recoverable from the other party under this Licence, the amount of GST payable by the other party is to be reduced by the amount of the *input tax credit* which the Supplier has received or is entitled to receive.
  2. Personal Property Securities Act
     + 1. In this clause:
          1. any capitalised words and expressions that are not defined in this Licence will have the meanings ascribed to them in the PPSA;
          2. **Licensor Personal Property** means any item of Personal Property:

which is owned by the Licensor; or

in which the Licensor has an interest,

that is located on the Licensed Area or the Land at any time during the Term;

* + - * 1. **Personal Property** has the meaning given to that term in the PPSA including, without limitation, items of equipment, plant or business inventory, but excludes any fixtures annexed to or forming part of the Licensed Area or the Land;
        2. **PPSA** means the *Personal Property Securities Act 2009* (Cth) and includes any regulations made under that Act;
        3. **Security Interest** has the meaning given to that term in the PPSA; and
        4. **Licensee Personal Property** means any item of Personal Property:

which is owned by the Licensee; or

in which the Licensee has an interest,

that is located on the Licensed Area or the Land at any time during the Term, or following the expiry or earlier determination of this Licence.

* + - 1. The Licensor may register any actual, impending or likely Security Interest arising from the operation of this Licence. The Licensee must not make any Claim against the Licensor in respect of any such registration, even if the registration is ended pursuant to s 151 of the PPSA, or it is determined by a court that registration of the Security Interest should not have occurred.
      2. The Licensee:
         1. must do all things reasonably requested by the Licensor to enable the Licensor to register any of the Licensor's Security Interests arising in relation to this Licence and to enforce the Licensor's rights under this clause and the PPSA;
         2. must not grant or permit the granting of any Security Interest in the Licensor Personal Property other than with the prior written consent of the Licensor;
         3. must not grant a Security Interest in respect of any of the Licensee Personal Property to any person other than the Licensor without obtaining the Licensor's prior written consent;
         4. must pay the Licensor's reasonable Costs in respect of anything done or attempted by the Licensor in the exercise of the Licensor's rights under this clause or the PPSA;
         5. agrees that on the expiry or earlier determination of this Licence, the Licensee must sign (or arrange for the holder of any registered Security Interest to sign) any document that the Licensor reasonably considers necessary to discharge any registered Security Interest in relation to the Licensee Personal Property or the Licensor Personal Property;
         6. gives the Licensor an irrevocable power of attorney to do anything the Licensor reasonably considers the Licensee must do (and is unable or unwilling to do) under this clause;
         7. waives the right to receive notice under s 157(1) of the PPSA; and
         8. hereby charges in favour of the Licensor all of its title and interest in the Licensee Personal Property as security for the performance of the Licensee's obligations under this Licence, and acknowledges that this charge constitutes the granting of a Security Interest.
      3. The Licensor and the Licensee agree not to disclose information of the kind that can be requested under s 275(1) of the PPSA in relation to any Security Interest held in respect of the Licensor Personal Property or the Licensee Personal Property.
      4. Without limiting any other rights of the Licensor, if this Licence is terminated by the Licensor as a result of the Licensee's breach of the Licence, the Licensor may set off any Loss or damage caused by that breach by taking custody of the Licensee Personal Property and may deal with it in any manner the Licensor sees fit.
      5. If the Licensee is a natural person, the Licensee must provide the Licensor with the Licensee's date of birth and a certified copy of a Victorian Driver's Licence (or another form of identification acceptable to the Licensor) to confirm the Licensee's date of birth. The Licensor must keep the Licensee's date of birth and any supporting evidence secure and confidential at all times.
      6. If there is any inconsistency between this clause and any other provision of this Licence, the provisions of this clause will prevail.
  1. Miscellaneous
     + 1. The rights, powers and remedies set out in this Licence are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Licence.
       2. Each indemnity in this Licence is a continuing obligation, separate and independent from the other obligations of the Licensee, and survives expiry or termination of this Licence.
       3. Unless this Licence provides otherwise, the Licensor need not make demand for any amount payable by the Licensee under this Licence.
       4. The expiry or termination of this Licence does not affect:
          1. the Licensor's rights for a breach of this Licence by the Licensee before the expiry or termination; or
          2. the Licensee's obligation to make a payment under this Licence for periods before the expiry or termination.
       5. This Licence does not constitute a partnership or a joint venture between the parties nor does it constitute one party the agent of the other party. This Licence creates only the relationship of Licensor and Licensee between the parties.

Executed as a deed this day of 2018

**Licensor**

|  |  |  |
| --- | --- | --- |
| Signed sealed and delivered for and on behalf of **[insert name of cemetery trust]** by (insert name of authorised signatory) in the presence of: |  |  |
| Signature of Witness |  | **[Insert title of authorised signatory]** |
| Name of Witness (print) |  |  |

**Licensee**

[Select an appropriate sealing clause for the Licensee from the following options or, if none apply, insert the Licensee's sealing clause.]

|  |  |  |
| --- | --- | --- |
| **Executed** by **[*insert company name*] ACN [XX]** in accordance with s 127(2) of the *Corporations Act 2001* (Cth) 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)** |

|  |  |  |
| --- | --- | --- |
| **Executed** by **[*insert company name*] ACN [XX]** in accordance with s 127(1) of the *Corporations Act 2001* (Cth) in the presence of: |  |  |
| **Signature of sole director and sole company secretary** |  | **who states that he/she is the sole director and the sole company secretary of the company** |
| **Name of sole director and sole company secretary (print)** |  |  |

|  |  |  |
| --- | --- | --- |
| **Signed, sealed and delivered** by **[*insert name of individual*]** in the presence of: |  |  |
| **Signature of witness** |  | **[*insert name of individual*]** |
| **Name of witness (print)** |  |  |

**MINISTERIAL ATTESTATION**

Under Section 36 of the *Cemeteries and Crematoria Act 2003* I, The Hon (insert full name) MP, Minister for Health hereby:

* approve the grant of this Licence;
* approve the covenants, exceptions, reservations, terms and conditions contained therein; and
* am satisfied that the purpose for which the Licence is being granted is not detrimental to the purpose for which the Land is reserved.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature) \_\_\_\_ / \_\_\_\_ / 20\_\_

2. Licence Details

|  |  |  |
| --- | --- | --- |
|  | **Licensor’s Name**  **Address** | [Insert name of cemetery trust] (ABN [Insert ABN of cemetery trust])  [Insert address of cemetery trust] |
|  | **Licensee’s Name**  **Address** | [Insert Licensee name]  [Insert Licensee address] |
|  | **Licensed Area** | [Select from the two options and amend as appropriate]  The Land and the improvements erected on the Land, situated at [insert address].  *OR*  That part of the Land, and improvements erected on the Land shown hatched on the Plan as the 'Licensed Area' and situated at [insert address]. |
|  | **Land** | [Obtain a Crown land parcel report and insert Crown allotment particulars as described on the Crown land parcel report] |
|  | **Commencement Date** | [Insert commencement date in the format dd mmm yyyy] |
|  | **Term** | [Insert term of the licence which may not be more than 3 years] |
|  | **Rates and Taxes and Outgoings** | Option 1: Clause 7 applies  Option 2: Not applicable  [Select Option 1 if the Licensee is required to pay separately for Rates, Taxes and Outgoings'. Select Option 2 if the Licensee is not required to pay separately for Rates, Taxes and Outgoings'.] |
|  | **Licence Fee** | [In determining the applicable Licence Fee, consider whether it will include an amount for Rates, Taxes and Outgoings if these are to be recovered from the Licensee or whether these costs will be recovered separately pursuant to clause 7 and Item 7.]  $# (excl GST) per annum payable: [tick the relevant box to indicate when the licence fee must be paid]   * on demand * in 12 monthly instalments on the first day of the month |
|  | **Permitted Use** | The Licensee may use the Licensed Area for the following use(s): [tick the relevant box to indicate the permitted use(s) for which the Licensee may use the Licensed Area]   * Operating temporary flower stall at a public cemetery * Catering services provided to mourners * Operating temporary café or other retail food and beverage facility * The installation and monitoring of groundwater monitoring wells in a public cemetery * Grazing or agistment of livestock * Placement of temporary infrastructure for utility or other purposes. If for 'other purposes', the details are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ * Access to adjacent property for construction or other purposes |
|  | **Review Date** | [Insert the dates on which the Licence Fee will be reviewed. Example: On each anniversary of the Commencement Date, the Licence Fee will be revised to a Market Licence Fee.] |
|  | **Security Deposit** | [Insert value of the Security Deposit. If there will not be a security deposit, write 'Nil'.] |
|  | **Insurance** | **Public Liability Insurance**  $20 million per each event.  **Industrial Special Risks Insurance** (or equivalent insurance)  For the full replacement value of any landscaping and improvements constructed on the Licensed Area by the Licensee. |
|  | **Authorised Officers and Addresses for Service** | **Licensor [Insert details of the Licensor's Authorised Representative]** Authorised Officer:  Address:  Tel:  Email: |
|  |  | **Licensee [Insert details of the Licensee's Authorised Representative]** Authorised Officer:  Address:  Tel:  Fax: |
|  | **Special Conditions** | [Insert details of any special conditions. If the parties agree to amend any of the clauses in the body of the licence, these amendments should be set out here.] |

Annexure A - Plan

[Attach a copy of the Plan which clearly shows the Licensed Area, for example, by hatching or cross-hatching (this is preferable to use of colour in case black and white copies of the Licence are later produced). The Plan should be consistent with the description at Item 3 of the Schedule.]