

2021

**WA COUNTRY HEALTH SERVICE
"LESSOR"**

AND

**SHIRE OF CUNDERDIN
"LESSEE"**

**LEASE
PORTION OF CUNDERDIN HEALTH CENTRE**

**STATE SOLICITOR'S OFFICE
COMMERCIAL AND CONVEYANCING
PERTH**

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SSO : 4049-20

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Schedule

1. Property Details

1.1 Land

Lot 801 on Deposited Plan 407494 and being the whole of the land in Certificate of Title Volume 2932 Folio 641

1.2 Premises

That part of the Building constructed on the Land as is delineated and coloured yellow on the plan annexed hereto

1.3 Lettable Area of Premises

158 m²

1.4 Permitted Use

General Medical Practice

1.5 Lessor's Property

2. Term

2.1 Term

The period commencing on the Commencement Date and expiring on the Expiry Date

2.2 Commencement Date

The date of execution of the Lease by the last party to do so

2.3 Expiry Date

31 August 2025

2.4 Further Term

(a) 5 years commencing on 1 September 2025

(b) 5 years commencing on 1 September 2030

3. Rent

One peppercorn.

4. Operating Expenses and Insurance

4.1 Operating Expenses Contribution

\$15,600.00 per annum

4.2 Insurance requirements

- (a) Plate glass insurance to full replacement value.
- (b) Public liability insurance for an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000) in respect of any one occurrence unlimited in the aggregate which covers all claims and losses howsoever arising or caused, including but not limited to those in respect of:
 - (i) any injury of, or illness to, or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of the Lessor;
 - (iii) the loss of use of any property, including the property of the Lessor;
 - (iv) any claims, risks and events covered under the indemnities provided by the Lessee to the Lessor under the Lease.
- (b) Property insurance covering loss of or damage to any property of the Lessee that it brings on the Premises for its full replacement value;
- (c) Workers compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* including cover for common law liability for an amount of not less than FIFTY MILLION DOLLARS (\$50,000,000.00) for any one event in respect of the Lessee's employees;
- (d) Medical malpractice insurance covering the negligent act or omission of the Lessee and any person providing medical services at the Premises in the rendering of or failure to render professional medical services arising out of the medical services provided from the Premises for an amount not less than TWENTY MILLION DOLLARS (\$20,000,000) for any one claim, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.

5. Additional Terms

5.1 Inconsistencies

Where the provisions contained in this Schedule are inconsistent with the rest of the Lease, the provisions of this Schedule shall prevail to the extent of any inconsistency.

5.2 Fit out

The Lessee must:

- (a) obtain the prior written consent of the Lessor to any fit out work on the Premises before commencing those fit out works;
- (b) provide the Lessor with a detailed plan (minimum size – A3) of the proposed fit out works with appropriate specifications when requesting the Lessor's consent to the fit out works;
- (c) ensure all fit out works are carried out in a timely and professional manner using good quality materials and strictly in accordance with the plans approved by the Lessor; and
- (d) pay any costs incurred by the Lessor to provide its consent including architects and engineers fees.

5.3 Acknowledgement

The Lessee acknowledges that it has been given the opportunity to obtain legal and/or financial advice in respect of the Lease and confirms that it has obtained all legal and financial advice it considers appropriate in respect of the Lease.

5.4 Conduct of practice

The Lessee must use its best endeavours to ensure that the medical practice at the Premises is staffed by at least one registered doctor.

5.5 Notify Lessor

The Lessee must notify the Lessor in writing of the names of the doctors staffing the medical practice operated at the Premises and as to changes which occur from time to time.

5.6 Mutual Rights

The Lessor acknowledges that the Lessee has full authority in the conduct of the medical practice in the Premises and the Lessor will not hinder or purport to control or interfere with the right of the Lessee to continue to exercise that authority in the Premises and the Lessee

acknowledges that the WA Country Health Service has full authority to administer and conduct a health service on the portion of the Land which is not included within the Premises ("the Lessor's Premises") and the Lessee will not hinder or purport to control or interfere with any persons whatsoever giving professional or para medical service or advice on the Lessor's Premises or any staff on the Lessor's Premises whether such staff be employed by the Lessor or otherwise.

5.7 Utility Room

- (a) The Lessee may use the Utility Room for the Permitted Use at the same time as it uses the Premises.
- (g) The provisions of clauses 5, 8-17 inclusive, 17.3-17.7 inclusive, 18-23 inclusive and 25-27 inclusive of the Lease will apply mutatis mutandis to the Lessee's use of the Utility Room.
- (h) If at any time the Lease is terminated, the licence contained in this item 5.7 will automatically terminate.

5.8 Address for service of Notices

The address for service of notices as at the Commencement Date are as follows:

Lessor:

Address: P O Box 690 Northam WA 6401

Attention: Regional Director

Email: WACHSWB.Procurement&Contracts@health.wa.gov.au

Lessee:

Address: P O Box 100 Cunderdin WA 6407

Attention: Chief Executive Officer

Email: admin@cunderdin.wa.gov.au

This Deed of Lease

is made on

between the following parties:

1. **WA COUNTRY HEALTH SERVICE** a body corporate under the *Health Services Act 2016* of 189 Royal Street East Perth Western Australia (**Lessor**)
2. **SHIRE OF CUNDERDIN** of 37 Lundy Avenue Cunderdin Western Australia (**Lessee**)

RECITALS

- (a) The Lessor is the registered proprietor of the Land.
- (b) The Lessor has agreed to lease the Premises to the Lessee on the terms and conditions set out in the Lease.
- (c) The Minister for Health established the WA Country Health Service pursuant to section 32 of the *Health Services Act 2016*. Pursuant to section 41(7) of the *Health Services Act 2016*, the Chief Executive has been authorised by the WA Country Health Service to execute this Deed on its behalf.

OPERATIVE PART

1. Definitions, Interpretation and Related Matters

1.1 Definitions

In the Lease unless the context indicates otherwise:

Air conditioning Plant means any plant machinery or equipment for heating cooling or circulating air installed in the Premises or any building thereon.

Authorisation means any approval, agreement, certificate, authorisation, notification, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Government Agency required under any Laws, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Lessor under the Lease.

body corporate includes a "company" and a "corporation" as those expressions are defined in section 9 of the Corporations Act.

Building means the building constructed on the Land which contains the Premises.

Business Day means a day not being a Saturday, Sunday or a public holiday in Perth Western Australia.

Change in Control means in respect of any person, a change in the person or persons who, directly or indirectly, ultimately Control that person other than as a result of any dealing in securities listed on a stock exchange.

Claim means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made under or in connection with the Lease or under any Law, and the terms "**Claiming**" and "**Claimed**" are to be construed accordingly.

Commencement Date means the date of commencement of the Lease specified in item 2.2 of the Schedule.

Common Areas means all those parts of the Land and the buildings on the Land which are set aside by the Lessor for use by the Lessee and other occupants of the Building and not leased to any person from time to time including all the walkways, pavements, entrances, passages, fire stairs, parking areas, driveways and toilets.

Commonwealth means the Commonwealth of Australia.

Contamination means anything which makes the Premises or the Environment:

- (a) unsafe or unfit for humans;
- (b) degraded in any way, including in its capacity to support plant life; or
- (c) materially diminished in value,

or is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003*.

Control has the meaning given to that term in the Corporations Act.

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

CPI means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital City) (all groups index numbers) or any substitute for that index accepted by the Commonwealth from time to time provided that if the index number base adopted by the Australian Statistician for the index number at any time is updated the index number is to be appropriately adjusted as from the same time. If at any time either or both the Consumer Price Index and the index number is discontinued or suspended or, in the reasonable opinion of the Lessor, substantially is altered there is to be substituted for the Consumer Price Index and the index number the alternative method of computing changes in the cost of living which is mutually agreed in

writing between the Lessor and the Lessee during the period of 10 Business Days after written notice given by the Lessor to the Lessee or, failing that agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants in Australia (WA Division) at the request of the Lessor or the Lessee or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Region (the costs of that expert being borne by the Lessor and the Lessee in equal shares).

CPI Method means the amount determined by the following formula:

$$\text{OEC} = \frac{\text{COEC} \times \text{CCPI}}{\text{PCPI}}$$

Where:

OEC = the adjusted Operating Expenses Contribution payable from and including the relevant Review Date;

COEC = the Operating Expenses Contribution payable for the review period immediately preceding the Review Date in question;

CCPI = the CPI as last published by the Australian Statistician prior to the relevant Review Date;

PCPI = the CPI as last published by the Australian Statistician prior to latter of the Commencement Date or the immediately preceding Review Date.

Environment has the meaning given to it in the *Environmental Protection Act 1986* (WA).

Event of Default means any of the events specified in clause 18.2.

Expiry Date means the expiry date referred to in item 2.3 of the Schedule.

Financial Year means the period:

- (a) commencing on the Commencement Date and ending on the next 30 June;
- (b) of each 12 months commencing on 1 July until the next 30 June during the Term;
- (c) commencing on 1 July immediately preceding the expiration of the Term and ending at the expiration of the Lease.

Further Term means each further term referred to in item 2.4 of the Schedule.

Government Agency means any government or any governmental, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any part of, entity comprising, or agent of the State.

GST means GST within the meaning of the GST Act.

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

Insolvency Event means the happening of any of the following events in relation to the Lessee:

- (a) (informs creditors) a corporation informs its creditors generally that it is insolvent;
- (b) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) (execution) a distress, attachment or other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (d) (voluntary liquidation) a corporation enters into voluntary liquidation;
- (e) (application) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days after being made;
- (f) (winding up) an order is made for the administration, dissolution or winding up of a corporation;
- (g) (resolution) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other party;
- (h) (arrangement or composition) a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other party;

- (i) (statutory demand) a corporation fails to comply with, or fails to apply to have set aside, a statutory demand within 10 Business Days after the time for compliance, or:
 - (i) a corporation applies to have a statutory demand set aside within 10 Business Days after the time for compliance;
 - (ii) the application to set aside the statutory demand is unsuccessful; and
 - (iii) the corporation fails to comply with the statutory demand within 5 Business Days after the order of the court dismissing the application;
- (j) (execution levied against it) a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge or circulating security interest;
- (k) (insolvency - corporation) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (l) (insolvency - persons) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event;
- (m) (death etc.) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (n) (analogous matters) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Insurable Event means fire, storm and tempest, flood, impact, malicious damage, loss of rent and any risk required to be insured against by a party under the Lease.

Land means the land described in item 1.1 of the Schedule.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;
- (b) Authorisations;
- (c) principles of law or equity;

- (d) standards, codes, policies and guidelines;
- (e) the Australian Securities Exchange listing rules; and
- (f) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a), (b), (c) and (d) of this definition,

whether or not existing at the Commencement Date.

Lease means this lease including the Schedule.

Lessee's Contribution means the Lessee's Proportion of the Operating Expenses.

Lessee's Property means all buildings, improvements, other fixtures and any plant or equipment, fittings, furniture and furnishings or other property not owned by the Lessor and which the Lessee or any other person (except for the Lessor) constructs on, or fixes to, the Premises or brings on to the Premises during the Term.

Lessee's Proportion means the proportion of the Operating Expenses payable by the Lessee as mentioned in item 4.1 of the Schedule, or if no proportion is mentioned, the proportion that the Lettable Area of the Premises bears to the lettable area of the land owned by the Lessor in respect of which the Operating Expenses are incurred.

Lessee's Visitors means each of the Lessee's employees, agents, contractors, service suppliers, sub-lessees, licensees, customers and other visitors and any other person who at any time is on the Premises with or without the consent of the Lessee.

Lettable Area means the area of the Premises as stated in the Lease or, if no area is stated, the area of the Premises as properly measured by the Lessor.

Lessor's Property means all the plant and equipment and other goods including any air conditioning system, fire equipment, fixtures, fittings, furniture and furnishings including curtains, blinds and lights in, or fixed to, the Premises which are not the Lessee's Property, including those items (if any) listed in item 1.5 of the Schedule.

Loss means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual prospective or contingent or any fine or penalty.

notice includes a request, demand, consent, approval or other communication to, or by, a party to the Lease.

officer, in relation to a body corporate, means an officer for the time being of that body corporate as defined in section 9 of the Corporations Act.

Operating Expenses Contribution means the sum specified in item 4.1 of the Schedule which is the Lessee's contribution to operating expenses for the Premises.

parties means the Lessor and the Lessee and "party" is a reference to either of them.

Permitted Use means the use of the Premises referred to in item 1.4 of the Schedule.

Plan means the plan of the Premises (if any) attached to, and forming part of, the Lease.

PPS Law means the PPSA and any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Premises means the premises the subject of the Lease (including additions) as described in item 1.2 of the Schedule together with the Lessor's Property in, or forming part of, those premises.

Rates means rates and other charges imposed by a Government Agency in relation to the Premises or the Land or any property which includes the Premises or the Land.

Rent means the annual rent for the Premises stated in item 3 of the Schedule.

Review Date means each anniversary of the Commencement Date.

Schedule means the schedule to the Lease which is a schedule to, and forms part of, the Lease.

Security Interest means any one or more of:

- (a) a mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or the compliance with any other obligation; and
- (b) a "security interest" within the meaning of the PPSA.

Services means all services running through, or servicing, the Premises including air conditioning, electricity, water, sewerage, sewer volume charges, gas, telecommunications and fire sprinkler system.

State means the State of Western Australia and includes any department, agency or instrumentality of the State of Western Australia, the Parliament and any Minister (including of the State), whether body corporate or otherwise and their respective employees, agents, contractors and consultants.

Taxes means every tax, charge or duty, including land tax, duty and fines or penalties imposed by a Government Agency in relation to the Lease, the Land or the Premises or any property which includes the Land or the Premises.

Term means the term for which the Premises are let by the Lessor to the Lessee as specified in item 2.1 of the Schedule, including every period of holding over and every renewed or extended term of the Lease where the context so permits.

Termination Date means each of the following:

- (a) if the Lease is terminated prior to the Expiry Date, the date on which the Lease is terminated;
- (b) if paragraph (a) does not apply, the later of:
 - (iv) the Expiry Date; and
 - (v) the date of expiry of any period of holding over permitted under the Lease.

Utility Room means that portion of the Building as is delineated and coloured pink on the Plan.

1.2 Interpretation

In the Lease unless the context indicates otherwise:

- (a) **(person)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to the Lease;
- (e) **(other persons)**: a reference to any party or person includes their and each of their legal representatives, executors,

administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;

- (f) **(authority)**: a reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body;
- (g) **(the Lease)**: a reference to the Lease or to any other deed, agreement, document or instrument is deemed to include a reference to the Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty;
- (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (l) **(headings)**: headings are for convenience only and do not affect the interpretation of the Lease;
- (m) **(clauses)**: a reference to:
 - (i) a clause, schedule or attachment is a reference to a clause, schedule or attachment of the Lease; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

- (n) **(inclusive)**: a reference to the Lease includes all schedules and attachments to the Lease, including the Schedule;
- (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)**: a reference to "\$" is to Australian currency and any amounts in the Lease are exclusive of GST, unless otherwise specified;
- (q) **(time)**: a reference to time is a reference to Western Australian Standard Time;
- (r) **(language)**: all information and documentation prepared or delivered by the parties under or in connection with the Lease will be in English;
- (s) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted the Lease or any part;
- (u) **(information)**: any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(policies)**: any reference to a State of Western Australia policy or scheme is deemed to include a reference to such policy or scheme as amended, varied or replaced by the State from time to time;
- (w) **(thing)**: a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them but this is not to be taken as implying that performance of part of an obligation is the performance of the whole;
- (x) **(consortium)**: if a party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:

- (i) an obligation imposed on a party under the Lease binds each person who comprises that party jointly and severally;
 - (ii) each person who comprises a party agrees to do all things necessary to enable the obligations imposed on that party under the Lease to be undertaken; and
 - (iii) the act of one person who comprises a party binds the other person or persons who comprise that party;
- (y) **(jointly and severally)**: 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;
- (z) **(electronic address)**: a reference to a document published at an electronic address is to the document as published at that electronic address on the date of execution of the Lease;
- (aa) **(liability)** a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (bb) **(year)** a reference to a year is to a calendar year;
- (cc) **(month)** a reference to a month is to a calendar month;
- (dd) **(contractor)** a reference to a contractor is to a consultant, contractor or subcontractor at any tier;
- (ee) **(upper case)** terms not defined but commencing in upper case shall have their apparent meanings; and
- (ff) **(retail shop)** during any time when the Lease is a lease to which the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA) applies:
- (i) the provisions of the Lease are subject to the provisions of that Act; and
 - (ii) any provision of the Lease giving a right, power or remedy to the Lessor or imposing an obligation on the Lessee which is prohibited or made void or otherwise unenforceable by that Act does not apply to the extent only that the provision is so prohibited, made void or is otherwise unenforceable, but without prejudice to the other provisions of the Lease, which continue in full force and effect.

1.3 Time

- (a) (**Business Day**): Where the day on or by which an act is required to be done under the Lease is not a Business Day, the time for doing that act will be taken to be the next Business Day.
- (b) (**day of event**): Where time is to be reckoned by reference to a day or event, that day or the day of the event is excluded.
- (c) (**month**): Where time is to be counted in months and the period commences on the 29th, 30th or 31st day of a month and the month at the end of the period does not have a 29th, 30th or 31st day (as applicable), then the period will end on the last day of that month (for example, a period of 2 months which begins on 31 July will end on 30 September; and a period of 2 months which begins 30 July will end on 30 September).

1.4 State's interests and Statutory Functions

- (a) (**State's rights**): Any right of the Lessor may be exercised for the benefit of any other part of the State and any reference in the Lease to the Loss of, or costs incurred by, the Lessor includes direct Losses of, and direct costs incurred by, any other part of the State.
- (b) (**State's interests**): Except where the Lease expressly provides otherwise, to the extent permitted by Law, nothing in the Lease gives rise to any duty on the part of the Lessor to consider interests other than the Lessor's interests (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) (**fetter**): Nothing contained in the Lease or contemplated by the Lease has the effect of constraining the Lessor or any other part of the State or placing any fetter on the Lessor's or any other part of the State's statutory rights, duties, powers or functions including any statutory rights, duties, powers or functions conferred or imposed upon the WA Country Health Service under the *Health Services Act 2016* (WA).
- (d) (**Lessor's powers, functions and duties**): Notwithstanding anything contained or implied in the Lease to the contrary, the parties agree that the Lessor is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.

- (e) **(no Claim)**: The Lessee is not entitled to make any Claim against the Lessor for any Loss relating to any exercise or failure by the Lessor to exercise its statutory rights or duties.

1.5 Standards

- (a) **(provisions limiting or excluding liability)**: Any provision of the Lease which seeks either expressly or by implication to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(standards)**: Unless agreed or notified in writing by the Lessor, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Lease is a reference to the edition last published prior to the preparation of the relevant documentation.

1.6 Third Parties

Any covenant (whether express or implied) by the Lessee not to do or omit to do any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit to do the same.

2. Lease

The Lessor leases the Premises to the Lessee at the Rent and on the terms and conditions contained in the Lease and the Lessee accepts the Lease.

3. Rent

The Lessee must pay the Rent to the Lessor on demand.

4. Rates and Taxes

The Lessor must pay all Rates and Taxes.

5. Goods and Services Tax

5.1 Definitions

Expressions set out in *italics* in this clause bear the same meaning as those expressions in the GST Act.

5.2 Amounts payable by Lessee exclusive of GST

Except where express provision is made to the contrary, all amounts payable by the Lessee specified in the Lease are stated exclusive of GST.

5.3 Liability to pay any GST

If the Lessor makes a *taxable supply* in connection with the Lease for a *consideration* which represents an amount which is exclusive of GST, then the Lessee must pay to the Lessor, at the same time and in the same manner as such *consideration* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

5.4 Reimbursements

If the Lease requires the Lessee to pay, reimburse or contribute an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor's recovery from the Lessee is a *taxable supply*, any GST payable under clause 5.3.

5.5 Tax invoice

The Lessor shall provide to the Lessee a valid *tax invoice* in respect of any GST paid pursuant to clause 5.3 within 28 days of the Lessee's request to do so.

6. Operating Expenses

6.1 Contribution

The Lessee must pay to the Lessor the Operating Expenses Contribution annually in advance commencing on the Commencement Date and thereafter on each anniversary of the Commencement Date.

6.2 Review of Operating Expenses Contribution

The Lessor may review the Operating Expenses Contribution on each Review Date using the CPI Method.

7. Service charges

The Lessee must pay all charges for Services which are imposed solely in respect of the Premises either to the supplier before those charges become overdue or at the Lessor's option to the Lessor within 10 Business Days after the Lessor requests payment.

8. Assignment and sub-letting

8.1 No interest to be created without consent

The Lessee must not give any person any right or interest in the Lease or the Premises (including a licence to use or occupy the Premises) or

allow any person to use or occupy the Premises (other than those persons carrying out the Permitted Use on behalf of the Lessee) without the Lessor's consent.

8.2 Requirements

If the Lessor consents to a proposed assignment or sub-lease then, within a reasonable time before the proposed date of change in possession, the Lessee must:

- (a) supply to the Lessor evidence reasonably acceptable to the Lessor that the proposed assignee or sub-lessee is respectable, responsible, solvent, fit and proper and able to perform all the Lessee's obligations under the Lease;
- (b) deliver to the Lessor a deed executed by the proposed assignee in a form prepared by, or approved by, the Lessor, by which:
 - (i) the proposed assignee agrees to be bound by the Lease from the date that the assignment or sub-lease takes effect; and
 - (ii) any guarantor requested under clause 8.6 gives the Lessor a guarantee and indemnity as required by that clause;
- (c) include a clause in any sublease in a form prepared by, or approved by, the Lessor, by which the sublessee agrees not to do anything which would cause the Lessee to be in breach of the Lease;
- (d) pay to the Lessor on demand the Lessor's costs and expenses including agents fees and legal costs in connection with the preparation or examination of any documents relating to the assignment or sub-lease and the duty on those documents;
- (e) in the case of an assignment, withdraw any caveat lodged in respect of the Lessee's interest in the Premises; and
- (f) comply with any other requirement of the Lessor,

and the Lessor's consent is taken to be conditional on the Lessee complying with the obligations in this clause 8.2.

8.3 Lessee remains liable

The Lessee remains fully liable under the Lease even if the Lessee ceases to occupy the Premises for any reason with or without the Lessor's consent except from the date a valid assignment of the Lease takes effect and provided clause 8.2 has been complied with.

8.4 Change in control

The Lessee must not, without the prior approval of the Lessor, and except on such terms and conditions as are determined by the Lessor:

- (a) permit a Change in Control of the Lessee; or
- (b) assign, transfer, mortgage, novate, charge, or otherwise encumber the Lease or any payment or other right, benefit, money or interest under or in respect of the Lease.

8.5 Exclusion of statutory provisions

The provisions of sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to the Lease.

8.6 Guarantee required

If the Lessee at any time intends to assign the Lease or if clause 8.4 applies, and if the Lessor requests, the Lessee must obtain a guarantee of the assignee's or lessee's obligations under the Lease from the directors and principal shareholders of the assignee or lessee (if a company) or any other person reasonably required by the Lessor. The guarantee must be on terms reasonably acceptable to the Lessor.

8.7 Costs and expenses

The Lessee must pay to the Lessor on demand all fees and expenses payable by the Lessor to any agent, consultant or solicitor engaged by the Lessor in connection with a proposed assignment or sub-letting.

8.8 Dealing by Lessor

The Lessor may transfer, mortgage, charge, or encumber the Land or any part of it or any right, benefit, money or interest under the Lease without the Lessee's consent.

9. Use of Premises

9.1 Permitted Use

The Lessee must only use the Premises for the Permitted Use and the Lessee must not use the Premises for any other purpose unless the Lessor consents.

9.2 Increase in Rent on Change of use

If at any time the Lessee requests the Lessor to change the Permitted Use, the Lessor may, as a condition of agreeing to that request require

the Rent to be increased from a date (after the Lessee's request) stipulated by the Lessor.

9.3 No warranty by Lessor

The Lessor does not expressly or impliedly warrant that the Premises are now or will remain suitable or adequate for all or any of the purposes of the Lessee or for the business which the Lessee is authorised to conduct thereon and to the extent permitted by Law, all warranties (if any) as to suitability and adequacy of the Premises implied by Law are hereby expressly negated.

10. Insurances

10.1 Lessee to effect insurances

- (a) The Lessee must effect and maintain and keep current during the Term and continuance of the Lease with an insurer authorised by the Australian Prudential Regulation Authority to conduct insurance business in Australia or the Lessee's self insurance fund in the names of the Lessee and the Lessor, for their respective rights and interests, all insurances which the Lessee is required to take out as referred to in item 4.2 of the Schedule. The insurance in item 4.2(b) of the Schedule must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).
- (b) The existence of insurance cover as required under this clause 10.1 shall not, in any way, limit the obligations or responsibilities of the Lessee under the Lease.

10.2 Lessee's obligations

In respect of the insurances referred to in clause 10.1 the Lessee must:

- (a) within 5 Business Days after the Commencement Date and each time those insurance policies are renewed or varied, provide to the Lessor certificates of currency or alternative evidence (in a form acceptable to the Lessor) of the existence of those insurances;
- (b) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 10.1;

- (c) not vary or cancel any such insurance or allow it to lapse during the Term or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (d) without limiting clause 10.2(c), promptly reinstate any such insurance if it lapses or if cover is exhausted.

10.3 Incidents and claims

If the Lessee becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 10.1 or which could adversely affect any of them or if any such insurance is cancelled it must as soon as reasonably practicable notify the Lessor in writing of that event or incident. Failure to comply with this clause 10.3 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Lease.

10.4 Restrictions on Lessee's activities

Unless the Lessor consents, the Lessee must not:

- (a) do or allow anything to be done which adversely affects any insurance taken out by the Lessor in connection with the Premises or which may increase the premium on that insurance;
- (b) store or use inflammable, volatile or explosive substances on the Premises except those normally used in the Lessee's business; or
- (c) settle or compromise any claim under any policy of insurance relating to the Premises.

10.5 No Limitation of Other Liabilities

Nothing in this clause 10 limits the Lessee's other liabilities or obligations under the Lease or restricts the Lessee from insuring for sums or risks greater than those required under the Lease.

11. Indemnities, Release and exclusions

11.1 By the Lessee

The Lessee indemnifies and must keep indemnified the Lessor and the State against any Claim, Loss or other liability resulting from:

- (a) any damage to the Premises or other property; or

- (b) the death of, illness of or injury to, any person,
to the extent caused or contributed to by:
- (c) any breach of the Lease by the Lessee; or
- (d) the use or occupation of the Premises by the Lessee or the Lessee's Visitors; or
- (e) any work carried out by, for or on behalf of the Lessee under the Lease; or
- (f) the Lessee's activities, operations, business or other use of the Premises of any kind under the Lease; or
- (g) any act, omission, negligence or default of the Lessee or the Lessee's Visitors; or
- (h) any danger created by the Lessee or the Lessee's Visitors.

11.2 Release

- (a) The Lessee:
 - (i) agrees to occupy, use and keep the Premises at the risk of the Lessee;
 - (ii) releases to the full extent permitted by Law the Lessor and the State from:
 - (A) any liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature in or near the Premises; and
 - (B) loss of or damage to fixtures or personal property of the Lessee;except to the extent that such loss or damage is caused by the gross negligence of the Lessor.
- (b) The obligations of the Lessee under this clause 11 continue after the expiration or earlier determination of the Lease in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of the Lease.

11.3 Lessor not liable

The Lessor is not liable for any Loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in,

or affecting, the Premises unless, but only to the extent, caused by the gross negligence of the Lessor or any employee of the Lessor.

11.4 Part 1F of the Civil Liability Act excluded

Should the Lessee commit or be responsible for the commission of a tortious act or contractual breach, Part 1F of the *Civil Liability Act 2002* is hereby excluded.

11.5 Lessee assumption of responsibilities

Notwithstanding any other provision of the Lease, the Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term it were the owner and occupier of the freehold of the Premises.

12. Common Areas

12.1 Use of Common Areas

The Lessee has the right for the Lessee and the Lessee's permitted assigns, the Lessee's servants, employees and invitees in common with the Lessor and the Lessor's assigns and the Lessor's employees, tenants, occupiers, customers, invitees and all other persons authorised by the Lessor to use the Common Areas subject to the right of the Lessor to close temporarily any Common Areas to make repairs or changes as in the Lessor's judgement may be desirable to improve the convenience thereof.

12.2 Indemnity

The Lessee covenants to indemnify and keep indemnified the Lessor from and against all Claims and Losses which the Lessor suffers or incurs in connection with loss of life, personal injury, illness and/or damage to property arising from or out of the use by the Lessee of the Common Areas or any part thereof, other than those arising out of the negligence or default of the Lessor, its agents, servants, contractors and employees.

12.3 Use at Lessee's Risk

The Lessee must use the Common Areas at the Lessee's own risk and the Lessee hereby releases to the full extent provided by Law the Lessor and Lessor's agents, servants, contractors and employees from all Losses, Claims and demands of every kind arising from any accident, damage or injury occurring therein or thereon.

12.4 Not to Obstruct

The Lessee must not in any way obstruct or permit the obstruction of the Common Areas or any part thereof.

12.5 Lessor to regulate

The Lessor may regulate the use of the Common Areas at all times.

12.6 Lessor may alter

The Lessor may at any time at its discretion, add to, alter or reduce the Common Areas, provided that this does not materially adversely affect the Lessee's access to the Premises. The Lessee will have no Claim against the Lessor resulting from or in connection with such addition, alteration or reduction in the Common Areas.

13. Compliance with laws and requirements

The Lessee must comply with all requirements of any Government Agency and all Laws in connection with the Premises, the Lessee's Property and the Lessee's business and will at its expense obtain any Authorisations required to use the Premises for the Permitted Use.

14. Maintenance, repair and alteration

14.1 Maintenance and repair

The Lessee must:

- (a) promptly repair any damage to the Premises caused by the Lessee or the Lessee's Visitors except when the damage is the result of an Insurable Event, but this exception will not apply if the insurance money is not payable by the insurer as a result of an act or omission by the Lessee or the Lessee's Visitors;
- (b) without limiting paragraph (b), promptly replace damaged glass in the Premises, including plate glass and exterior windows with glass of the same or similar quality; and
- (c) keep and maintain the Lessor's Property in good and substantial repair and condition and maintained serviced and lubricated and to replace with items of a like nature the whole or any part of the Lessor's Property which shall be lost, broken, worn out, destroyed or rendered unserviceable.

14.2 No interference with Services

The Lessee must not modify or interfere with the Services, including any drainage or water supply facilities serving the Premises or any equipment connected to those facilities.

14.3 Structural work

The Lessee must carry out work of a structural nature which is necessary to comply with paragraph 14.1(a) (subject to the exception stated in that paragraph) or because of the Lessee's use of the Premises, but the Lessee is not required to carry out any other structural work.

14.4 Notice of damage

The Lessee must notify the Lessor of damage to the Premises or the defective operation of any of the Services immediately the Lessee becomes aware of it.

14.5 Alterations to the Premises

The Lessee must not make any alteration or addition to the Premises unless the Lessor first consents in writing.

14.6 Damage to the Premises

The Lessee must not cause or allow damage to the Premises.

14.7 Building work

In carrying out its obligations to keep the Premises in good repair and condition and to redecorate, and when making any alterations or additions to the Premises the Lessee must:

- (a) obtain any Authorisations required for the work;
- (b) comply with those Authorisations and any other requirements of any Government Agency and all Laws and standards which apply to the work;
- (c) before carrying out any building work, obtain the Lessor's approval to the plans and specifications for the work;
- (d) pay any costs incurred by the Lessor to provide its approval including architects and engineers fees; and
- (e) carry out the work in a safe and proper manner and strictly in accordance with the plans and specifications for the work approved by the Lessor.

14.8 Redecoration

The Lessee must redecorate (including painting, papering and varnishing) the Premises in a good and workmanlike manner with good quality materials as shall first be approved by the Lessor (which approval shall not be unreasonably withheld):

- (a) at least once every five years during the Term; and
- (b) at the termination of the Lease.

15. Cleaning

The Lessee must:

- (a) keep the Premises clean and free from rubbish, vermin and pests; and
- (b) comply with the Lessor's directions for the disposal of rubbish and if no directions are given, the Lessee is to store the rubbish in a proper hygienic manner within the Premises and to attend to its prompt disposal.

16. Lessee's general obligations

16.1 Positive obligations

The Lessee must:

- (a) conduct the Lessee's business in the Premises in a safe and proper manner;
- (b) use its best endeavours to protect and keep safe the Premises and any property contained therein from theft or robbery and securely lock all exterior doors and windows in the Premises when the Premises are not occupied;
- (c) allow persons having an interest in the Premises superior to, or concurrent with, the Lessor's interest to exercise the Lessor's or that other person's rights and perform their obligations in connection with the Premises;
- (d) withdraw any 'subject to claim' caveat lodged to protect the Lessee's interest under the Lease on an assignment of the Lease or immediately the Lessee's interest in the Lease ceases to exist;
- (e) immediately deliver to the Lessor a copy of every notice received by the Lessee relating to the Premises;
- (f) immediately notify the Lessor if the Lessee becomes aware of any threat to the Premises and comply with the Lessor's

directions for the purpose of protecting property or person in the Premises;

- (g) comply with fire drills and emergency procedures when requested by the Lessor;
- (h) abide by and comply with any rules that the Lessor may make from time to time.

16.2 Negative obligations

In connection with the Premises, the Lessee must not, and must not allow anyone else to:

- (a) give any person a Security Interest in the Premises;
- (b) do anything which is illegal, offensive or a nuisance and must promptly abate any such thing which does occur;
- (c) interfere with, or obstruct access to, the Services;
- (d) use facilities in or near the Premises, including the toilets and drains, for any improper purpose;
- (e) place or suffer to be placed or maintained on any external door wall or window of the Premises any television or wireless antennae or mast or other apparatus or any sign awning or canopy or advertising matter or other thing of any kind or erect or place or permit to be erected or placed on any part of the Premises any radio or television receiver loudspeaker amplifier or other similar device or place or maintain on or under any awning or canopy or on any window or on any door of the Premises any decoration lettering or advertising matter of a permanent or semi-permanent nature without the Lessor's and the relevant Government Agency's (if required) prior written consent PROVIDED that the Lessee may erect such antennae or receiving dish for reception of radio, television and video programmes in such place on the Premises as the Lessor shall first agree in writing;
- (f) hold an auction, bankruptcy, fire or closing down sale;
- (g) permit any other person to carry on business on the Premises;
- (h) use the Premises as a residence;
- (i) vacate the Premises, except as required by the Lease, or abandon the Premises;
- (j) bring on the Premises any heavy machinery or other plant and equipment which is not reasonably necessary or proper for the

Permitted Use by the Lessee of the Premises, and in no circumstances shall any such machinery plant or equipment be of such nature or size as to cause or be likely to cause any structural or other damage to the floors or walls or any other part of the Premises. Any damage done to the Premises in bringing any plant or equipment on the Premises shall be made good by the Lessee, and in the event of the Lessee failing or refusing to make good damage the Lessor may make good the damage and the Lessee shall pay to the Lessor on demand the cost thereof;

- (k) without the prior written consent of the Lessor install any electrical equipment on the Premises that overloads the cables switchboards or sub-boards through which electricity is conveyed to the Premises PROVIDED THAT if the Lessor grants such consent any alterations which may be necessary to comply with the requirements of the Lessor's insurer and/or any Law relating thereto shall be effected by the Lessor at the expense of the Lessee and the entire cost to the Lessor of such alteration shall be paid by the Lessee upon demand by the Lessor and the Lessor may require the Lessee to deposit with the Lessor the estimated cost thereof before any such alterations are commenced.

16.3 Air conditioning

Where there is any Air conditioning Plant installed in the Premises the following provisions shall apply:

- (a) the Lessee will to the extent of the Lessee's control over the same at all times use and regulate the same to ensure that the Air conditioning Plant is employed to the best advantage in the conditions from time to time prevailing and will not, without the Lessor's prior written consent, install in the Premises any electrical or other equipment or appliances which will generate excessive heat loads and shall forthwith remove any equipment which in the opinion of the Lessor's consultant engineer is interfering with the performance of the Air conditioning Plant;
- (b) the Lessor shall not be under any liability to the Lessee or any other person arising from any breakdown or failure of operation of the Air conditioning Plant at any time or times for any reasons whatsoever.

16.4 No absolute caveat

The Lessee must not lodge an absolute caveat affecting the Land to protect the Lessee's interest under the Lease.

16.5 Lessee's Warranty

The Lessee warrants that it has the power to enter into the Lease and to perform and observe the Lessee's covenants contained in the Lease.

17. Lessor's general rights and obligations

17.1 Quiet enjoyment

If the Lessee complies with the Lessee's obligations under the Lease, then the Lessee may possess and use the Premises during the Term without interruption by the Lessor, except as provided in the Lease.

17.2 Right to enter

The Lessor may, after giving reasonable notice to the Lessee (or in an emergency, without notice), enter the Premises to:

- (a) inspect the state of repair and condition of the Premises;
- (b) maintain, repair or alter the Services;
- (c) carry out alterations or other works to the Premises required by a Government Agency or the Lessor; and
- (d) remove harmful substances,

without affecting the Lessee's obligations under the Lease.

17.3 Lessor's power with respect to contractors

- (a) The Lessor retains in its absolute and total discretion the right to approve or not to approve any contractor or tradesman or employee or any person or any firm or any company to carry out any type of repairs or renovation or alteration or addition or cleaning whatsoever to the Premises or adjoining improvements within the responsibility of the Lessor, regardless of whether the Lessee is liable for costs or not and irrespective of whether the work to be carried out is a requirement under the Lease or not.
- (b) The Lessor retains the right to appoint a contractor or agent or employee or tradesman of its choice to carry out any work of any nature to the Premises which may be required and if the work is the responsibility of the Lessee under the covenants or rules of the Lease then the Lessee shall be liable to pay on demand by the Lessor the costs so incurred.

17.4 Lessor's disclaimers

Notwithstanding any implication or rule of Law to the contrary the Lessor shall in no circumstances be liable to the Lessee for any Loss or damage suffered by the Lessee in consequence of any act or default of any other tenant or occupier of the Land or any malfunction or breakdown in or interruption of any Service or equipment or from any damage caused to merchandise or property in the Premises by any cause whatsoever.

17.5 Inspection by prospective lessees or purchasers

The Lessor may after giving reasonable notice to the Lessee:

- (a) enter the Premises to allow prospective lessees or purchasers to inspect them; and
- (b) within 3 months before the expiration of the Term, display inside or outside the Premises a sign with information indicating the availability of the Premises.

17.6 Lessor may rectify

The Lessor may do anything which should have been done by the Lessee under the Lease but which has not been done or has not been done properly and the Lessor may enter the Premises for that purpose. The Lessee must pay any costs incurred by the Lessor in taking action under this clause within 10 Business Days after the Lessor requests payment.

17.7 Lessor's right to alter Building

- (a) The Lessor reserves to itself the right to:-
 - (i) use the outside of the external walls and the roof of the Building for any purpose;
 - (ii) use the Building and the Premises for the passage of air conditioning equipment, fire and sprinkler systems, pipes, services, ducts, cables, electrical wiring, water, sewerage and drainage connections and any other services; and
 - (iii) to enter the Premises at all reasonable times to inspect, install, maintain or repair any of the abovementioned things.
- (b) The Lessor also reserves the right to carry out any works to the Building which it reasonably considers to be desirable or

appropriate, including (without limiting the generality of the foregoing):-

- (i) demolishing and/or reconstructing any part of the Building;
 - (iii) renovation or refurbishment;
 - (iii) altering the size, location, composition and arrangement of any parts of the Building;
 - (iv) altering the means of access to the Premises.
- (c) If the Lessor employs reputable contractors or tradespeople to carry out the abovementioned works, and if they do so during hours and using methods and practices which are not unusual for work of the kind they are doing and they use reasonable efforts to avoid causing the Lessee undue loss, injury, damage or nuisance, the Lessor will not be in breach of the Lease and will not be liable to the Lessee for any loss, injury, damages, compensation, costs or expenses in nuisance, negligence, any other tort or other breach of the Lease in consequence of carrying out the abovementioned works or for anything incidental or ancillary thereto.
- (d) The Lessor will not exercise its rights under clause 17.7(b) without first giving the Lessee at least 10 Business Days notice.
- (e) Any additions to the Building will not form part of the Premises.

18. Default

18.1 Essential terms

The following obligations of the Lessee are essential terms of the Lease:

- (a) any obligation to pay money; and
- (b) the obligations:
 - (i) not to give any person an interest in the Premises without the Lessor's consent;
 - (ii) to use the Premises only for the Permitted Use;
 - (iii) to repair the Premises; and
 - (iv) to redecorate the Premises.

This sub-clause does not prevent any other obligation of the Lessee under the Lease being an essential term.

18.2 Events of Default

An Event of Default occurs if:

- (a) the Lessee repudiates the Lease;
- (b) the Lessee breaches the Lease whether or not an essential term and does not remedy that breach within 10 Business Days after being given a notice by the Lessor requiring the Lessee to remedy that breach;
- (c) a judgment, order or a Security Interest is enforced, or becomes enforceable, against the Lessee's interest in the Lease or the Lessee's Property;
- (d) an Insolvency Event occurs in respect of the Lessee;
- (e) the Lessee commits more than 3 breaches of the Lease in any 180 day period.

18.3 Lessor's right to terminate

If an Event of Default occurs, the Lessor may terminate the Lease by:

- (a) re-entering the Premises without notice; or
- (b) notice to the Lessee.

18.4 Indemnities

The Lessee must indemnify and keep indemnified the Lessor against any Claim, Loss or other liability resulting from:

- (a) an Event of Default; or
- (b) if the Lease is terminated by the Lessor for any reason:
 - (i) the Lessor re-entering the Premises; or
 - (ii) the Lessor not receiving the benefit of the Lessee performing the Lessee's obligations under the Lease from the date of termination until the end of the Term,

including in each case, legal costs and expenses relating to any of those matters.

This indemnity is not affected by the Lessor accepting a repudiation of the Lease by the Lessee.

18.5 Benefit of Lessee's obligations

The benefit of the Lessee performing the Lessee's obligations referred to in subparagraph 18.4(b)(ii) is to be calculated on the assumption that the Lease continues in force until the end of the Term and taking into account the provisions in the Lease relating to Operating Expenses and other payments required by the Lessee.

18.6 Interest on overdue money

The Lessee must pay interest on any amount payable by the Lessee under the Lease from the date the amount becomes due for payment until it is paid. The interest is to be paid on demand and is to be calculated on daily balances. The rate to be applied to each daily balance is 10% per annum.

18.7 Acceptance of money or mitigation

The acceptance of any money under the Lease or an attempt by the Lessor to mitigate its loss is not a waiver of a breach by the Lessee of its obligations under the Lease or a surrender by operation of Law.

19. Environmental Protection

19.1 Contamination of the Premises

The Lessee must not cause or permit any Contamination of the Premises or of the Environment as a result of anything brought on to, or done on, the Premises by the Lessee or the Lessee's Visitors.

19.2 Lessee to minimise Contamination

Without affecting:

- (a) the obligation of the Lessee in clause 19.1, or
- (b) limiting any right of, or any indemnity in favour of, the Lessor.

If any Contamination occurs as a result of anything brought on to, or done on, the Premises by the Lessee or the Lessee's Visitors, the Lessee is to do everything necessary to minimise its effect and is to remediate and make good any damage which it causes.

20. Lessee's obligations on termination

20.1 Lessee to vacate

The Lessee must vacate the Premises and remove the Lessee's Property including all fixtures and fittings signs placards or other advertising media and make good any damage caused by their removal immediately on the termination of the Lease except that when the termination is before the end of the Term, the Lessee must remove the Lessee's Property within 7 days after the termination.

20.2 Lessee to leave property required by Lessor

The obligation to remove the Lessee's Property in clause 20.1 does not apply to any buildings, improvements or other fixtures which the Lessor requires, by notice to the Lessee, not to be removed (without any entitlement by the Lessee to compensation in respect thereof).

20.3 Removal of Lessee's Property

If the Lessee does not comply with clause 20.1, the Lessee's Property shall at the option of the Lessor become the property of the Lessor (without any entitlement by the Lessee to compensation in respect thereof) and the Lessor may remove the Lessee's Property from the Premises and either store it at the risk and cost of the Lessee or treat the Lessee's Property as abandoned and deal with it in any manner the Lessor chooses.

20.4 Risk

The Lessee's Property remains at the Lessee's risk at all times before and after the termination of the Lease, except for any property which the Lessor requires not to be removed under clause 20.2, which is at the Lessor's risk after termination of the Lease.

20.5 Condition of the Premises

When the Lessee vacates the Premises, the Lessee must leave the Premises in good repair and condition and in a good state of decoration in accordance with the obligations of the Lessee under the Lease including the removal of all fixtures and fittings signs placards or other advertising media before delivering up possession of the Premises to the Lessor as aforesaid.

20.6 Survive Termination

The Lessee's obligations under this clause 20 shall survive termination of the Lease.

20.7 Withdrawal of Caveat

The Lessee must immediately following termination of the Lease at the Lessee's cost withdraw any subject to claim caveat the Lessee has lodged against the Land or the Premises pursuant to the Lease.

21. Holding over

If the Lessee continues to occupy the Premises after the end of the Term with the consent of the Lessor, the Lessee is a monthly lessee of the Premises and:

- (a) the monthly tenancy may be terminated by either party giving to the other at least 1 month's notice which may expire on any day;
- (b) the monthly rent is an amount equal to 1/12th of the Rent payable for the 12 months immediately preceding the end of the Term; and
- (c) all the provisions of the Lease apply to the monthly tenancy except any option to extend the Term.

22. Damage or destruction

22.1 Lessor's right to terminate or reinstate

If any part of the Premises is damaged or destroyed so that the whole or a substantial part is unfit for use by the Lessee, the Lessor is to give a notice to the Lessee within 2 months after the damage or destruction which either:

- (a) terminates the Lease on a date that is not less than 1 month after the date the Lessee receives the notice and not more than 4 months after the damage or destruction occurred; or
- (b) informs the Lessee of the Lessor's intention to make the Premises fit for use by the Lessee.

22.2 Lessee's right to terminate

If the Lessor gives a notice under clause 22.1(b) and does not make the Premises fit for use by the Lessee within a reasonable time, having regard to the extent of the damage and the time required to obtain all necessary approvals and to carry out the necessary work:

- (a) the Lessee may give the Lessor a notice of the Lessee's intention to terminate the Lease if the Lessor does not make the Premises fit for use by the Lessee within 1 month after the date the Lessor receives the notice; and

- (b) if the Lessor does not make the Premises fit for use by the Lessee within that period the Lessee may terminate the Lease by a further notice to the Lessor.

22.3 No other liability

Neither the Lessee nor the Lessor is liable to the other solely because of the termination of the Lease under this clause 22.

22.4 No obligation to reinstate

Nothing in this clause or elsewhere imposes an obligation on the Lessor to repair or reinstate the Premises.

23. Costs, expenses, duties and fees

23.1 Costs and expenses

The Lessee must pay or reimburse the Lessor on demand for all the Lessor's costs and expenses, including legal costs and expenses and consultants and agents fees in relation to:

- (a) the instructions for and the negotiation, preparation and execution of the Lease;
- (b) the exercise or enforcement by the Lessor of any right under the Lease, and the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA);
- (c) obtaining or giving any consent or approval under the Lease, or a variation or surrender of the Lease; and
- (d) any act or omission by the Lessee causing cost or expense to the Lessor,

including in each case, the Lessor's legal costs and expenses on a full indemnity basis.

23.2 Duties and fees

The Lessee must pay or reimburse the Lessor on demand for all duty, taxes and fees (including fines and penalties in respect of any of them except if the Lessor caused the fine or penalty to be incurred) which may be payable in connection with the Lease.

24. Power of attorney

The Lessee for valuable consideration irrevocably appoints the Lessor and if the Lessor is a corporation each of the directors and all officers (all jointly and severally) as the Lessee's attorney for the purpose of withdrawing any caveat which the Lessee is required to withdraw under the Lease.

25. Notices

25.1 Form and address

A request, consent, permission, authorisation, direction, notification, notice or other communication (howsoever described) given under or in connection with the Lease, to be effective, must be in writing and:

- (a) must be given by the relevant party or any authorised officer of that party or its solicitor or agent; or
- (b) must be left at the address of the addressee or sent by prepaid ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee or by email with automatic receipt notification in each case as set out in the Lease or to any other address, email or facsimile number previously notified to the sender.

25.2 Receipt

- (a) Unless a later time is specified in it, a notice or other communication takes effect from the time it is received. It is taken to be received:
 - (i) if left at the Premises, at the time it is left;
 - (ii) in the case of a posted letter, on the sixth Business Day after posting;
 - (iii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iv) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent to the facsimile number of the recipient.
- (b) If a notice or other communication is received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

25.3 Email

With respect to a notice sent by email, the parties agree that the following applies:

- (a) any text in the body of the email or the subject line will not form part of the notice; and

- (b) an attachment to the email will only form part of the notice if it is in .pdf format or such other format as may be agreed between the Parties from time to time,

and with respect to any notice sent by email under or in connection with the Lease, each party must ensure that:

- (c) its firewall and/or email server (as applicable):
 - (i) allows messages of up to 6MB to be received;
 - (ii) automatically sends a receipt notification to the sender upon receipt of a message; and
- (d) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain that cannot or will not be delivered to the recipient.

26. Miscellaneous

26.1 Survival

The following clauses of the Lease survive termination of the Lease and will continue in full, force and effect:

- Clause 1 (Definitions, Interpretation and Related Matters)
- Clause 5 (GST)
- Clause 8 (Assignment and Subletting) with respect to any obligation of the Lessee to pay the Lessor any costs, expenses or fees.
- Clause 10 (Insurances)
- Clause 11 (Indemnities Release and Exclusions)
- Clause 13 (Compliance with laws and requirements)
- Clauses 14.1(b), 14.1(c), 14.3, 14.7 and 14.8 of clause 14 (Maintenance, repair and alteration)
- Clause 15 (Cleaning)
- Clause 16 (Lessee's general obligations)
- Clause 17 (Lessor's general rights and obligations)
- Clause 18.4 (Indemnities)
- Clause 18.6 (Interest on overdue money)
- Clause 19 (Environmental Protection)
- Clause 20 (Lessee's obligations on termination)
- Clause 21 (Holding Over)
- Clauses 22.3 and 22.4 of clause 22 (Damage or destruction)
- Clause 23 (Costs, expenses, duties and fees)
- Clause 25 (Notices)
- Clause 26.1 (Survival)
- Clause 26.4 (Entire Agreement)
- Clause 26.10 (Governing Law and jurisdiction)

- Clause 26.14 (Payments)
- Clause 28 (Trust)

The preceding provisions of this clause 26.1 do not oust or limit the operation of the common law pertaining to the survival of contractual provisions post-termination. Such operation of the common law is hereby preserved and applies in its entirety to the Lease (even after termination).

26.2 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under the Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under the Lease.
- (b) A waiver given by a party under the Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No course of dealings between the parties removes the requirement under clause 26.2(b) that a waiver must be in writing to be effective and binding upon the parties.
- (d) No waiver of a breach of a term of the Lease operates as a waiver of any other breach of that term or of a breach of any other term of the Lease.
- (e) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under the Lease by the Lessor does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under the Lease.

26.3 Variation

Any variation of any term of the Lease must be in writing and signed by the parties.

26.4 Entire Agreement

The Lease states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

26.5 Counterparts

Except where the Lease is to be registered at the Western Australian Land Information Authority, the Lease may be executed in any number of counterparts. Each counterpart is deemed an original and all the counterparts together constitute one instrument, which is deemed to be dated on the date of exchange.

26.6 Relationship of the parties

- (a) Nothing in the Lease gives a party authority to bind the other party in any way.
- (b) Neither the Lease, nor the relationship created by it, is intended to create, and will not be construed as creating any partnership or joint venture or fiduciary relationship, as between the parties.
- (c) Neither the Lessee's staff, personnel or contractors will be deemed to be employees, agents, contractors, or consultants of the Lessor and each party must pay all costs associated with its employees.

26.7 Corporate power and authority

Each party represents and warrants to the other that it has full power to enter into and perform its obligations under the Lease and that when executed the Lease will constitute legal, valid, and binding obligations under its terms.

26.8 Financial difficulties

The Lessee must immediately notify the Lessor in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its obligations in relation to the Lease from the resources available, or likely to be available, to it, at the time the obligation is due.

26.9 Cumulative remedies

The rights, powers, authorities, discretions, and remedies arising in connection with the Lease are cumulative and do not exclude any other right, power, authority, discretion, or remedy of the Lessor.

26.10 Governing Law and jurisdiction

- (a) The Lease is governed by the Law in force in Western Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts

of appeal from them in respect of any proceedings arising in connection with the Lease. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

26.11 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to the Lease.

26.12 Approvals and consents

Unless otherwise stated, whenever the Lessor's approval or consent is required under the Lease, the Lessor may give it conditionally or unconditionally. Each approval or consent must be in writing and be given prior to the happening of the event for which the approval or consent is required.

26.13 Accrued rights

The termination of the Lease does not affect the rights of the Lessor in relation to a breach of the Lease by the Lessee before the termination.

26.14 Payments

The Lessee must make payments under the Lease without set-off or counterclaim and without any deduction. All payments by the Lessee under the Lease are to be made to the Lessor or any one else nominated by the Lessor in a notice given to the Lessee. The Lessor need not make demand for payment of any amount to be paid by the Lessee unless otherwise stated.

26.15 Lessor may act by Agent

All acts and things which the Lessor is required or empowered to do under the Lease may be done by the Lessor or the solicitor or authorised agent contractor or employee of the Lessor.

27. Option to extend the Lease

27.1 Option

The Lessor gives the Lessee the option to extend the Lease for each Further Term. Each option is exercisable by the Lessee giving notice to the Lessor not earlier than 6 months and not later than 3 months before the end of the Term.

27.2 Loss of option

If, when the Lessee notifies the Lessor or, if the notice has been given at the end of the Term, an Event of Default has occurred and it has not been remedied or waived, the option (and any subsequent option) to extend the Lease ceases to have effect and the Lessee ceases to be entitled to an extension of the Lease.

27.3 Terms of extension

The extension of the Lease is to be on the same terms as the Lease except that:

- (a) the rent applicable at the commencement date of the extended lease is to be the same as the Rent payable under the Lease immediately before the end of the Term;
- (b) any option to extend the Lease included in the Lease but which has been exercised does not apply.

27.4 Documentation

The Lessee must promptly sign a deed of extension of lease, to be prepared by the Lessor or its solicitors, when requested by the Lessor. Clause 23 relating to costs, expenses, duties and fees applies in relation to that deed.

28. Trust

If the Lessee enters into the Lease as trustee of a trust, whether or not the Lessor is aware of that fact:

- (a) the Lessee does so both for itself and as trustee of the trust, and in the Lease, each reference to the Lessee has effect as a reference in each capacity.
- (b) the Lessee warrants to the Lessor that:
 - (i) the Lessee is the only trustee of the trust;
 - (ii) no action has been taken or proposed to remove the Lessee as trustee of the trust;
 - (iii) the copy of the trust deed and other documents relating to the trust (which the Lessee must produce to the Lessor prior to the Commencement Date) disclose all the terms of the trust;
 - (iv) the Lessee has power under the trust deed to enter into the Lease and the Lessee has entered into the Lease for the benefit of the beneficiaries of the trust;

- (v) the Lessee has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Lease;
 - (vi) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Lessee has a right to be indemnified out of those assets;
 - (vii) the Lessee is not in default under the trust deed;
 - (viii) no action has been taken or is proposed to terminate the trust;
 - (ix) the Lessee has complied with the Lessee's obligations in connection with the trust; and
 - (x) the Lessor's rights under the Lease rank in priority to the interests of the beneficiaries of the trust.
- (c) the Lessee must:
- (i) at the Lessor's request, exercise the Lessee's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under the Lease;
 - (ii) comply with the Lessee's obligations as trustee of the trust; and
 - (iii) not, without the consent of the Lessor, do anything which:
 - (A) effects the retirement, removal or replacement of the Lessee as trustee of the trust;
 - (B) could restrict the Lessee's right of indemnity from the assets of the trust in respect of obligations incurred by the Lessee under the Lease;
 - (C) could restrict the ability of the Lessee to comply with the Lessee's obligations under the Lease; or
 - (D) effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

29. PPSA

29.1 Interpretation

For the purposes of this clause 29:

- (a) "the **Lessor's Personal Property**" means all personal property the subject of a security interest granted to or held by the Lessor under the Lease; and

- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

29.2 Further assurance

If the Lessor determines that the Lease (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including without limitation obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Lessor has the priority required by it; and/or
- (c) enabling the Lessor to exercise rights in connection with the security interest.

29.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

29.4 Priority of the Lessor's interest

Nothing in the Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (a) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under the Lease attaches to the relevant collateral.

29.5 Enforcement

To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

- (a) **(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);
- (b) **(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
- (c) **(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

29.6 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor under the Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

29.7 The Lessor's interest remains unaffected

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

29.8 Notices to the Lessor

Without limiting clause 29.6, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- (a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- (c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.





