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**LEASE FOR  
324 HORTON ROAD, WOOTTATING,  
WESTERN AUSTRALIA.**

**BETWEEN**

**PAUL GUY CURTIS and SEAN THADEUS CURTIS**  
as trustees for the  
**LITTLE LOADS PROPERTY TRUST**  
("the Landlord")

**AND**

**RIVER NOMINEES PTY LTD**  
**[ACN 109 054 239]**  
as trustee for the  
**SP UNIT TRUST**  
("the Tenant")

Ref: BM:PUR:8491

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THIS LEASE is made the ..1.??.. day of ...:-;[Y??].....20.J?}

## **PARTIES**

The person or persons or company identified in Item 1 of Schedule 1 ("the Landlord")

AND

The person or persons or company identified in Item 2 of Schedule 1 ("the Lessee")

AND

The person or persons or company identified in Item 24 of Schedule 1 ("the Guarantor").

## **1. OPERATIVE PART**

### **1.1 • Grant Of Lease**

The Landlord grants a lease of the Premises to the Tenant for the Term on the terms and conditions of this Lease.

### **1.2 License To Use Common Areas**

The Landlord grants to the Tenant a non-exclusive licence to use and access the Common Areas for the Term on the terms and conditions of this Lease.

## **2. INTERPRETATION**

### **2.1 Defined Terms**

These meanings apply unless the contrary intention appears.

**"Bank Guarantee"** means an unconditional undertaking (or any replacement or addition to it under clause 34) by a bank and on terms acceptable to the Landlord acting reasonably:

- (a) to pay on demand the amount in Item 25 in Schedule 1; and
- (b) with no expiry date.

**"Bond"** means the amount in Item 26 of Schedule 1.

**"Building"** means the office building and all other improvements (other than the Tenant's Property) on the Land.

<b>“Business Day”</b>	means a day on which banks are open for general banking business in the capital city of the State or Territory in which the Premises are situated (not being a Saturday, Sunday or public holiday in that city).
<b>“Commencement Date”</b>	means the date so described in Item 6 of Schedule 1.
<b>“Common Areas”</b>	means those parts of the Land or Building which the Landlord intends for common use.
<b>“Control”</b>	<p>of a corporate includes the direct or indirect power to directly or indirectly:</p> <p>(a) direct the management or policies of the corporation; or</p> <p>(b) control the membership of the board of directors,</p> <p>whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.</p>
<b>“Controller”</b>	has the meaning it has in the Corporations Act.
<b>“Corporations Act”</b>	means the Corporations Act 2001 (Cth).
<b>“Costs”</b>	include costs, charges and expenses, including those incurred in connection with advisors.
<b>“Expiry Date”</b>	means the date so described in Item 7 of Schedule 1.
<b>“Governing Body”</b>	means each entity which manages or administers any Shared Scheme of which the Premises are part.
<b>“GST”</b>	has the meaning it has in the GST Act.
<b>“GST Act”</b>	means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
<b>“GST exclusive market value”</b>	has the meaning it has in the GST Act.
<b>“Input Tax Credit”</b>	has the meaning it has in the GST Act.

- A person is **“Insolvent”** if:
- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
  - (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
  - (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Landlord); or
  - (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of a), b) or c) above; or
  - (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
  - (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Landlord reasonably deduces it is so subject); or
  - (g) it is otherwise unable to pay its debts when they fall due; or
  - (h) something having a substantially similar effect to a) to g) happens in connection with that person under the law of any jurisdiction.

**“Land”** means the land described in Item 3 of Schedule 1 and any revised description of the Land if part of it is resumed or surrendered, on which the Building is situated and any other land which the Landlord uses with the Land for a commercial office building, a parking areas or other related undertaking.

**“Landlord”** means the person so described in Item 1 of Schedule 1.

**“Landlord’s Insurance”** means any insurance policy that the Landlord has taken out over the Land, the Building and the Common Area including, but not limited to:

- (a) public liability insurance;
- (b) building insurance;

- (c) fire insurance;
- (d) property insurance for the Landlord's Property;
- (e) loss of rental income insurance; and
- (f) any other type of insurance that is required by law or which, in the Landlord's reasonable opinion, a prudent landlord would take out in connection with the Land, the Building and the Common Area.

**“Landlord's Property”** means all plant, equipment, fixtures, fittings, furniture, furnishings and other property the Landlord provides in the Premises.

**“Lettable Area”** means the Lettable Area calculated by the Landlord's surveyor using the method of measurement of the Property Council of Australia Limited applicable at the Commencement Date.

**“Permitted Use”** means the use in Item 18 of Schedule 1.

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), collected, held, used or disclosed in connection with this lease whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**“Premises”** means the airspace within that part of the Building so described in Item 4 of Schedule 1 the boundaries of which are:

- (a) the inside surface of the walls (under any paint or wall covering); and
- (b) the lower surface of the ceiling (above any false or suspended ceiling); and
- (c) the upper surface of the floor (under any floor covering),

and includes the surfaces themselves and the Landlord's Property.

**“Rates & Taxes”** means:

- (a) all rates, including but not limited to:
  - (i) rates payable to the local authority;
  - (ii) water rates;
  - (iii) fire and emergency services levies;

- (b) all taxes including but not limited to:
  - (i) land tax (on the basis that the Land is the only property owned by the Landlord in Western Australia); and
  - (ii) Metropolitan Region Improvement Tax; and
- (c) interest charges on the above,

levied or imposed on the Land or the Premises by any State or Federal government, or by any authority or body whether local, municipal or statutory.

<b>“Related Corporate”</b>	<b>Body</b>	has the meaning it has in the Corporations Act.
<b>“Rent”</b>		means the yearly amount in Item 10 of Schedule 1 as varied under clause 5 of this Lease.
<b>“Rules”</b>		means the rules of the Building as varied or added to under clause 15.3 of this Lease.
<b>“Services”</b>		means the services (such as water, sewerage, drainage, gas, electricity, communications, fire fighting, air conditioning, lifts and escalators) to or of the Building or any premises in it or the Land, provided by authorities, the Landlord or any person authorised by the Landlord, and includes all plant and equipment in connection with those services.
<b>“Shared Scheme”</b>		means each scheme or plan regulated by a Shared Scheme law that affects the Premises. Examples of properties that are often part of a shared scheme are strata title units and properties in integrated developments.
<b>“Shared Scheme law”</b>		means any legislation that provides for the: <ul style="list-style-type: none"> <li>(a) subdivision and development of land with shared property; or</li> <li>(b) subdivision of buildings; or</li> <li>(c) management of land that is subdivided and has shared property; or</li> <li>(d) management of subdivided buildings.</li> </ul>
<b>“Tax Invoice”</b>		has the meaning it has in the GST Act.
<b>“Tenant”</b>		means the person so described in Item 2 of Schedule 1.
<b>“Tenant’s Business”</b>		means the business carried on from the Premises.

<b>“Tenant’s Employees and Agents”</b>	means each of the Tenant’s employees, officers, agents, contractors and invitees.
<b>“Tenant’s Property”</b>	means all property on the Premises which is not Landlord’s Property or Services.
<b>“Tenant’s Subtenants”</b>	Means any person (not being the Tenant) entitled to occupy the Premises during the Term (or any extension of it or holding over under it), regardless of whether they are in occupation, and that person’s employees, officers, agents, contractors and invitees.
<b>“Term”</b>	means the period from and including the Commencement Date to and including the Expiry Date described in Item 5 of Schedule 1.
<b>“Variable Outgoings”</b>	means all amounts paid or payable by the Landlord for an Outgoings Year in connection with the Land or the Building (other than the cost of structural or other capital works) including amounts paid or payable in connection with the ownership, operation, maintenance, repair and management of the Land or the Building.  However, the amount of Outgoings: <ul style="list-style-type: none"> <li>(a) will be reduced by the amount of any credit or refund of GST to which the Landlord is entitled as a result of incurring Outgoings; and</li> <li>(b) excludes Shared Scheme levies payable by the Tenant under this lease or by any other tenant or occupier of the Building.</li> </ul>

## 2.2 References To Certain General Terms

Unless the contrary intention appears, in this lease:

- (a) a reference to a document (including this lease) includes any variation or replacement of it;
- (b) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this lease;
- (c) 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;
- (d) the word “law” includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

- (e) the singular includes the plural and vice versa;
- (f) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (g) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (q) if an act under this lease to be done by a party on or by a given day is done after 5:30pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to time in the capital city of the State or Territory in which the Premises are situated;
- (s) a reference to any thing (including any amount) is a reference to the whole and each part of it; and

- (t) a reference to “this lease” is a reference to this lease and to any renewal or extension of it or holding over under it.

### **2.3 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this lease.

## **3. TERM OF LEASE**

### **3.1 Initial Term**

The term of this Lease shall:

- (a) commence on the date specified in Item 6 of Schedule 1 (“the Commencement Date”); and
- (b) end on the date specified in Item 7 of Schedule 1 (“the Expiry Date”).

### **3.2 Option To Renew Lease For Further Term**

- (a) The Landlord grants to the Tenant an option to renew the Lease for the Further Term specified in Item 8 of Schedule 1.
- (b) If the Tenant wishes to exercise the option to renew the Lease for the Further Term, the Tenant must give to the Landlord notice in writing during the period specified in Item 9 of Schedule 1.
- (c) If:
  - (i) the Tenant provides the Landlord with a notice to exercise the option to renew the Lease for the Further Term in accordance with clause 3.2(b) above;
  - (ii) at the time that the Tenant issues the notice and at the expiration date of such notice, the Tenant is not in breach of any of its obligations under the Lease, whether the Landlord has issued a notice of default or not; and
  - (iii) the Landlord has not exercised or does not have the right to exercise the Landlord’s right of re-entry to the Premises,

then the Landlord shall grant to the Tenant a renewal of the Lease for the Further Term and otherwise on the same terms and conditions as are herein contained or implied other than the option of renewal conferred by clause 3.2(a) above that the Tenant has exercised.

- (d) Following the exercise of an option of renewal by the Tenant under clause 3.2(c) above, the parties shall enter into a Deed of Renewal of Lease prepared by the Landlord’s solicitor at the Tenant’s cost to effect the renewal of the Lease for the Further Term and containing such other terms and conditions that the Landlord’s solicitors think fit.

- (e) If any guarantees, indemnities or covenants were or are provided by third parties, the Landlord shall not be required to grant a renewal of the Lease for the Further Term unless:
  - (i) the third parties providing those guarantees, indemnities or covenants agree to extend those guarantees, indemnities or covenants for the Further Term; or
  - (ii) similar guarantees, indemnities and covenants are procured from other parties in favour of the Landlord which are in a form and substance that is satisfactory to the Landlord.

## **4. RENT**

### **4.1 Payment Of Rent**

- (a) The Tenant shall pay the Rent, as reviewed from time to time under the terms of this Lease, by equal monthly instalments in advance on or before the first calendar day of each month of the Term.
- (b) If an instalment of Rent is for a period of less than one month, then the amount payable for that month will be the same proportion of a full month's Rent as the number of days in the period bears to the total number of day in that month.
- (c) Notwithstanding any claims that the Tenant may have against the Landlord, the Tenant shall not set-off or deduct any amounts from the Rent payable to the Landlord.

### **4.2 Manner Of Payment**

The Tenant shall pay the Rent to the Landlord by the method instructed by the Landlord which may include, but is not limited to, one of the following:

- (a) by cheque payable to the Landlord sent to the address notified by the Landlord; or
- (b) by direct debit or other arrangement for electronic funds transfer into a bank account nominated by the Landlord.

## **5. RENT REVIEW**

### **5.1 CPI Rent Review**

- (a) Subject to clause 5.1(d) below, the Rent shall be varied on the dates described as CPI in Item 11 of Schedule 1 ("CPI Review Date") by aggregate of:
  - (i) the percentage increase in the Consumer Price Index All Categories Perth for the most recent 12 months published as at the relevant CPI Review Date; and
  - (ii) the percentage rate specified in Item 12 of Schedule 1.

- (b) The Landlord shall issue a written notice to the Tenant to notify the Tenant of the new Rent (and an invoice stating the new Rent is sufficient notice) as soon as the Landlord has reviewed the rent in accordance with clause 5.1(a) above.
- (c) If the Landlord issues the written notice after the Tenant has paid the Rent instalment for that calendar month, then the Tenant agrees to pay the difference between what the Tenant has paid on account of Rent and the Rent stated in the notice for the period from and including the relevant CPI Review Date.
- (d) If the sum of percentage change in the Consumer Price Index All Categories Perth for the most recent 12 months published as at the relevant CPI Review Date and the percentage rate specified in Item 10 of Schedule 1 is negative, then the Rent shall not be varied by clause 5.1(a) and the Rent payable immediately before the relevant CPI Review Date shall continue to apply until the next review of the Rent.

## **5.2 Fixed Percentage Rent Review**

- (a) The Rent shall be increased on the dates described as Fixed in Item 11 of Schedule 1 ("Fixed Percentage Review Date") by the percentage rate specified in Item 13 of Schedule 1.
- (b) The Landlord shall issue a written notice to the Tenant to notify the Tenant of the new Rent (and an invoice stating the new Rent is sufficient notice) as soon as the Landlord has reviewed the rent in accordance with clause 5.2(a) above.
- (c) If the Landlord issues the written notice after the Tenant has paid the Rent instalment for that calendar month, then the Tenant agrees to pay the difference between what the Tenant has paid on account of Rent and the Rent stated in the notice for the period from and including the relevant Fixed Percentage Review Date.

## **5.3 Market Rent Review**

### **(a) Market Review Dates**

The Rent shall be reviewed to market pursuant to clause 5.3(b) to clause 5.3(i) below on the dates described as Market in Item 11 of Schedule 1 ("Market Review Dates").

### **(b) Landlord To Issue Notice Of Rent Assessment**

The Landlord may give the Tenant a notice stating the Landlord's assessment of the current annual market rent of the Premises on the relevant Market Review Date at any time before the next date for the review of Rent under this lease.

**(c) Tenant's Right To Dispute Landlord's Assessment**

If the Tenant disagrees with the Landlord's assessment, the Tenant must give the Landlord written notice within 20 days of receiving the Landlord's notice of assessment specifying:

- (i) that the Tenant disputes the Landlord's assessment; and
- (ii) the Tenant's assessment of the current annual market rent on the relevant Market Review Date.

**(d) If Tenant Does Not Dispute Landlord's Assessment**

- (i) If the Tenant does not give the Landlord notice within the time stipulated in clause 5.3(c) above, the Rent from and including the relevant Market Review Date will be the amount stated in the Landlord's notice.
- (ii) If the Landlord issues the notice of assessment of the current annual market rent of the Premises after the Tenant has paid the Rent instalment for the calendar month, then the Tenant agrees to pay the difference between what the Tenant has paid on account of Rent and the Rent stated in the notice for the period from and including the relevant Market Review Date.

**(e) If Tenant Disputes Landlord's Assessment**

If the Tenant provides the Landlord with a notice pursuant to clause 5.3(c) above:

- (i) the Rent from and including the relevant Market Review Date shall be determined by a valuer pursuant to clause 5.3(f); and
- (ii) the Tenant shall pay Rent at a rate equal to the sum of:
  - (1) the Rent immediately before the relevant Market Review Date; and
  - (2) 80% of the increase sought by the Landlord in the Landlord's assessment of the current annual market rent of the Premises,

until the amount of the increase is determined in accordance with clause 5.3(f).

**(f) Appointment Of Valuer**

If a valuer is required to assess the current annual market rent of the Premises on the relevant Market Review Date under clause 5.3(e)(i) above:

- (i) the valuer shall be appointed by:
  - (1) agreement of the parties; or

- (2) if the parties are unable to agree on the appointment of a valuer within 14 days from the date that the Tenant issues its notice to the Landlord under clause 5.3(b), then by the president of the Australian Property Institute (Incorporated) WA Division,

who, at the time of appointment, has at least 5 years' experience, and is actively engaged, in valuing industrial premises for the purposes of leasing;

- (ii) the valuer shall be instructed to:
- (1) decide what is the current annual market rent of the Premises on the relevant Market Review Date:
- (A) disregarding the goodwill of the Tenant's Business, the value of any fit out in the Premises paid for by the Tenant and the rent paid by any subtenant in the Building; and
- (B) subject to clause 5.3(f)(ii)(C), only having regard to comparable face rents, and not discounting the valuer's decision as to current annual market rent on account of any rent incentive or reduction, rent free period or other incentive or benefit applicable to any other lease considered by the valuer when making a decision under this clause 5.3(f); and
- (C) having regard to and, if appropriate, reflecting in the valuer's decision as to current annual market rent the benefit to the Tenant of any rent incentive or reduction, rent free period or other incentive or benefit made available to the Tenant by the Landlord, or in connection with the Tenant's occupation of the Premises; and
- (2) give a written valuation setting out what was taken into account, what was disregarded, their respective weightings and any other adjustments; and
- (3) give that valuation within one month after receiving instructions; and
- (4) acts as an expert and not as an arbitrator and, subject to clause 5.3(g), whose decision is final and binding.
- (iii) The Landlord and the Tenant may make submissions to the valuer, but they must be in writing.

**(g) Rent Not To Decrease**

- (i) If the amount decided by the valuer is less than the Rent payable immediately before the relevant Market Review Date, then the Rent payable immediately before the relevant Market

Review Date shall continue to apply until the next review of the Rent.

**(h) Valuer's costs**

If the current annual market rent decided by the valuer is:

- (i) equal to or more than the amount specified in the notice given by the Landlord under clause 5.3(b), then the Tenant agrees to pay all of the valuer's costs; or
- (ii) equal to or less than the amount specified in the dispute notice given by the Tenant under clause 5.3(c), then the Landlord agrees to pay all of the valuer's costs; or
- (iii) more than the amount specified in the Tenant's dispute notice, but less than the amount specified in the Landlord's notice, the Landlord and the Tenant agree to pay the valuer's costs in equal shares.

**(i) Adjustments Following Valuation Of Market Review**

- (i) If the current annual market rent decided by the valuer is greater than the amount that the Tenant has paid to the landlord pursuant to clause 5.3(e)(ii) above, then the Tenant shall pay the difference to the Landlord on the earlier of:
  - (1) within 14 days of the date that the valuer issues the determination of the current annual market rent; or
  - (2) on the date that the next Rent instalment is due by the Tenant.

for the period from and including the relevant Market Review Date to but excluding the date of payment.

- (ii) If the current annual market rent decided by the valuer is less than the amount that the Tenant has paid to the Landlord pursuant to clause 5.3(e)(ii) above, then the Landlord shall credit from the invoice for the next Rent instalment the difference for the period from and including the relevant Market Review Date to but excluding the date for the beginning of the period of the next Rent instalment.

**5.4 Rent Review For Structural Improvements & Alterations**

- (a) If the Landlord effects any:
  - (i) structural alterations to the Building or any part thereof;
  - (ii) alterations to the water, gas, electrical, plumbing equipment, fire equipment or other services or appurtenances to the Premises or to any other part of the Building,

which may be required by reason of any existing or future Act (both State and Federal), regulation or by-law of any government authority or body having jurisdiction, then the Rent shall be increased for each year of the Term following the completions of such works by a sum equal to 18% of the total cost to the Landlord of the construction of such works including, but not limited to, fees payable to architects, quantity surveyors, engineers and other consultants.

- (b) Clause 5.4(a) shall not apply where the structural alterations or additions are required by virtue of:
- (i) the Tenant's use of the Premises;
  - (ii) the gender or number of the Tenant's Employees;
  - (iii) the provision of separate lavatories in the Premises,
- in which case the Landlord's costs for the construction of such works shall be borne by the Tenant.
- (c) If the Rent is increased in accordance with clause 5.4(a), then the Rent for the remainder of the year of the Term in which the works are completed shall be increased by a rateable proportion (based on the ration that the number of days remaining in that year of the Term bears to the number 365) of 18% of the total costs of the works.
- (d) If, in the Landlord's opinion, the works effect benefit to other premises in the Building, then the Rent shall be increased only by that proportion of 18% of the total costs of the works as the floor area of the Premises has to the total floor area of all of the premises in the Building which the Landlord adjudges to have benefited from the works.
- (e) Notwithstanding anything in clause 3.3(a) and clause 3.3(c), no amount of any increase in Rent shall be taken as a deduction from the Variable Outgoings payable by the Tenant and such proportion shall be paid in addition to the Rent (as reviewed from time to time) for the remainder of the Term or Further Term as the case may be.

## **6. TENANT'S CONTRIBUTION TOWARDS VARIABLE OUTGOINGS**

### **6.1 Application Of Variable Outgoings Provision**

Clauses 6.2 to 6.6 do not apply if "not applicable" appears in Item 14 of Schedule 1.

### **6.2 Tenant's Contribution To Variable Outgoings**

- (a) The Tenant shall pay to the Landlord a contribution towards the Variable Outgoings:

- (i) which shall be the sum of the same proportion of the Variable Outgoings for the Building as the floor area of the Premises bears to the Lettable Area of the Building; and
  - (ii) in the manner provided for in clause 6.3 to clause 6.6 below.
- (b) For the purposes of clause 6.2(a) above, a certificate issued by the Landlord, which the Landlord may issue from time to time, shall be determinative of the proportion of the floor area of the Premises bears to the Lettable Area of the Building.

### **6.3 Landlord's Estimate Of Variable Outgoings**

- (a) The Landlord shall:
- (i) on the 1<sup>st</sup> day of July of each year of the Term; or
  - (ii) such other date that the Landlord may determine from time to time,
- give the Tenant a notice stating the Landlord's estimates of:
- (1) the Variable Outgoings for that financial year beginning 1 July of that year of the Term and ending on 30 June of the following year;
  - (2) the Tenant's contribution for Variable Outgoings for that financial year beginning 1 July of that year of the Term and ending on 30 June of the following year; and
  - (3) reasonable details of how the Landlord arrived at those estimates.
- (b) The Landlord may vary an estimate by notice to the Tenant.

### **6.4 Payment Of Instalments Of Variable Outgoings**

- (a) The Tenant shall pay its contributions for Variable Outgoings monthly instalments payable in advance on the dates specified by Item 14 of Schedule 1 based on the Landlord's estimate given under clause 6.3 above.
- (b) If the Landlord does not provide the Tenant with the Landlord's estimate under clause 6.3 on or before 1 July of that year of the Term, then:
- (i) the Tenant shall continue to pay the Tenant's contribution towards Variable Outgoings at the rate payable in the previous year until the Landlord gives the Tenant the notice under clause 6.3; and
  - (ii) if the Tenant's contribution towards Variable Outgoings under the Landlord's estimate is greater than the Tenant's contribution towards Variable Outgoings in the previous year, then the Tenant agrees to pay the difference between what the

Tenant has paid on account for Variable Outgoings and the Variable Outgoings stated in the notice for the period from and including 1 July of that year of the Term.

### **6.5 Adjustment For Actual Variable Outgoings**

- (a) The Landlord shall provide the Tenant with notice of the actual Variable Outgoings as soon as possible after 30 June of each year of the Term.
- (b) If the actual Variable Outgoings payable by the Tenant exceeds the what the Tenant has paid on account for Variable Outgoings for that year, then the Tenant shall pay the difference to the Landlord on the earlier of:
  - (i) within 14 days of the date that the Landlord issues the notice to the Tenant of the actual Variable Outgoings; or
  - (ii) on the date that the next Variable Outgoings instalment is due by the Tenant.
- (c) If the actual Variable Outgoings payable by the Tenant are less than what the Tenant has paid on account for Variable Outgoings for that year, then the Landlord shall credit the difference from the invoice for the next Variable Outgoings instalment.

### **6.6 Multi-Purpose Buildings**

- (a) If the Building or the Land has sections which are used for purposes in addition to commercial office premises, the Landlord (acting reasonably) may:
  - (i) decide what portion of the Variable Outgoings is referable to the section to which the Premises belong; and
  - (ii) if the Landlord has made the decision in clause 6.6(a)(i) in connection with premises in sections of the Building or the Land to which the Premises do not belong, vary the percentage that the Tenant is responsible for by the appropriate portion of the Outgoings referable to the section to which the Premises belong.
- (b) A determination by the Landlord under clause 6.6(a)(i) above may be effected by a written notice from the Landlord to the Tenant.

## **7. TENANT'S CONTRIBUTION TOWARDS RATES & TAXES**

### **7.1 Application Of Rates & Taxes Provisions**

Clauses 7.2 to 7.5 do not apply if "not applicable" appears in Item 15 of Schedule 1.

## **7.2 Tenant's Contribution To Rates & Taxes Where Premises Comprise The Entire Land/Building**

- (a) If the Premises comprises the whole of the Land or the Building, then the Tenant shall pay to the relevant authority or authorities the Rates and Taxes on or before the specified date of payment.
- (b) If the Tenant fails to pay the Rates & Taxes to the relevant authority:
  - (i) the Landlord may, without prejudice to any other rights which the Landlord may have at law or under this Lease, pay the Rates & Taxes to the relevant authority; and
  - (ii) the Tenant shall indemnify the Landlord on demand.

## **7.3 Tenant's Contribution To Rates & Taxes Where Premises Comprise Part Of Land/Building**

If:

- (a) the Premises comprises only part of the Land or the Building; and
- (b) the Premises are not separately assessed for Rates and Taxes,

then the Tenant shall pay to the Landlord on demand such percentage of the Rates & Taxes as the floor area of the Premises bears to the Lettable Area of the Building.

## **7.4 Contributions For Broken Periods**

If the term of the Lease does not encompass the whole of the assessment period for the Rates & Taxes, the Tenant's contribution to the Rates & Taxes shall be apportioned on a daily basis.

## **7.5 Landlord's Right To Arrange Rates & Taxes**

The Tenant acknowledges that the Landlord shall be entitled, at the Landlord's absolute discretion, to enter into any arrangement with any relevant authority in relation to the payment of any of the Rates and Taxes.

# **8. SERVICE CHARGES**

## **8.1 Application Of Service Charge Provisions**

- (a) Clauses 8.2 to 8.4 do not apply if "not applicable" appears in Item 16 of Schedule 1.
- (b) Clause 8.5 always applies to this Lease.

## **8.2 Separately Metered Services**

The Tenant agrees to pay all charges for Services which are separately metered to the Premises on or before their due date for payment.

### 8.3 Payments For Services Measured By A Common Meter

- (a) If:
- (i) the Services to the Premises are connected to a meter which includes other premises in the Building or the Common Area of the Building; and
  - (ii) If the Premises are part of a Shared Scheme,
- then, subject to clause 8.3(b) below, the Tenant agrees to pay on demand all levies and charges for the lot or lots which comprise the Premises (or a proportion of those levies and charges based on the Lettable Area of the Premises as a proportion of the Lettable Area of the lot or lots if the Premises comprise more or less than the whole of a lot).
- (b) If the Landlord is of the opinion that the Tenant's use of the Premises consumes services at a greater rate than those other areas:
- (i) connected to the common meter;
  - (ii) comprising the Shared Scheme,
- then the Landlord may, at the Landlord's sole discretion, adjust the allocation of the charges for Services in a manner that takes into account the disproportionate use of Services by the Tenant.

### 8.4 Supply By Landlord

If the Landlord supplies a Service to the Premises:

- (a) the Tenant agrees to pay the charges relating to the Service within 14 days after being billed; and
- (b) the charge will be the greater of:
  - (i) the amount, calculated by the Landlord, that the supplier of the Service to the Landlord would have charged the Tenant; and
  - (ii) the amount the supplier of the Service charges the Landlord; and
- (c) the Landlord may stop the Service until all outstanding amounts have been paid by the Tenant.

### 8.5 Services Provided After Hours

If, at the Tenant's request, the Landlord makes Services available to the Land, the Building or the Premises during the hours set out in Item 19, then the Tenant agrees to pay the Landlord's reasonable costs of making the Services available on demand.

## **9. AIR CONDITIONING**

### **9.1 Application Of Provisions**

Clause 9.2 to clause 9.3 only apply where there is any plant, machinery or equipment for the heating, cooling and circulation of air ("Air Conditioning Plant") that is:

- (a) installed in or about the Premises; or
- (b) installed outside of the Premises but exclusively services the Premises.

### **9.2 Repair & Maintenance**

- (a) The Tenant shall, at the Tenant's own expense:
  - (i) regularly repair and maintain the Air Conditioning Plant;
  - (ii) replace any worn or damaged parts of the Air Conditioning Plant; and
  - (iii) replace the Air Conditioning Plant if the Air Conditioning Plant breaks down and cannot be restored to good working order.
- (b) If the Air Conditioning Plant is situated outside of the Premises, then the Tenant must obtain the Landlord's permission to access the area of the Building where the Air Conditioning Plant is installed when the Tenant seeks to comply with the Tenant's obligations under clause 9.2(a) above.
- (c) The Landlord shall not be liable to the Tenant for:
  - (i) any loss or damage, including but not limited to personal injury, arising from the failure or malfunction of the Air Conditioning Plant; or
  - (ii) any economic loss or damage that the Tenant incurs by reason of the interruption in service of the Air Conditioning Plant.

### **9.3 Operation & Running Costs**

- (a) The Tenant shall be solely responsible for paying the electricity and running costs of operating the Air Conditioning Plant.
- (b) The Tenant shall use the Air Conditioning Plant to the best advantage and will not install any electrical or other equipment or appliance in the Premises which will generate excessive heat loads.
- (c) The Tenant shall remove any electrical or other equipment or appliance in the Premises that is, in the Landlord's opinion, interfering with the performance of the Air Conditioning Plant.

## **10. TELEPHONE SERVICES**

### **10.1 Tenant Responsible For Arranging Telephone Connection**

The Tenant shall be solely responsible for installing and maintaining the telephone service connected to the Premises.

### **10.2 To Pay Connection & Rental Charges For Telephone**

The Tenant shall pay to Telstra Corporation (or such other relevant corporation) for all charges and rentals for any telephone service connected to the Premises.

## **11. TENANT'S CONTRIBUTION TOWARDS LANDLORD'S INSURANCE**

### **11.1 Application Of Insurance Contribution Provisions**

- (a) Clauses 11.2 to 11.5 do not apply if "not applicable" appears in Item 17 of Schedule 1.
- (b) Clauses 11.6 to 11.9 are always applicable to this Lease.

### **11.2 Tenant's Contribution To Landlord's Insurance Where Premises Comprise The Entire Land/Building**

If the Premises comprises the whole of the Land or the Building, then the Tenant shall pay to the Landlord on demand the whole of the insurance premiums for the Landlord's Insurance.

### **11.3 Tenant's Contribution To Landlord's Insurance Where Premises Comprise Part Of Land/Building**

If the Premises comprises only part of the Land or the Building, then the Tenant shall pay to the Landlord on demand such percentage of the insurance premiums of the Landlord's Insurance as the floor area of the Premises bears to the Lettable Area of the Building.

### **11.4 Invoice From Landlord Is Conclusive Evidence For Determining Tenant's Contribution**

For the purposes of clause 11.2 and clause 11.3, a copy of an invoice from the Landlord's insurer will be determinative of the Tenant's obligation to contribute to the Landlord's insurance premiums

### **11.5 Contributions For Broken Period**

If the term of the Lease does not encompass the whole of the assessment period for the insurance premium for the Landlord's Insurance, the Tenant's contribution to the insurance premium for the Landlord's Insurance shall be apportioned on a daily basis.

### **11.6 Tenant's Use Which Increases Landlord's Insurance**

- (a) If the Tenant's use of the Premises results or could result in an increase of the insurance premium payable by the Landlord on the Landlord's Insurance, the Tenant's contribution to the Landlord's

Insurance shall be increased by the amount that the insurance premium payable by the Landlord has been increased by reason of the Tenant's use of the Premises.

- (b) For the purposes of clause 11.6(a) above, the increase in the insurance premium for the Landlord's Insurance shall be the difference between the premium payable if the Premises had been unoccupied and the premium levied by the Landlord's insurer.

#### **11.7 Avoidance Of Landlord's Insurance**

- (a) The Tenant shall not do or permit to be done any act or thing which results or could result in the invalidating or avoiding of any policy of insurance that the Landlord has taken out over the Building.
- (b) If the Tenant breaches clause 11.7(a) above, the Tenant shall be liable to the Landlord for any loss or damage (including economic loss or damage) that the Landlord suffers as a result of the Tenant's breach.

#### **11.8 Prohibition Against Other Activity Which Increases Landlord's Insurance**

- (a) The Tenant shall not:
  - (i) do any act or thing; or
  - (ii) bring onto or keep on the Premises any article or thing,
    - that results or could result in an increase of the insurance premium payable by the Landlord for the insurance policy that the Landlord has taken out over the Building.
- (b) If the Tenant breaches clause 11.8(a), then the Tenant's contribution to the insurance premium for the Landlord's Insurance shall be increased by the amount that the insurance premium payable by the Landlord has been increased by reason of the Tenant's breach of clause 11.(a) above.
- (c) For the purposes of clause 11.8(b) above, the increase in the insurance premium for the Landlord's Insurance shall be the difference between the premium payable if the Premises had been unoccupied and the premium levied by the Landlord's insurer.

#### **11.9 Payment Of Excess On Insurance Claims**

If the Tenant causes the Landlord to lodge an insurance claim pursuant to any insurance policy held by the Landlord, the Tenant must pay to the Landlord on demand the amount of any excess payable by the Landlord to the relevant insurer.

## **12. GST**

### **12.1 Amounts Expressed Are Exclusive Of GST**

The consideration specified in this Lease does not include any amount for GST.

### **12.2 Recovery Of GST**

If a supply under this lease is subject to GST, the recipient must pay to the supplier an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.

### **12.3 Payment Of GST**

The additional amount is payable on the earlier of:

- (a) at the same time as the consideration for the supply is payable or is to be provided; or
- (b) the date that the supplier gives the recipient a Tax Invoice.

### **12.4 Adjustment Of Additional Amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

### **12.5 Reimbursements**

If a party is entitled to be reimbursed or indemnified under this Lease, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## **13. INTEREST ON LATE PAYMENTS**

### **13.1 Interest On Overdue Amounts**

- (a) The Tenant agrees to pay interest at the rate specified at Item 20 of Schedule 1 on any amount under this Lease which is not paid on the due date for payment.
- (b) The Tenant agrees to pay interest under this clause 13(a) on demand from the Landlord.

### **13.2 Interest Accrues Daily**

Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.

### **13.3 Landlord's Right To Compound Interest**

Interest payable under clause 13.1 which is not paid when due for payment may be added to the overdue amount by the Landlord:

- (a) at intervals which the Landlord determines from time to time; or

- (b) if no determination is made, every 30 days,

and the Landlord shall be entitled to charge interest on the interest added to the overdue amount pursuant to clause 13.1 and clause 13.2 above.

## **14. USE OF PREMISES**

### **14.1 Permitted Use**

- (a) The Tenant agrees to use the Premises only for the Permitted Use and under the business name set out at Item 18 of the Schedule.
- (b) The Tenant shall not, without the written consent of the Landlord, change the business name used in connection with the Premises.

### **14.2 Operating Hours**

- (a) Unless prohibited by law, the Tenant agrees to keep the Premises open during normal business hours.
- (b) The Tenant shall not operate the Premises outside normal business hours unless:
  - (i) the Tenant has obtained the Landlord's prior written consent; and
  - (ii) if the Tenant requires Services outside normal business hours, has complied with the requirements of clause 8.5.

### **14.3 No Warranty As To Suitability Of Premises**

The Tenant acknowledges that the Tenant has not relied on any promises, representations, warranties or undertakings given by or on behalf of the Landlord with respect to:

- (a) the suitability of the Premises for any business to be carried out on the Premises;
- (b) the fittings, finish, facilities and amenities of the Premises and the Building;
- (c) any other businesses carried on in the Building; or
- (d) any rights to exclusivity in the Building in favour of the Tenant for the Tenants' business to be conducted from the Premises,

other than those set out in Item 30 of Schedule 1.

## **15. TERMS OF LICENSE TO USE COMMON AREAS**

### **15.1 Tenant Entitled To Use Common Areas**

The Tenant is entitled to use the Common Areas in common with other persons entitled by the Landlord to use the Common Areas subject to any restrictions contained in this Lease or the Rules.

## 15.2 Not To Use Common Areas For Business Purposes

The Tenant shall not use the Common Areas for any of the following purposes:

- (a) for any business or commercial purpose;
- (b) for the display or advertisement of any goods or services;
- (c) for hawking or other solicitation of business;
- (d) for any purpose which obstructs or interferes with the use or access of the Common Areas.

## 15.3 Rules For Building

- (a) The Landlord may make rules for the operation, use and occupation of the Building ("the Rules").
- (b) The Landlord may vary the Rules by notice in writing to the Tenant.
- (c) If there is an inconsistency between the Rules and the terms of this Lease, the terms of this Lease prevail.

## 16. TENANTS GENERAL OBLIGATIONS

### 16.1 General Obligations For Conduct On Premises

The Tenant agrees to:

- (a) comply on time with all laws and the requirements of authorities in connection with the Premises, the Tenant's Business, the Tenant's Property and the use or occupation of the Premises (including obtaining all permits) including in connection with contamination and occupational health and safety;
- (b) inform the Landlord of damage to the Building or the Premises or of a faulty Service immediately the Tenant becomes aware of it;
- (c) observe the maximum load weights throughout the Building; and
- (d) protect and keep the Premises and the Building safe from theft and robbery;
- (e) keep all doors, windows and other openings into the Premises and the Building closed and securely fastened when the Tenant is not open for business;
- (f) immediately report any of the following events to the Landlord:
  - (i) the making of a threat or demand against the Premises, the Building or a person or person on the Premises or the Building, including bomb threats;
  - (ii) the breakage of any glass, including exterior windows;

- (iii) damage to or breakage of any heating, lighting, electrical equipment or plumbing installed on the Leased Premises;
  - (iv) damage to or defect in any Service, fixture, fitting, plant or equipment which could cause or pose a danger, risk or hazard to the Premises, the building or any person or persons on the Premises or the Building;
  - (v) any notices received by the Tenant from any governmental authority relating to the Premises; and
  - (vi) the breakout of any notifiable infection or illnesses occurring on the Premises and the Building;
- (g) install an appropriate fire extinguisher that shall be located so as to be clearly visible and easily accessible which the Tenant shall service and maintain, at the Tenant's own expense, to ensure that it is in good working order;
  - (h) when asked by the Landlord, promptly do everything necessary for the Tenant to do to enable the Landlord to exercise its rights under this lease.

## 16.2 Prohibited Acts

The Tenant may not:

- (a) use, exercise or carry on or permit or suffer to be used, exercised, carried on in or upon the Premises or any part thereof any noxious, illegal or offensive art, trade, business, occupation or calling;
- (b) do anything in or around the Premises or the Building which, in the Landlord's sole opinion, may be annoying, dangerous or offensive to other tenants and occupiers in the Building, other persons otherwise lawfully therein or occupiers or owners of any adjacent land or premises;
- (c) install or place any radio, television receiver, loud speaker, amplifier or other public address device in the Leased Premises or the Common Area without the Landlord's prior written consent;
- (d) alter the Landlord's Property or remove it from the Premises; or
- (e) store or use inflammable, volatile or explosive substances or any Contaminants on the Premises or the Land unless they are required for the Permitted Use and the Tenant has informed the Landlord which substances these are; or
- (f) do anything which interferes with or overloads the Building's facilities or Services or use them for anything other than their intended purpose; or
- (g) use the drains, bores, water closets, lavatories, grease traps and other sanitary appliances for any purpose other than that for which they were constructed;

- (h) do anything to contaminate, pollute or increase toxicity in the Land, the Building or the Premises or the environment around the Land; or
- (i) copy any keys, access cards or similar devices for the Building or the Premises given to it by the Landlord;
- (j) give copies of any keys, access cards or similar devices for the Building or the Premises to any person other than the Tenant, Tenant's employees or the Tenant's agents; or
- (k) take any action against another tenant or occupier of the Building because that tenant or occupier does not comply with an obligation under its lease, licence or right of occupation; or
- (l) require the Landlord to enforce the Landlord's rights against any other tenant or occupier of the Building;
- (m) park or allow the Tenant's employees to park their cars on any car parking or other area which is not specifically set aside by the Landlord for the parking of the cars for the Tenant or the Tenant's employees;
- (n) bring upon the Premises any heavy machinery or other plant and equipment unless:
  - (i) reasonably necessary for the conduct of the Tenant's Business; and
  - (ii) the machinery or other plant and equipment is not, in the Landlord's opinion, likely to cause any structural or other damage to the floors, walls or any other parts of the Premises, the Building and the Common Areas;

### **16.3 Tenant's Employees & Agents To Comply**

The Tenant agrees to ensure that:

- (a) the Tenant's Employees and Agents; and
- (b) the Tenant's Subtenants,

do not do or omit to do anything which, if done or omitted to be done by the Tenant, would be a breach of the Tenant's obligations under this lease.

## **17. FIT-OUT & ALTERATIONS TO PREMISES**

### **17.1 Requirement For Landlord's Consent**

- (a) The Tenant may not, without the Landlord's approval, carry out works or alterations to the Premises, including but not limited to:
  - (i) making structural alterations, additions or improvements to the Premises or the Building (including the installation of partitioning);

- (ii) installing exterior trade fixtures, exterior signs, exterior lighting, exterior shades, exterior awnings or plumbing fixtures;
  - (iii) install any water, gas or electrical fixtures, equipment or appliances; and
  - (iv) installing any apparatus for illuminating, air-conditioning, heating, cooling or ventilating the Premises.
- (b) The Landlord shall not be required to grant approval until the Tenant has furnished the Landlord with the plans and specifications for the Tenant's works or alterations.
- (c) If the Landlord gives approval, it may impose conditions specifying:
- (i) which parts of the Premises affected by the Tenant's works or alterations must not be reinstated; and
  - (ii) which items of Tenant's Property installed as part of the works or alterations must not be removed,
- when the Tenant vacates the Premises.

## 17.2 Tenant's Works

The Tenant agrees to ensure that any works or alterations it does are done:

- (a) by contractors approved by the Landlord (who may not unreasonably withhold its approval); and
- (b) in a proper and workmanlike manner; and
- (c) in accordance with any plans, specifications and schedule of finishes required and approved by the Landlord (who may not unreasonably withhold its approval); and
- (d) in accordance with all laws and the requirements of authorities; and
- (e) without disturbing other occupiers of or visitors to the Building or the Land; and
- (f) in accordance with the Landlord's reasonable requirements and directions.

## 17.3 Certificates

Promptly after the Tenant's works or alterations are completed, the Tenant agrees to:

- (a) obtain all certificates from relevant authorities evidencing that the works or alterations comply with all laws and the requirements of authorities; and
- (b) remove all surplus material and refuse in connection with the Tenant's works or alterations from the Premises and the Building.

#### 17.4 Specific Prohibitions

- (a) The Tenant shall not do any of the following without obtaining the prior written consent of the Landlord:
- (i) cut any openings into or drill holes through:
    - (1) roof sheeting;
    - (2) metal fascia;
    - (3) ceilings;
    - (4) concrete floors;
    - (5) brick walls, including natural face brickwork;
    - (6) gyprock walls or any type of partition; or
    - (7) any other surface in the Premises;
  - (ii) paint any aluminium framing (including aluminium shop fronts);
  - (iii) drive any nails or screws into or in any way deface:
    - (1) brick walls, including natural face brickwork;
    - (2) gyprock walls;
    - (3) partitions;
    - (4) ceilings;
    - (5) concrete floors;
    - (6) tiled areas;
    - (7) windows;
    - (8) shop fronts;
    - (9) metal fascias;
    - (10) woodwork;
    - (11) doors; or
    - (12) any other surface in the Premises; or
  - (iv) glue any partitions, coverings or screens to face brickwork or any other surface in the Premises.
- (b) If the Tenant:
- (i) breaches any of the prohibitions in clause 17.4(a) above; or

- (ii) fails to observe any conditions or requirements set by the Landlord,

the Tenant shall upon written notice (and without limiting the Landlord's other rights) be required to immediately re-instate the Premises and the physical structures which the boundaries of the Premises form part of at the Tenant's own cost to specifications equivalent to those required in clause 26.2 below.

- (c) If the Tenant fails to reinstate the Premises and the physical structures which the boundaries of the Premises form part of, the Landlord may carry out the necessary works and the Tenant shall pay the Landlord for the Landlord's costs on demand.

### **17.5 Requirement of Public Authorities**

- (a) If at any time during the Term any authority having jurisdiction or authority over or in respect of the Premises or the user thereof requests, requires, notifies or orders any structural alterations, re-alterations, additions, conversions, improvements or other works to be made to the Premises, the Tenant shall elect whether the Tenant shall carry out those works within 14 days of receiving notice from the authority.
- (b) If the Tenant elects to carry out the works required under clause 17.5 the Tenant shall complete the works at the Tenant's own expense and comply with all of the covenants in clause 17.2 to clause 17.4 above.
- (c) If the Tenant elects not to carry out the works, then:
  - (i) the Landlord and the Landlord's architects, contractors, workmen and servants shall be authorised to enter the Premises and carry out such works; and
  - (ii) the Tenant shall indemnify the Landlord for all of the Landlord's costs for carrying out those works on demand.
- (d) If the Tenant does not serve the Landlord with notice of its election under clause 17.5(a) within 14 days of receiving notice from the authority, the Tenant shall be deemed to have elected not to carry out the works.

## **18. REPAIR & MAINTENANCE**

### **18.1 Condition Of Items**

The Tenant acknowledges that the Premises were in good repair at the Commencement Date.

### **18.2 Tenant To Repair & Maintain Premises**

- (a) Subject to clause 18.2(b), the Tenant agrees to:

- (i) keep the Premises and the exterior of the Building and the Tenant's Property in good repair excluding wear and tear which is in the Landlord's opinion fair and reasonable;
  - (ii) promptly replace worn or damaged items in or attached to the Premises or the Building (including plate glass, the Tenant's Property and those floor coverings and furnishings which are part of the Landlord's Property) with items of similar quality;
  - (iii) promptly replace all damaged or broken heating, lighting, electrical and plumbing equipment installed on the Premises or attached to the Building;
  - (iv) promptly replace all damaged or broken light globes and florescent tubes in the Premises;
  - (v) maintain and repair all doors and all parts thereof including without limitation the locks, closers, hinges, handles, of all doors;
  - (vi) promptly replace any damaged or broken fibrous cement, gyprock, metal sheeting or other cladding material forming any part of the exterior surface of the building;
  - (vii) promptly replace any damaged or broken gutters or downpipes attached to the building;
  - (viii) maintain all concreted or bitumised surfaces of the Land in good condition and repair or excise and replace any cracked, worn or otherwise damaged areas of concrete or bitumen.
  - (ix) maintain all fencing, gates or other access ways to the Land in good condition and repair or replace any gates, access ways or sections of fencing which are damaged or broken;
  - (x) maintain all reticulation piping, plant and equipment and repair or replace any reticulation piping, plant and equipment which is damaged or broken.
- (b) The Tenant is not obliged to carry out or pay for repairs which constitute structural work unless it is required because of the use or occupation of the Premises or the act, negligence or default of the Tenant or of the Tenant's Employees and Agents, or of the Tenant's Subtenants, and then only with the consent and at the direction of the Landlord.
- (c) For the purposes of clause 18.2(b), structural work means repairs to or replacement of:
- (i) any load-bearing part of the Building which are required to maintain the integrity of that part of the Building as a load-bearing part of the Building; or
  - (ii) external roof coverings which are required to maintain the water-proofing of the roof cavity,

but does not include repairs or replacements which are merely cosmetic.

- (d) If the Tenant is required to do repairs which constitute structural work, then the Landlord may either:
  - (i) do the work and recover the costs incurred from the Tenant as a debt payable on demand; or
  - (ii) direct the Tenant to do those works at the Tenant's own cost.
- (e) If the Tenant is required to carry out repairs which constitute structural work, then the Tenant shall comply with all of the requirements of clause 17.2 for those works.

### **18.3 Landlord's Right To Inspect & Repair**

- (a) The Landlord may enter onto the Land or the Premises at reasonable times on 48 hours' notice to see if the Tenant is complying with its obligations under clause 18.2.
- (b) If, in the Landlord's opinion, the Tenant has not complied with the Tenant's obligations under clause 18.2 above, then the Landlord may, at the Landlord's sole discretion, do the work and recover the costs incurred from the Tenant as a debt payable on demand.
- (c) If the Landlord decides there is an emergency or an urgent need for repairs to the Building or the Premises, the Landlord may enter at any time without notice.

### **18.4 Specific Obligations For Carpets**

- (a) The Tenant shall use key mats or other protective devices approved by the Landlord to protect the carpeted floors in the Premises.
- (b) The Tenant shall repair and make good any damage caused to the carpeted floors in the Premises caused by the use of castors or rollers or unprotected carpeted floor in the Premises.
- (c) If, in the Landlord's absolute discretion, the damage caused by the use of castors or rollers or unprotected carpeted floor in the Premises cannot be repaired, Tenant shall replace those affected areas in accordance with the Landlord's specifications and instructions.
- (d) Subject to the Tenant's yielding up obligations under clause 26.2(f), any carpet installed by the Tenant under clause 18.4(c) shall become and remain the property of the Landlord.

### **18.5 Specific Obligations For Window Treatments**

- (a) If any of the curtains, blinds or other window treatments in the Premises have become worn or damaged by the Tenant's act or omission, then the Tenant shall replace those worn or damaged curtains, blinds and window treatments with curtains, blinds and

window treatments of similar quality, colour and design to the satisfaction of the Landlord.

- (b) Any curtains, blinds and window treatments which are installed in the Premises under clause 18.5(a) above shall become and remain the property of the Landlord.

### **18.6 Damage Caused By Tenant**

The Tenant shall make good all damage to the Premises, the Common Areas, any adjoining premises and any facility or appurtenance thereof caused by:

- (a) the use or misuse by the Tenant;
- (b) the neglect of the Tenant; or
- (c) any breach or default by the Tenant of this Lease or the Rules.

## **19. CLEANING & GARDENING**

### **19.1 Tenant To Keep Premises Clean**

The Tenant agrees to keep the Premises and the exterior of the Building:

- (a) in a thorough state of cleanliness; and
- (b) free of pests and vermin including, but not limited to, rodents, cockroaches and termites.

### **19.2 Disposal Of Rubbish**

- (a) The Tenant shall not allow any rubbish, trade waste, cartons, boxes, containers, produce or accumulation of useless property within the Premises or on the Land.
- (b) The Tenant shall:
  - (i) ensure that all rubbish or waste which is kept on the Premises is stored in closed rubbish bins concealed on the Premises; and
  - (ii) regularly remove the rubbish or waste which is kept on the Premises to the bins and containers for the Building for disposal.
- (c) The Tenant must not attempt to dispose of rubbish or waste through any drains, water closets or lavatories on the Leased Premises or the Common Areas.
- (d) The Tenant shall obey the Landlord's directions regarding the recycling of recyclable waste and rubbish.

### **19.3 Lawns, Gardens & Landscaping**

- (a) The Tenant shall:

- (i) water;
- (ii) mow and edge; and
- (iii) remove weeds from,

all lawned areas on the Land to ensure that those areas are maintained to a standard that is presentable to the Landlord.

(b) The Tenant shall:

- (i) water;
- (ii) prune and trim;
- (iii) remove weeds from; and

the garden beds and other landscaped areas on the Land to ensure that those areas are maintained to a standard that is presentable to the Landlord.

#### **19.4 Rubbish Bins**

- (a) The Tenant shall be entitled to one standard 240 litre bin.
- (b) If the Tenant requires additional bins, then the Tenant shall procure these bins at the Tenant's own cost.
- (c) The Tenant shall store its bins on the Premises.
- (d) If the Tenant wishes to store its bins in any other part of the Building then the Tenant must enter into a license arrangement with the Landlord for use of the allocated space for a fee and on terms to be determined by the Landlord.

## **20. REDECORATION & PAINTING**

### **20.1 Redecoration**

- (a) The Tenant shall, at the Tenant's own expense, redecorate and refurbish the Premises and the Tenant's Property:
  - (i) at the times set out in Item 22 of Schedule 1; and
  - (ii) in the manner, style and design approved by the Landlord.
- (b) The Tenant shall:
  - (i) provide the Landlord with detailed plans and specifications for the redecoration and refurbishment of the Premises; and
  - (ii) reimburse the Landlord for any fees for architectural services incurred by the Landlord in reviewing and approving those plans and specifications.

## 20.2 Repainting

- (a) The Tenant shall repaint:
- (i) the interior walls of the Premises;
  - (ii) concrete floors;
  - (iii) the doors, door frames, window frames and skirtings in the Premises;
  - (iv) the exterior surfaces of the Building including without limitation all doors, door frames, window frames and pipe work,

which have previously been painted:

- (1) at the time stipulated at Item 23 of Schedule 1; or
- (2) if no times are stipulated at Item 23 of Schedule 1, then once every five (5) years of the Term or any extension or renewal of the Term,

using paint which complies with the colour and quality specifications as directed by the Landlord.

- (b) The Tenant's obligation in clause 20.2(a) is in addition to the Tenant's repainting obligations in clause 26.2(k) below when yielding up the Premises.
- (c) All painting carried out by the Tenant must be done by a qualified registered painter.
- (d) If the Tenant does not repaint the Premises to a standard that is acceptable to the Landlord, then the Landlord may:
  - (i) request that the Tenant redo the repainting of the Premises;
  - (i) carry out the repainting of the Premises on the Tenant's behalf and any costs incurred by the Landlord will be a debt of the Tenant payable on demand.

## 21. SIGNAGE

### 21.2 Signage Must Be Approved

Except for the signage rights granted to the Tenant in Item 28 of Schedule 1, the Tenant shall not place or maintain signage, decoration or advertisement on any:

- (a) exterior wall;
- (b) exterior door;
- (c) window;

- (d) external glass wall;
- (e) awning; or
- (f) canopy

without the prior written consent of the Landlord.

### **21.3 Tenant Must Maintain Signage**

- (a) The Tenant must, at all times during the Term of the Lease, maintain any signage, decoration or advertisement approved by clause 21.1 above in good condition and repair.
- (b) If, in the Landlord's sole opinion, the Tenant's signage, decoration or advertisement is not in good condition and repair, the Tenant shall, at the Tenant's own cost, repair or replace the Tenant's signage, decoration or advertisement.

### **21.4 Directory Board**

- (a) If there is a directory board in the Building, the Tenant may, at the Tenant's own expense, install a plaque on that directory board with the Tenant's name and particulars.
- (b) The Tenant must, at the Tenant's own expense, remove their plaque from the directory board at the expiry or earlier termination of this Lease and make good any damage caused by its removal.

## **22. TENANT'S INSURANCE OBLIGATIONS**

### **22.1 Tenant To Take Out Own Insurances**

The Tenant agrees to procure and maintain insurance policies for the risks identified in Item 21 of Schedule 1.

### **22.2 Conditions On Tenant's Insurance Policies**

- (a) Each policy under clause 22.1 must:
  - (i) be in the names of the Tenant, the Landlord and any other person nominated by the Landlord for their respective rights and interests; and
  - (ii) be on terms (including a cross liability and waiver of subrogation clause) and for an amount reasonably satisfactory to the Landlord; and
  - (iii) be with an insurer approved by the Landlord acting reasonably.
- (b) Damages recoverable by the Landlord against the Tenant shall constitute a valid and acceptable claim within the terms of the Tenant's policy regardless of whether it falls within the indemnity provided by the terms, exceptions and conditions of the Tenant's contract of insurance.

- (c) The Tenant shall not alter the terms or conditions of its insurance policies without the Landlord's prior written consent.

### **22.3 Evidence**

The Tenant agrees to produce evidence satisfactory to the Landlord of current insurance cover (including a certified copy of each policy):

- (a) within 14 days after each anniversary of the Commencement Date; and
- (b) within 48 hours of any request by the Landlord.

### **22.4 Obligations Relating To Tenant's Insurance Cover**

The Tenant shall not do or omit to do anything that could:

- (a) cause its insurance cover to be reduced or cancelled (and the Tenant agrees to notify the Landlord if it is or could be); or
- (b) permit an insurer to decline a claim (and the Tenant agrees to notify the Landlord if anything happens which would permit an insurer to do this); or
- (c) increase an insurance premium payable in connection with the Premises, the Building or property in them; or
- (d) affect any rights of indemnity under any insurance.

### **22.5 Notifications Relating To Insurance Claims**

The Tenant agrees to notify the Landlord if:

- (a) an insurance policy required under clause 22.1 is cancelled; or
- (b) an event occurs which gives rise or may give rise to an insurance claim; or
- (c) an insurance claim is refused either in part or in full.

### **22.6 Use Of Insurance Proceeds**

- (a) The Tenant agrees to pay the proceeds of any insurance claim (even under a policy in the Tenant's name only in breach of clause 22.2(a)) which the insurer does not require to be used for replacement or reinstatement into a separate joint account in the names of the Tenant, the Landlord and, if required by the Landlord, any other persons.
- (b) The money which is deposited in the joint account must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item, and then any surplus shared between the account holders having regard to the effect the event has on them or on their respective interests in that item.

## 23. INDEMNITIES & RELEASES BY TENANT TO LANDLORD

### 23.1 Tenant Occupies Premises At Own Risk

The Tenant agrees to occupy, use and keep the Premises at the risk of the Tenant and hereby releases the Landlord and the Landlord's agents, servants, contractors and employees from all claims and demands of every kind resulting from any accident, damage or injury occurring within the Premises.

### 23.2 Indemnity

- (a) The Tenant indemnifies the Landlord against any liability or loss arising from, and Costs incurred (whether before or after termination of this lease) in connection with:
- (i) damage, loss, injury or death to the extent it is caused or contributed to by the act, negligence or default of the Tenant or of the Tenant's Employees and Agents; and
  - (ii) the Landlord doing anything which the Tenant must do under this lease but has not done or which the Landlord considers the Tenant has not done properly; and
  - (iii) any person exercising, or attempting to exercise, a right or remedy in connection with this lease after the Tenant defaults under this lease; and
  - (iv) the Landlord's involvement, through or by virtue of this lease or any dealing with it, with any persons or entities involved in, or suspected of being involved in, terrorism or in any terrorist act to the extent that the involvement is caused or contributed to by the Tenant or the Tenant's Employees and Agents; and
  - (v) if this Lease is terminated under clause 31.2, the Tenant's breach of this lease and the termination of this lease, including the Landlord's loss of the benefit of the Tenant performing its obligations under this lease from the date of that termination until the Expiry Date and having regard to any incentive or other benefit paid or given by the Landlord:
    - (1) to the Tenant as an inducement for the Tenant to enter into this lease; or
    - (2) following termination of this lease, to any replacement tenant of the Premises as an inducement for the replacement tenant to enter into a lease of the Premises.
- (b) To the extent that the Landlord's loss of benefit relates to unpaid future Rent, Tenant's Contribution or any other amounts payable by the Tenant under this lease, any loss is to be discounted back to a net present value calculated as at the date this lease is terminated by applying a discount rate nominated by the Landlord acting reasonably).

- (c) The Tenant agrees to pay amounts due under this indemnity on demand from the Landlord.

### **23.3 Release**

The Tenant releases the Landlord from, and agrees that the Landlord is not liable for, liability or loss arising from, and Costs incurred in connection with:

- (a) damage, loss, injury or death except to the extent it is caused or contributed to by the Landlord's act, negligence or default; and
- (b) anything the Landlord is permitted or required to do under this lease; and
- (c) if the Landlord has complied with clause 25.2:
  - (i) a Service being interrupted, not being available or not working properly; and
  - (ii) the Landlord's plant and equipment not working properly; and
  - (iii) the Common Areas not being clean; and
  - (iv) the Building not complying with any law or the requirements of authorities; and
- (d) any inconvenience, disruption or nuisance caused or contributed to by works being done on land adjacent to or near the Land, whether or - not those works are being done by, for or on behalf of the Landlord.

### **23.4 Acknowledgement Of Area Of Premises**

- (a) The Tenant acknowledges that the area of the Premises is not less than the area stipulated in Item 4 of Schedule 1.
- (b) The Tenant agrees that:
  - (i) the Tenant shall not take any action or make any claim against the Landlord to dispute that the area of the Premises is less than the area stipulated in Item 4 of Schedule 1; and
  - (ii) releases the Landlord from any liability if the area of the Premises is less than the area stipulated in Schedule 1.
- (c) The Landlord may, at any time during the term or further term of this Lease:
  - (i) resurvey the Building according to any acceptable method of measurement as determined by the Landlord; and
  - (ii) the Tenant's contribution towards:
    - (1) Variable Outgoings under clause 6;
    - (2) Rates & Taxes under clause 7;
    - (3) Service Charges under clause 8; and

- (4) Landlord's Insurance under clause 11,  
will be recalculated once the Building has been resurveyed.

## **24. ASSIGNMENT, SUBLETTING & OTHER DEALINGS**

### **24.1 Dealings Requiring Landlord's Consent**

The Tenant shall not:

- (a) transfer;
- (b) assign;
- (c) sublet;
- (d) license;
- (e) part with possession;
- (f) encumber or grant security over; or
- (g) declare a trust over;
- (h) otherwise deal with,

this Lease or the Premises without the prior written consent of the Landlord.

### **24.2 Conditions For Transfer & Assignment Of Lease**

For the purposes of clause 24.1 above, the Landlord is not required to consent to the transfer or assignment of this Lease unless:

- (a) the Tenant notifies the Landlord of the Tenant's proposal for the transfer or assignment of the Lease no later than 21 days before the date of the proposed transfer or assignment;
- (b) the Tenant satisfies the Landlord that the proposed new tenant is respectable and financially capable of complying with the Tenant's obligations under this lease including by providing financial statements; and
- (c) the Tenant and the proposed new tenant sign a contract relating to the transfer or assignment containing provisions required by the Landlord including, without limitation, provisions under which:
  - (i) the Tenant releases the Landlord from its obligations under this lease arising before the transfer or assignment; and
  - (ii) the proposed new tenant agrees to comply with this lease as if it were the Tenant (including obligations which arose before the transfer or assignment); and

- (iii) the proposed new tenant and its guarantor consent to the Landlord using and disclosing their Personal Information in the manner described in clause 38.16;
- (d) any guarantee, guarantee and indemnity or other security reasonably required by the Landlord is provided; and
- (e) any default by the Tenant has been remedied by the Tenant or waived by the Landlord; and
- (f) the Tenant and the proposed new tenant comply with all the Landlord's reasonable requirements including payment of the Landlord's reasonable Costs; and
- (g) the Landlord has obtained any consents from any third party that the Landlord has agreed to obtain.

### **24.3 Conditions For Sublease**

- (a) For the purposes of clause 24.1 above, the Landlord is not required to consent to the subletting for the whole or part of the Premises unless:
  - (i) the Tenant notifies the Landlord of the Tenant's proposal to sublet the whole or part of the Premises no later than 21 days before the commencement date of the proposed sublease;
  - (ii) the Tenant satisfies the Landlord that the proposed subtenant is respectable and financially sound with experience in and a good reputation for conducting the Permitted Use; and
  - (iii) the Tenant and the proposed subtenant sign a contract relating to the proposed sublease containing provisions required by the Landlord including provisions under which:
    - (1) the proposed subtenant agrees not to do anything which:
      - (A) may result in the Tenant being in breach of this lease; or
      - (B) if done by the Tenant, would be a breach of this lease; or
      - (C) may result in the Tenant being liable to the Landlord under an indemnity given by the Tenant under this lease; and
    - (2) the proposed subtenant and its guarantor consent to the Landlord using and disclosing their Personal Information in the manner described in clause 38.16;
  - (iv) any default by the Tenant has been remedied by the Tenant or waived by the Landlord; and

- (v) the Tenant and the proposed subtenant comply with all the Landlord's reasonable requirements including in relation to the provisions of the proposed sublease and payment of the Landlord's reasonable Costs; and
  - (vi) the Landlord has obtained any consents from any third party that the Landlord has agreed to obtain; and
  - (vii) any guarantee, guarantee and indemnity or other security reasonably required by the Landlord is provided.
- (b) The Landlord and the Tenant agree that:
- (i) any act or omission of a Tenant's Subtenant is taken to be an act or omission of the Tenant under this lease; and
  - (ii) if, under this lease, the Tenant must obtain the Landlord's consent to do something, then the Tenant must ensure that the Tenant's Subtenants also obtain the Landlord's consent to do that thing

#### **24.4 Change In Control of Tenant**

If the Tenant is a company which is not listed on the Australian Stock Exchange, and there is a proposed change in Control:

- (a) of the Tenant; or
- (b) of any holding company of the Tenant including of the Tenant's ultimate holding company (in either case as defined in the Corporations Act),

then that proposed change in Control is treated as a proposed transfer or assignment of this lease, the person or group of persons acquiring Control is treated as the proposed new tenant and clause 24.1 apply.

### **25. LANDLORD'S RIGHTS & OBLIGATIONS**

#### **25.1 Quiet Enjoyment**

Subject to the Landlord's rights, while the Tenant complies with its obligations under this lease, it may occupy the Premises during the Term without interference by the Landlord.

#### **25.2 General Obligations Of Landlord**

- (a) The Landlord agrees to take reasonable action to keep:
  - (i) the Services available to the Premises each day during the hours:
    - (1) set out in Item 19 of Schedule 1; and
    - (2) agreed to by the Landlord under clause 8.5; and

- (ii) the Landlord's plant and equipment in the Building in good working order; and
  - (iii) the Common Areas clean.
- (b) The Tenant may not terminate this lease or stop or reduce payments under it because a Service is not available or is interrupted or fails or the Landlord's plant or equipment breaks down or the Common Areas are not clean.

### 25.3 Consents

If the Landlord has agreed to obtain a person's consent in connection with this lease, then the Landlord agrees to do everything reasonably necessary to obtain that consent.

### 25.4 Rights

The Landlord may:

- (a) do anything to comply with any law or the requirements of authorities; and
- (b) carry out any works on the Land or in the Building or the Premises (including alterations and redevelopment), or limit access to or close the Common Areas, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's Business; and
- (c) use, maintain, repair, alter and add to Services to or in the Premises, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's Business; and
- (d) exclude or remove any person from the Land or the Building; and
- (e) restrict access to loading docks, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's Business; and
- (f) permit functions, displays, and other activities on the Land or in the Building; and
- (g) install and use a public address system throughout the Common Areas; and
- (h) change the direction or flow of pedestrian or vehicular traffic into, out of or through the Building; and
- (i) charge or vary car parking fees; and
- (j) change the name, logo or signage of the Building; and
- (k) assign the naming rights or grant a license for the naming rights of the Building to any person; and

- (l) advertise in such manner as the Landlord sees fit on all external walls of the Building, or on or in the Common Areas;
- (m) lease, licence or grant other rights of occupation in connection with the Building to any person;
- (n) vary any lease, licence or right of occupation in connection with the Building;
- (o) construct, maintain and operate lighting in the Common Areas;
- (p) police the Common Areas;
- (q) change the area, level, location and arrangement of the Common Area parking and other facilities;
- (r) restrict parking by the Tenant and the Tenant's agents and employees to the employee parking areas;
- (s) close all or any portion of the Common Area to such extent as may be in the opinion of the Landlord is sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein;
- (t) close temporarily all or any portion of the Common Area parking areas or facilities as the Landlord may deem reasonable.

### **25.5 Entry For Inspection & Emergencies**

- (a) The Landlord may enter the Premises at reasonable times on reasonable notice to see if the Tenant is complying with its obligations under this lease or to do anything the Landlord must or may do, under this Lease.
- (b) If the Landlord decides there is an emergency, the Landlord may enter at any time without notice.

### **25.6 Prospective Tenants Or Purchasers**

After giving reasonable notice, the Landlord may:

- (a) enter the Premises to show prospective purchasers or tenants through the Premises; and
- (b) display for a reasonable time on the Building a sign indicating that the Building is or the Premises are available for purchase or lease.

### **25.7 Blocking Access To Building In Emergency**

If the Landlord decides there is an emergency, the Landlord may stop the Tenant from entering the Building at any time.

## 25.8 Enforcement Of Rights

The Tenant acknowledges that the Landlord may enforce its rights against the Tenant whether or not the Landlord enforces its rights against other tenants or occupiers of the Building.

## 25.9 To Deal With The Land

The Landlord may:

- (a) subdivide the Land, including under a Shared Scheme law, or grant easements or other rights over it or the Premises unless this would have a substantial adverse effect on the Tenant's Business; and
- (b) require the Tenant (at the Tenant's cost) to do everything reasonably necessary (and to procure that any person claiming through the Tenant does everything reasonably necessary), including signing and producing documents and giving consents, to enable the Landlord to exercise these rights; and
- (c) require the Tenant and any guarantor to vary or replace this lease (and to procure that any person claiming through the Tenant consents to the variation or replacement) if, in the Landlord's reasonable opinion, that variation or replacement is necessary because of the subdivision and does not adversely affect the Tenant's rights under this lease.

## 25.10 Strata Arrangement / Shared Scheme

If the Premises are part of a Shared Scheme:

- (a) the Tenant agrees to give the Landlord copies of any notices issued by the Governing Body promptly after the Tenant receives them; and
- (b) the Tenant agrees to comply with the rules and by-laws of the Shared Scheme; and
- (c) if certain obligations of the Landlord under this lease may only be performed by the Governing Body:
  - (i) the Landlord agrees to use reasonable endeavours to cause the Governing Body to comply with those obligations; and
  - (ii) despite the other provisions of this lease, the Landlord is not otherwise obliged to perform those obligations; and
- (d) the Land and the Common Areas include the common property of the Shared Scheme; and
- (e) the Tenant agrees to consent (and agrees to procure that any person claiming through the Tenant consents) to any alteration to the plan relating to the Shared Scheme and to any rules and by-laws of the Shared Scheme, if those alterations do not adversely affect the Tenant's rights under this lease.

### 25.11 Change Of Landlord

If the Landlord deals with its interest in the Land so that another person becomes landlord:

- (a) the Landlord is released from any obligation under this lease arising after it ceases to be landlord; and
- (b) if asked by the Landlord, the Tenant agrees to sign a contract under which:
  - (i) the Tenant agrees with the other person to comply with this lease as if the other person was the Landlord; and
  - (ii) the other person assumes the Landlord's obligations under this lease arising after the Landlord ceases to be landlord; and
- (c) if clause 34 applies:
  - (i) the Tenant agrees to give the other person a replacement Bank Guarantee in favour of the other person within 14 days after the Landlord notifies the Tenant of the requirement for the replacement Bank Guarantee; and
  - (ii) the Landlord agrees to request the other person to give the Bank Guarantee which is replaced to the Tenant at the same time as the replacement Bank Guarantee is given to the other person.

### 25.12 Landlord May Rectify Tenant's Defaults

After giving the Tenant reasonable notice; the Landlord may, at the Tenant's cost, do anything which the Tenant should have done under this lease but which it has not done or which the Landlord considers it has not done properly.

### 25.13 Appointment Of Managing Agent

- (a) The Landlord may, from time to time, appoint a Managing Agent (who may be a company or other legal or business entity established by the Landlord for such a purpose) to manage the Building and any Managing Agent so appointed shall represent the Landlord in all matters relating to this Lease except where:
  - (i) the Landlord otherwise directs in writing;
  - (ii) there is a direct communication from the Landlord to the Tenant but only to the extent where there is an inconsistency with any communication from Managing Agent to the Tenant.
- (b) The Landlord may, in the absence of appointing a managing agent to manage the Building, administer the Building itself and the Tenant shall pay to the Landlord an administration fee for administering the Building.

### **25.14 Adjacent Developments**

If works are proposed to be done, or are being done, on land adjacent to or near the Land:

- (a) the Landlord has no obligation to object to those works or take any other action in connection with them; and
- (b) any inconvenience, disruption or nuisance caused by the works will not be a breach of the Landlord's obligations under clause 25.1 even if those works are being done by, for or on behalf of the Landlord.

### **25.15 Limitation of Landlord's Liability**

The Tenant acknowledges and agrees that where the Landlord has entered into this Lease as trustee of a trust and in no other capacity:

- (a) the Landlord will not be personally liable to the Tenant for any breach of the covenants, conditions and stipulations contained or implied in this Lease;
- (b) in respect of any such breach the Tenant will be able to claim damages from the Landlord only to the extent that the landlord is able to be reimbursed from the net assets of that trust;
- (c) no officers or agents of the Landlord shall be personally liable to the Tenant; and
- (d) the Landlord's covenants under this Lease shall bind the trustee for the time being of the trust, but only so long as the Land and the Building are assets of the trust and, in any event, only to the extent set out in this clause 25.15.

## **26. EXPIRY OR TERMINATION OF LEASE**

### **26.1 Yielding Up**

The Tenant shall at the expiration or earlier termination of this Lease quietly and peacefully surrender and yield up the whole of the Premises, the Building and the Land and every part thereof in a good, clean, sound and substantial state of repair equivalent to the condition that the Premises were in when the Lease commenced (excepting wear and tear which is in the Landlord's opinion fair and reasonable).

### **26.2 Reinstating Premises**

Without limiting the operation of clause 26.1 above, the Tenant acknowledges that the following items must be attended to at the Tenant's expense when the Tenant yields up possession of the Premises to the Landlord.

**(a) Removal Of Fittings & Fixtures**

- (i) The Tenant shall remove all goods, fittings and fixtures and partitioning, except for the Landlord's Property, and make good all damage to the Premises caused by the removal of those goods, fittings and fixtures and partitioning.
- (ii) Notwithstanding clause 26.2(a)(i) above, the Tenant shall not remove any fittings or fixtures which do not comprise the Tenant's Property and which the Landlord has directed the Tenant not to remove and shall ensure that such fittings and fixtures are in good repair and condition.

**(b) Fixings & Anchors**

The Tenant shall:

- (i) remove all fixings including without limitation nylon plugs, anchors, screws, nails from all walls, floors, ceilings, partitions, brickwork, plaster and any other surface in the Premises; and
- (ii) repair all damaged surfaces and areas in the Premises.

**(c) Natural Face Brickwork**

- (i) The Tenant shall:
  - (1) wash and clean all natural face brickwork forming part of the Premises or the Building;
  - (2) remove all oil, grease, paint, glue, stains or any other foreign matter from all natural face brickwork forming part of the Premises or the Building; and
  - (3) if requested by the Landlord, apply a clear coat of sealing acrylic to all natural face brickwork in accordance with the Landlord's specifications and standards.
- (ii) If the Tenant has drilled holes into or otherwise marked or damaged any portion of the natural face brickwork, then the Tenant shall replace the affected bricks and cement with new bricks which are identical in colour, style and quality and laid in matching colour mortar.

**(d) External Cladding**

The Tenant shall replace any damaged or broken metal sheeting, gyprock, fibrous cement or other material used to clad the exterior of the Building and the roof of the Building with complete sheets of identical colour and quality to the existing cladding on the Building.

**(e) Concrete Floors**

- (i) The Tenant shall:
  - (1) remove all oil, grease, paint, glue, stains or any other foreign matter from all concrete floors; and
  - (2) if the Tenant is not able to clean the concrete floors to the satisfaction of the Landlord, then paint or coat the concrete floors to the Landlord's specifications and standards.
- (ii) If any portion of the concrete floors is holed or otherwise cracked, marked or damaged, then the Tenant shall make good that damage by patching and filling in the damaged areas with concrete that is identical in colour, style and quality.
- (iii) If, in the Landlord's opinion, the damage to the concrete floors cannot be made good by patching and filling, then the Tenant shall cut out and replace the concrete in those affected areas.

**(f) Repairs To Fittings & Fixtures**

- (i) The Tenant shall clean, service and otherwise ensure that all fittings and fixtures to the Premises are in good working order, including but not limited to:
  - (1) doors;
  - (2) windows;
  - (3) shopfronts;
  - (4) shopfront doors;
  - (5) locks on doors;
  - (6) door hinges;
  - (7) door closers;
  - (8) window screens;
  - (9) security screens;
  - (10) security bars and grates;
  - (11) cupboards;
  - (12) sinks;
  - (13) all plumbing fixtures and fittings;
  - (14) all electrical fixtures and fittings;
  - (15) light fittings;

- (16) fluorescent light tubes;
  - (17) light globes;
  - (18) power points;
  - (19) light and power switches;
  - (20) air-conditioning
  - (21) fans;
  - (22) hot water heaters and systems;
  - (23) external signs;
  - (24) external lighting;
  - (25) ceiling tiles; and
  - (26) ceiling suspension grids.
- (ii) If any of the items are damaged, defective or not working, the Tenant shall repair or replace those items at the Tenant's cost irrespective of whether the Tenant was the party who damaged those items or caused those items not to work.
  - (iii) The Tenant shall, at the request of the Landlord and at the Tenant's cost, service any of the items as directed by the Landlord and provide the Landlord with a certificate proving that the service was completed.

**(g) Floor Coverings, Carpets, Vinyl, Etc...**

- (i) The Tenant shall:
  - (1) steam clean all carpets in the Premises; and
  - (2) remove all marks and stains from the carpets in the Premises.
- (ii) The Tenant shall strip clean and polish all vinyl floor coverings in the Premises.
- (iii) If, in the Landlord's reasonable opinion, the carpets and/or vinyl:
  - (1) cannot be adequately cleaned; or
  - (2) are damaged, cut, stained or worn,then the Tenant shall replace those affected areas in accordance with the Landlord's specifications and instructions even if this requires the total replacement of all the carpet or vinyl in the Premises.

**(h) Tiles - Wall & Floor**

- (i) The Tenant shall clean all wall and floor tiles
- (ii) The Tenant shall:
  - (1) remove and replace any wall and floor tiles which are damaged, cracked, chipped, scratched or worn;
  - (2) replace any wall or floor tiles which are missing, with tiles and coloured grout which are identical in colour, style and quality.

**(i) Reinstating & Closing Of Openings To Premises**

- (i) If the Tenant has made any structural alterations to the Premises involving the creation of openings into the Premises, then the Tenant shall close all such openings and reinstate the surfaces of the Premises.
- (ii) Notwithstanding clause 26.2(h)(i) above, the Tenant agrees to comply with following minimum standards:

**(1) for Metal Deck Roof:**

The Tenant shall replace all sheets which the Tenant has holed or cut with new sheets which are of the same material and of similar length, profile and quality.

The Tenant acknowledges that patching up holes and cuts is not acceptable.

**(2) for Ceiling Panels:**

**(A)** The Tenant shall replace all damaged or holed ceiling panels with new panels of similar size and texture.

The Tenant acknowledges that patching up holes and damage is not acceptable.

**(B)** The Tenant shall repair all ceilings made of:

- fibre plaster;
- glass; and
- gyprock,

in accordance with the Landlord's specifications and instructions.

**(3) for Face Brickwork:**

- (A) The Tenant shall close all openings made through natural face brickwork walls by replacing the missing brick by toothing in every brick into the existing brick wall with bricks of similar size, colour and texture and laid in matching colour mortar.
- (B) The Tenant shall close all openings made through plastered masonry walls by:
- replacing the missing brick by toothing in every brick into the existing brick wall with bricks of similar size, colour and texture and laid in matching colour mortar; and
  - plastering over the new brickwork with plaster which of identical colour and texture.

**(j) Window Treatments**

- (i) The Tenant shall clean all curtains, blinds or other window treatments in the Leased Premises.
- (ii) If, in the Landlord's sole opinion, any curtains, blinds or other window treatments in the Leased Premises have become too damaged or worn to be properly made good by cleaning, the Tenant shall replace those worn or damaged curtains, blinds and window treatments with curtains, blinds and window treatments of similar quality, colour and design to the satisfaction of the Landlord.

**(k) Signage**

The Tenant shall:

- (i) remove all signs and signage from within, on or externally attached to the Premises or the Building, including signage on the shopfront windows; and
- (ii) make good and repair all damage to the absolute and full satisfaction of the Landlord, including the repainting and cleaning of the surfaces previously beneath the Tenant's signage.

**(l) Repainting**

- (i) The Tenant shall repaint or revarnish the Premises in accordance with this clause 26.2(k) only after the Tenant has completed all of the Tenant's other obligations under clause 26.2(a) to clause 26.2(j).
- (ii) The Tenant shall repaint or revarnish all surfaces of the Premises and parts of the Premises, and all external surfaces of the Building and parts of the Building including fittings and fixtures, which have or ought to have been painted or

varnished using paint or varnish which complies with the colour and quality specifications as directed by the Landlord.

- (iii) Without limiting the generality of clause 26.2(k)(ii) above, the Tenant shall repaint or revarnish, as applicable, all:
  - (1) previously painted or varnished walls, ceilings, columns and partitions;
  - (2) doors, door frames, window frames and skirtings;
  - (3) fixtures and fittings and areas behind those fixtures and fittings;
  - (4) concrete floors;
  - (5) external signs; and
  - (6) any other item or surface within or around the Premises as directed by the Landlord.
- (iv) All painting carried out by the Tenant must be done by a qualified registered painter.
- (v) If the Tenant carries out the repainting of the Premises before the Tenant has completed the Tenant's other obligations under clause 26.2(a) to clause 26.2(j), then the Landlord may request that the Tenant redo some or all of the repainting if, in the Landlord's opinion, the finish to the painting has been adversely affected by the other works carried out by the Tenant.

**(m) Lawns, Gardens & Reticulation**

The Tenant shall:

- (i) mow and remove all weeds from the lawned areas on the Land;
- (ii) prune and trim all vegetation and remove all weeds from the garden beds and other landscaped areas on the Land;
- (iii) service all reticulation piping, plant and equipment to ensure that it is in working order; and
- (iv) repair or replace any reticulation piping, plant and equipment which is damaged or broken.

**26.3 All Works To Be Completed To Landlord's Satisfaction**

The Tenant shall not be deemed to have discharged its obligations under clause 26.1 and clause 26.2 above until the Landlord provides the Tenant with notice in writing that all of the Tenant's yielding up obligations have been completed.

#### **26.4 Landlord's Right To Complete Reinstatement Works**

- (a) If:
- (i) the Tenant fails to carry out any or all of the items of reinstatement works required by clause 26.1 and clause 26.2;
  - (ii) the Tenant has failed to carry out any or all of the items of reinstatement works required by clause 26.1 and clause 26.2 to a standard that is reasonably satisfactory to the Landlord; or
  - (iii) in the Landlord's opinion, the Tenant has repudiated the Tenant's obligations to carry out any or all of the items of reinstatement works required by clause 26.1 and clause 26.2,

then the Landlord may, at the Landlord's discretion and at the cost of the Tenant, carry out any or all of the items of reinstatement works required by clause 26.1 and clause 26.2.

- (b) The Tenant shall pay:
- (i) any costs incurred by the Landlord under clause 26.4(a) above;
  - (ii) any costs of enforcement incurred by the Landlord, including the Landlord's legal costs on a full indemnity basis; and
  - (iii) interest at the rate prescribed under clause 13 on the above-mentioned amounts accruing on a daily basis,

on demand by the Landlord, whether that demand is made verbally or in writing.

#### **26.5 Tenant To Pay Liquidated Damages Until Yielding Up Is Complete**

Until such time that the Landlord provides the Tenant with notice in writing that the Tenant has completed the Tenant's yielding up obligations, the Tenant shall pay liquidated damages to the Landlord equal to the sum of:

- (a) the Rent;
- (b) the Tenant's contribution towards Variable Outgoings under clause 6; and
- (c) the Tenant's contribution towards Rates & Taxes under clause 7; and
- (d) the Tenant's contribution towards the Landlord's insurance premiums under clause 11,

payable at a daily rate from the day that the Tenant was required to vacate the Premises up to and including the day the Landlord issues the notice to the Tenant that the Tenant has completed the Tenant's yielding

up obligations or that the Landlord has completed the Tenant's yielding up obligations on the Tenant's behalf under clause 26.4.

## **26.6 Tenant's Fixtures & Fittings That Have Been Abandoned**

- (a) The Landlord may treat any goods, fittings or fixtures that the Tenant leaves on the Premises or the Land after vacating the Premises as abandoned and deal with it in any way it sees fit at the Tenant's expense.
- (b) Without limiting clause 26.6 above, the Landlord may:
  - (i) remove the Tenant's goods, fittings and fixtures under clause 26.4 and dispose of those items as rubbish at the Tenant's expense;
  - (ii) remove the Tenant's goods, fittings and fixtures under clause 26.4 and deliver those items to the Tenant at the Tenant's expense; or
  - (iii) keep the Tenant's goods, fittings and fixtures without the need to pay any consideration to the Tenant to acquire ownership of those items.

## **26.7 Return Of Keys**

- (a) On the day that the Tenant vacates the Premises, the Tenant shall return to the Landlord:
  - (i) the keys to the Premises, including any copies which the Tenant may have made;
  - (ii) access cards to the Premises;
  - (iii) any other devices used by the Tenant to access the Premises and the Building,

held by the Tenant, the Tenant's Employees and Agents and the Tenant's Subtenant and any other person that the Tenant has given them to.
- (b) If the Tenant returns the keys to the Premises to the Landlord before the Landlord has given written notice under clause 26.3 that the Tenant has completed the Tenant's yielding up obligations, then the Tenant's act of returning the keys:
  - (i) shall be deemed to be a repudiation of the Tenant's obligations to reinstate the Premises under clause 26.1 and clause 26.2;
  - (ii) shall not relieve the Tenant of its liability to carry out the Tenant's yielding up obligations or liability to pay Rent and the Other Monies Payable to the Landlord until the Tenant's yielding up obligations have been completed.

- (c) Any acceptance of keys by the Landlord or its agent will not operate as a waiver of any of the Tenant's obligations under this lease or as a surrender of the lease.
- (d) Failure to return of all of the keys to the Premises will entitle the Landlord to change all necessary locks and security at the cost and expense of the Tenant.

## **27. HOLDING OVER**

### **27.1 Monthly Tenancy**

If the Tenant continues to occupy the Premises after the Expiry Date with the Landlord's approval, it does so under a monthly tenancy:

- (a) which either party may terminate on one month's notice ending on any day; and
- (b) at a rent determined under clause 27.2.

### **27.2 Terms Of Monthly Tenancy**

Subject to clause 27.1, the monthly tenancy is on the same terms as this Lease except for:

- (a) the Rent which shall be reviewed under the market rent review provisions of clause 5.3 with the reviewed Rent commencing on the day after the expiration of the Term or Further Term as the case may be;
- (b) those changes which are necessary to make this lease appropriate for a monthly tenancy (but any bond or bank guarantee required under this lease may not be reduced); and
- (c) those changes which the Landlord requires as a condition of giving its approval to the holding over.

## **28. DAMAGE TO BUILDING & PREMISES**

### **28.1 Landlord To Elect Between Terminating Lease & Reinstating Premises**

- (a) If the Building is damaged so that:
  - (i) the Tenant's use of the Premises is substantially adversely affected; or
  - (ii) 50% or more of the lettable area of the Building is damaged or destroyed,

the Landlord agrees to give the Tenant a notice within a reasonable time after the damage occurs either:

- (1) terminating this lease on a date not less than two weeks after the date the Landlord gives the notice; or

- (2) stating that the Landlord intends to make the Premises fit for the Tenant's use.
- (b) This clause 28.1(a) does not oblige the Landlord to restore or reinstate the Premises or any other part of the Building.
- (c) If the Landlord terminates this lease pursuant to clause 28.1(a)(i), no compensation will be payable to the Tenant.

### **28.2 Reduction In Rent If Premises To Be Reinstated**

- (a) If the Landlord elects to re-instate the Premises, then the Landlord shall, within two weeks of issuing the Landlord's notice in clause 28.1(a), issue a further notice to the Tenant informing the Tenant of the reduction in the Rent payable by the Tenant due to the loss of amenity caused by the damage.
- (b) The Tenant shall pay the reduced Rent for the period from and including the date the damage occurs to but excluding the date the Premises are made fit for the Tenant's use.
- (c) If the Tenant does not agree with the Landlord's proposal for the reduction in Rent, then:
  - (i) the Landlord shall appoint a valuer to determine the reduced Rent; and
  - (ii) the Tenant shall to pay the reduced Rent at the rate proposed by the Landlord until the valuer issues its determination.
- (d) If the reduced Rent decided by the valuer is greater than the amount that the Tenant has paid to the Landlord pursuant to clause 28.2(c)(ii) above, then the Tenant shall pay the difference to the Landlord on the earlier of:
  - (i) within 14 days of the date that the valuer issues the determination of the reduced Rent; or
  - (ii) on the date that the next Rent instalment is due by the Tenant.
- (e) If the reduced Rent decided by the valuer is less than the amount that the Tenant has paid to the Landlord pursuant to clause 28.2(c)(ii) above, then the Landlord shall credit the difference from the invoice for the next Rent instalment.

### **28.3 Tenant May Terminate If Landlord Does Not Reinstat Premises**

If the Landlord does not make the Premises fit for the Tenant's use within a reasonable time after giving the notice that it intends to do so, the Tenant may give the Landlord a notice stating that the Tenant will terminate this lease if the Landlord does not make the Premises fit within a reasonable time after the Tenant gives the notice.

#### **28.4 Tenant May Not Terminate Or Reduce Rent If Tenant Caused Damage**

The Tenant may not:

- (a) terminate this Lease under clause 28.3; or
- (b) reduce payments under this clause 28.2,

if:

- (i) the damage is caused or contributed to by; or
- (ii) rights under an insurance policy in connection with the Building are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,

the act, negligence or default of the Tenant or of the Tenant's Employees and Agents or of the Tenant's Subtenants.

### **29. REDEVELOPMENT OF BUILDING & PREMISES**

#### **29.1 Right Of Landlord To Redevelop Building & Premises**

The Landlord may, at the Landlord's sole discretion, expand, redevelop, remodel, add to or alter the Land or the Building by subdivision, re-subdivision, construction of additional storeys or in any other manner whatsoever ("Redevelopment").

#### **29.2 Effect Of Redevelopment**

- (a) If:
  - (i) the Redevelopment has the effect of substantially inhibiting access to the Premises; or
  - (ii) the Landlord requires possession of the Premises to effect the Redevelopment,

then the Landlord may terminate this Lease by providing the Tenant with notice in writing of not less than 6 months ("the Termination Notice").

- (b) The Termination Notice shall be full and sufficient evidence of the fact of the Landlord's intention to carry out the Redevelopment.
- (c) At the expiration of the notice period in the Termination Notice:
  - (i) this Lease and any options to renew the Lease shall lapse and determine; and
  - (ii) the Tenant shall yield up the Premises in accordance with clause 26.1 and clause 26.2 above subject to any directions given to the Tenant by the Landlord.

### 29.3 Compensation For Tenant Fit Out

The Landlord agrees to indemnify the Tenant for the Tenant's original fit-out cost for the Premises on the following terms

- (a) if the Lease is in the first year of the Term, then the Landlord shall indemnify the Tenant for 80% of the Tenant's original fit-out cost for the Premises;
- (b) if the Lease is in the second year of the Term, then the Landlord shall indemnify the Tenant for 60% of the Tenant's original fit-out cost for the Premises;
- (c) if the Lease is in the third year of the Term, then the Landlord shall indemnify the Tenant for 40% of the Tenant's original fit-out cost for the Premises;
- (d) if the Lease is in the fourth year of the Term, then the Landlord shall indemnify the Tenant for 20% of the Tenant's original fit-out cost for the Premises; and
- (e) if the Lease is in the fifth year of the Term or beyond, then the Landlord shall not be required to indemnify the Tenant for any of the Tenant's original fit-out cost for the Premises,

PROVIDED THAT any money that the Landlord contributed towards the Tenant's original fit-out cost for the Premises shall be deducted from the amount of compensation payable by the Landlord to the Tenant.

## 30. RESUMPTIONS TO LAND & PREMISES

### 30.1 Resumption To Land Affecting Premises

- (a) If any government authority exercises a statutory power to resume the Land or any part of the Land or the Building, then this Lease shall not be affected unless the resumption would result in the Premises becoming wholly unfit for:
  - (i) occupation; or
  - (ii) the Tenant's use of the Premises.
- (b) The Landlord shall be solely entitled to any compensation payable by the government authority.

### 30.2 Tenant's Right To Terminate If Premises Unfit For Use Or Occupation

- (a) If the resumption would render the Premises unfit for occupation or use by the Tenant for the Tenant's Business, then the Tenant may terminate this Lease by notice in writing to the Landlord no earlier than the date that the government authority unconditionally commits to the resumption of the Land or part of the Land.

- (b) The termination of this Lease under clause 30.2(a) above shall not prejudice any right or claim that the Landlord may have against the Tenant with respect to any antecedent breaches by the Tenant.

## **31. DEFAULT**

### **31.1 Essential Terms**

- (a) The following provisions are deemed to be essential obligations of this Lease:
- (i) clause 4.1(a) (Rent)
  - (ii) clause 4.1(c) (No Set-Off)
  - (iii) clause 6.2 (Contributions for Variable Outgoings)
  - (iv) clause 7.2 or clause 7.3 (Contributions for Rates & Taxes);
  - (v) clause 8.2 or clause 8.3 (Payment of Service Charges)
  - (vi) clause 11.2 or clause 11.3 (Contributions towards Landlord's Insurance)
  - (vii) clause 11.7 (Prohibition Against Avoiding Landlord's Insurance)
  - (viii) clause 11.8 (Prohibition Against Increasing Landlord's Insurance Premiums)
  - (ix) clause 14.1 (Use Of Premises);
  - (x) clause 17.1 (Prohibition Against Alterations To Premises)
  - (xi) clause 18 (Repair & Maintenance of Premises)
  - (xii) clause 19 (Cleaning of Premises)
  - (xiii) clause 22.1 (Tenant's Obligation To Take Out Own Insurance)
  - (xiv) clause 24.1 (Prohibition Against Assigning & Subletting Premises)
  - (xv) clause 34.2 (Provision of Bank Guarantees)
  - (xvi) clause 35.2 (Provision of Security Bond).
- (b) Other obligations under this Lease may also be essential terms,

### **31.2 Landlord's Right To Terminate**

The Landlord may terminate this lease by giving the Tenant notice or by re-entry if:

- (a) the Rent, Outgoings, Rate & Taxes are unpaid for more than 7 days (whether a demand for payment has been made or not);
- (b) the Tenant breaches an essential term of this lease; or
- (c) the Tenant breaches any other term of this lease and, in the Landlord's reasonable opinion:
  - (i) the breach can be remedied, but the Tenant does not remedy it within 14 days after the Landlord gives the Tenant notice to remedy it; or
  - (ii) the breach cannot be remedied but the Landlord can be compensated and the Tenant does not pay the Landlord compensation for the breach in an amount to be determined by the Landlord acting reasonably within 14 days after the Landlord gives the Tenant notice to pay it;
- (d) the Tenant becomes Insolvent; or
- (e) a person who guarantees to the Landlord the Tenant's compliance with the Tenant's obligations in connection with this lease becomes Insolvent; or
- (f) without the Landlord's prior consent (which may not be unreasonably withheld), there is a change in Control of a corporation which guarantees to the Landlord the Tenant's compliance with the Tenant's obligations in connection with this lease, unless that corporation is a company which is listed on the Australian Stock Exchange; or
- (g) the Tenant desert or vacates the Premises; or
- (h) the Tenant commits any act or omission which constitutes a repudiation of this Lease.

### **31.3 Landlord's Right To Damages**

- (a) The Tenant shall compensate the Landlord for any breach of an essential term.
- (b) If the Landlord terminates the Lease under clause 31.2 above, the Landlord shall be entitled to recover:
  - (i) the total amount of annual Rent, Outgoings, Rates & Taxes payable under this Lease in respect of the entire balance of the Term less any monies payable to the Landlord for the balance of the Term if the Landlord re-lets the Premises; and
  - (ii) the Rent for any rent-free period (if any) granted to the Tenant at the commencement of this Lease, which rent-free period was granted in consideration of the Tenant agreeing to lease the Premises for the full term of this Lease.

- (c) The Landlord's right to damages is in addition to any other remedy or entitlement that the Landlord is entitled to, including the right to terminate the Lease.
- (d) The Landlord's right to damages shall not be affected or limited by any of the following:
  - (i) if the Tenant abandons or vacates the Premises;
  - (ii) if the landlord elects to re-enter the Premises or to terminate this Lease;
  - (iii) if the Landlord accepts the Tenant's repudiation; or
  - (iv) if the parties' conduct shall constitute a surrender of the Lease by operation of law.

#### **31.4 Acceptance Of Rent Or Other Acts Not A Waiver**

If the Landlord:

- (a) accepts rent or other money under this lease (before or after termination); or
- (b) does not exercise or delays exercising any right under this clause 31; or
- (c) gives any concession to the Tenant; or
- (d) attempts to mitigate its loss,

it is not a waiver of any breach or of the Landlord's rights under this lease. An attempt by the Landlord to mitigate its loss is not a surrender of this lease.

#### **31.5 Prior Breaches**

Expiry or termination of this Lease does not affect any rights in connection with a breach of this lease before then.

### **32. COSTS**

#### **32.1 Tenant's Liability For Costs**

- (a) In connection with this Lease and any document or matter in connection with it, the Tenant agrees to pay or reimburse the Landlord promptly for:
  - (i) the Landlord's Costs in connection with:
    - (1) negotiating, preparing, executing and, if applicable, stamping and registering this lease; and
    - (2) obtaining any consents the Landlord must obtain before giving approvals; and

- (3) considering requests for approvals;
  - (4) considering and negotiating, preparing, executing and, if applicable, stamping and registering documentation for any proposed dealing by the Tenant under clause 24; and
- (ii) the Landlord's Costs in connection with resolving any dispute or difference of opinion with the Tenant, including legal costs for procuring an opinion from the Landlord's solicitors;
  - (iii) the Landlord's Costs in connection with the Tenant's default, including enforcing rights (or considering doing so); and
  - (iv) if applicable, all stamp duty (including fines and penalties) and registration fees; and
  - (v) all Costs in Connection with works the Tenant carries out, including those incurred by the Landlord:
    - (1) in considering, approving and supervising the works; and
    - (2) in modifying or varying the Building because of the works.
- (b) The Tenant agrees to pay amounts due under this clause on demand from the Landlord.

### **32.2 Items Included In Costs**

The Tenant agrees that:

- (a) the Costs referred to in clause 32.1 and the liability or loss or Costs referred to in clause 23.1 include legal Costs, on whichever is the higher of a full indemnity basis or solicitor and own client basis; and
- (b) the Costs referred to in clause 32.1 include those paid, or that the Landlord reasonably believes are payable, to persons engaged by the Landlord in connection with this lease (such as consultants).

## **33. PERSONAL GUARANTEE BY GUARANTOR**

### **33.1 Application Of Provisions**

Clauses 33.2 to 33.5 do not apply if "Not applicable" appears in Item 24 of Schedule 1.

### **33.2 Grant Of Guarantee**

In consideration of the Landlord executing this Lease, the Guarantor unconditionally and irrevocably:

- (a) guarantees to the Landlord:
  - (i) the due and punctual payment to the Landlord of:

- (1) the Rent (as varied and reviewed pursuant to this Lease); and
  - (2) all other monies which become due and payable by the Tenant to the Landlord directly or indirectly pursuant to the terms of this Lease;
- (ii) the due and punctual performance by the Tenant of the Tenant's covenants and obligations,

and

- (b) indemnifies the Landlord and agrees to keep the Landlord indemnified from and against all losses, damages, costs and expenses suffered or incurred by the Landlord by reason of any breach, non-performance or non-observance by the Tenant of the Tenant's covenants and obligations.

### **33.3 Further Covenants By Guarantor**

The Guarantor further covenants and agrees that:

- (a) this guarantee and indemnity shall be a continuing guarantee and indemnity and shall not be considered wholly or partially discharged by the payment at any time or from time to time hereafter of any of the Rent or other sums of money due and payable by the Tenant to the Landlord under this Lease or by the settlement on account or any other matter or thing whatsoever;
- (b) this guarantee and indemnity shall:
  - (i) continue for the duration of this Lease and for any extension, renewal of the Lease and any holding over under this Lease and shall extend to the acts and defaults of the Tenant during such duration, extension, renewal or holding over; and
  - (ii) not be discharged until the Tenant has completed the Tenant's yielding up obligations under clause 26.1 and clause 26.2.
- (c) any payment made to the Landlord that is later avoided by any statutory provision shall be deemed not to have discharged the Guarantor's liability and, in any such event, the Landlord and the Guarantor shall be restored to the rights which each respectively would have had if the payment had not been made;
- (d) the Landlord may proceed against the Guarantor without first having proceeded against the Tenant without affecting the liability of the Guarantor as herein provided;
- (e) the Guarantor's liability shall not be abrogated, prejudiced or affected by:
  - (i) any granting of time, credit or any indulgence or concession by the Landlord to the Tenant;

- (ii) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities by the Tenant;
- (iii) any act of omission or neglect; or
- (iv) any other dealing, matter or thing,

which but for this provision could or might operate to abrogate or prejudice or affect this guarantee on the basis that it is the intention of the parties that the guarantee and obligations of the Guarantor shall be absolute and unconditional in any and all circumstances.

- (f) this guarantee shall not and will not be affected by any laches, acts, omissions or mistakes by the Landlord;
- (g) if the Tenant becomes Insolvent:
  - (i) the Guarantor shall not be entitled to prove or claim against the trustee in bankruptcy, liquidator, receiver, receiver and manager or administrator in competition with the Landlord so as to diminish any dividend or payment which the Landlord may receive;
  - (ii) the Guarantor may only prove or claim for and on behalf of the Landlord if so authorised by the Landlord and any such proof or claim by or on behalf of the Landlord shall not prejudice or affect the Landlord's right to recover from the Guarantor any payment of Rent or other monies payable by the Tenant under this Lease;
  - (iii) the Guarantor authorises the Landlord to prove for all monies which the Guarantor has paid under this Lease and retain or to appropriate any amounts received by the Landlord at the Landlord's discretion; and
  - (iv) the Guarantor indemnifies the landlord and agrees to keep the Landlord indemnified against all losses, damages, costs and expenses suffered or incurred by the Landlord by reason of the Tenant becoming Insolvent including:
    - (1) any amounts paid to the Landlord by the Tenant that the Landlord may subsequently be obliged to pay out on the grounds that the payment was a preference; and
    - (2) the amount of any interest that does not accrue from the date of the Insolvency and is not recoverable by reason of the happening of the Insolvency that would otherwise have accrued or have been recoverable from the Guarantor under this guarantee;
- (h) the Guarantor's liability shall not be affected by:
  - (i) any collateral rights or obligations which may exist between the Guarantor and the Tenant;

- (ii) any variation or avoidance of the collateral rights or obligations which may exist between the Guarantor and the Tenant; or
  - (iii) any other security that the Landlord may hold or hereafter take from the Tenant or the Guarantor or any other person in respect of this guarantee and indemnity.
- (i) this guarantee and indemnity is to continue and be binding upon the Guarantor notwithstanding:
- (i) the death or Insolvency of the Tenant or the Guarantor;
  - (ii) any change or alteration in the constitution of the Landlord, the Tenant or the Guarantor;
  - (iii) the happening of any matter or thing which, under the law relating to sureties would but for this provision, have the effect of releasing the Guarantor from this guarantee or of discharging this guarantee;
  - (iv) any part of this Lease being severed;
  - (v) any amendment or variation to the terms of this Lease;
  - (vi) any sub-lease of the Premises or any part;
  - (vii) any security taken by the Landlord is or becomes void or defective; or
  - (viii) any termination, repudiation or disclaimer of this Lease by a trustee in bankruptcy, liquidator, receiver, receiver and manager or administrator as a result of the Tenant entering into bankruptcy, liquidation, administration, scheme or arrangement;
- (j) if the Guarantor becomes insolvent, the Landlord shall be entitled to prove for the total indebtedness of the Tenant under this Lease for the duration of the Term notwithstanding that the Rent and other sums payable under this Lease are not due and payable at the date that the Guarantor enter into bankruptcy, liquidation, administration, scheme or arrangement; and
- (k) the Guarantor waives in favour of the Landlord all rights that the Guarantor has against the Tenant.

#### **33.4 Assignment Of Guarantee**

If the benefit of this Lease is transferred or assigned by the Landlord to any other person, the benefit of this guarantee and indemnity extends to and is taken to be assigned and enforceable by the Landlord's transferee or assignee.

### **33.5 Legal Or Equitable Tenancy**

The reference to "this Lease" in clause 33 is a reference to any tenancy or right, whether legal, equitable or otherwise, under which the Tenant occupies or is entitled to occupy the Premises including, but not limited to, a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

## **34. BANK GUARANTEE**

### **34.1 Application Of Provisions**

Clauses 34.2 to 34.6 do not apply if "Not applicable" appears in Item 25 of Schedule 1.

### **34.2 Delivery To Landlord**

On or before the Commencement Date, the Tenant agrees to deliver the Bank Guarantee to the Landlord for the amount expressed in Item 25 of Schedule 1.

### **34.3 Landlord May Call On Bank Guarantee**

If the Tenant does not comply with any of its obligations under this lease, whether this lease is registered or not, then the Landlord may call on the Bank Guarantee without notice to the Tenant.

### **34.4 Replacement Bank Guarantee**

If the Landlord calls on the Bank Guarantee or the Rent is increased, then no later than seven days after the Landlord gives the Tenant a notice asking for it, the Tenant agrees to deliver to the Landlord a replacement or additional Bank Guarantee so that the amount guaranteed is the amount in Item 25 of Schedule 1.

### **34.5 Return Of Bank Guarantee**

The Landlord agrees to return the Bank guarantee on the later of:

- (a) the date the Tenant has complied with all of its obligations under this lease, including under clause 26.1 and clause 26.2; and
- (b) one month after the Expiry Date.

### **34.6 Payment Not Demanded**

If the issuer of the Bank Guarantee makes a payment under it, but the Landlord did not call for that payment, then:

- (a) the payment is to be treated as a Bond; and
- (b) clause 35.3 to clause 35.6 inclusive apply to the payment (except that "or the Rent is increased" is taken to be deleted from clause 35.5, despite "Not applicable" appearing in Item 26 of Schedule 1; and

- (c) clause 35.3 to clause 35.6 inclusive continue to apply to the Bank Guarantee to the extent that any amount remains payable under it.

## **35. BOND**

### **35.1 Application Of Provisions**

Clause 35.2 to clause 35.6 do not apply if "Not applicable" appears in Item 26 of Schedule 1.

### **35.2 Payment Of Bond**

On or before the Commencement Date, the Tenant agrees to pay the Bond to the Landlord by unendorsed bank cheque.

### **35.3 Bond Is Landlord's Property**

When the Landlord receives the Bond it becomes the Landlord's property. The only obligation the Landlord has towards the Tenant in connection with the Bond is to make the payment referred to in clause 35.6.

### **35.4 Landlord May Draw On Bond**

If the Tenant does not comply with any of its obligations under this lease, whether this lease is registered or not, then the Landlord may draw on the Bond without notice to the Tenant.

### **35.5 Tenant To Top Up Bond**

If the Landlord draws on the Bond or the Rent is increased and the Landlord gives the Tenant a notice stating the amount required to top up the Bond, then no later than seven days after the Landlord gives the notice the Tenant agrees to pay that amount to the Landlord by unendorsed bank cheque.

### **35.6 Repayment**

When this lease expires or is terminated, the Landlord may use the Bond for outstanding amounts payable by the Tenant under this lease and then agrees to pay to the Tenant an amount equivalent to any unused part of the Bond.

## **36. NOTICES AND OTHER COMMUNICATIONS**

### **36.1 Form**

Unless expressly stated otherwise in this lease, all notices, certificates, consents, approvals, waivers and other communications in connection with this lease must be in writing, signed by:

- (a) the sender (if an individual);
- (b) the director or secretary of the send (if a company);
- (c) a person who has been authorised in writing to act on behalf of the sender; or

(d) the solicitor of the sender,

and marked for the attention of the person identified in the Item 27 of Schedule 1 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **36.2 Delivery**

Communications may be:

- (a) left at the address set out or referred to in Item 27 of Schedule 1; or
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in Item 27 of Schedule 1; or
- (c) sent by fax to the fax number set out or referred to in Item 27 of Schedule 1; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed fax number, then communications must be to that address or number.

### **36.3 When Effective**

Communications take effect from the time they are received or taken to be received under clause 36.4 (whichever happens first) unless a later time is specified.

### **36.4 When Taken To Be Received**

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

### **36.5 Receipt Outside Business Hours**

Despite clauses 35.3 and 35.4, if communications are received or taken to be received under clause 35.4 after 5.00pm-in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **37. TRUSTEE PROVISIONS**

### **37.1 Application Of Provisions**

Clause 37.2 to clause 37.4 below only apply if the Tenant is signing this Lease in its capacity as trustee for a trust.

### 37.2 Definitions

In this clause and elsewhere in the Lease:

- (a) "Trust Deed" means any document relating to the constitution, creation or formation of the Trust as varied from time to time;
- (b) "Trust Fund" means the trust fund comprising the property held by the Tenant as trustee under the Trust Deed;
- (c) "Trust" means any disclosed or undisclosed trust on behalf of which the Tenant enters into this Lease as trustee; and
- (d) references to the Tenant include:
  - (i) the Tenant in its capacity as trustee of the Trust;
  - (ii) the Tenant's successors as trustee of the Trust; and
  - (iii) any co-trustee of the Trust,

save to the extent that such an interpretation would involve the Landlord knowingly assisting a breach of trust.

### 37.3 Tenant As Trustee

- (a) The Tenant acknowledges that this Lease is binding upon the Tenant:
  - (i) in the Tenant's own capacity; and
  - (ii) in the Tenant's capacity as trustee of the Trust.
- (b) The Tenant agrees to cause any successor of the Tenant as trustee of the Trust to execute such documents as the Landlord may require to ensure that this Lease is binding upon that successor.

### 37.4 Trustee Warranties

The Tenant warrants that:

- (a) the Tenant is the sole trustee of the Trust and no action has been taken to remove or replace the Tenant as trustee;
- (b) if the Trust has been disclosed:
  - (i) full particulars of the terms of the trust have been disclosed to the Landlord prior to the execution of this Lease;
  - (ii) copies of the Trust Deed and any other documents relating to the Trust have been delivered to the Landlord and are true and complete documents;
- (c) the Tenant has the power under the trust Deed to execute and perform the Tenant's obligations under this Lease and all necessary action has been taken to authorise the execution and performance

of this Lease under the trust Deed and, where the Tenant is a company, the Tenant's Memorandum and Articles of Association;

- (d) this Lease is executed as part of the due and proper administration of the Trust and is for the benefit of the beneficiaries of the Trust;
- (e) the Tenant has a right to be fully indemnified out of the Trust Fund and no action has been taken to restrict or limit that right;
- (f) the Tenant is not in default under the Trust Deed;
- (g) no vesting date for the Trust has been determined by any act of the Tenant;
- (h) the Tenant has complied with all fiduciary obligations directly or indirectly imposed on the Tenant;
- (i) each of the above warranties will remain true during the term of this Lease;
- (j) except with the Landlord's prior written consent:
  - (i) the Trust Deed shall not be varied;
  - (ii) the Tenant shall not retire as trustee of the Trust;
  - (iii) no new or additional trustee shall be appointed; or
  - (iv) the Tenant shall not default in its duties as trustee of the Trust;
- (k) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed.

## **38. MISCELLANEOUS**

### **38.1 Special Conditions**

- (a) The special terms and conditions (if any) set out in Item 29 of Schedule 1 ("Special Conditions") shall be deemed to be incorporated in this Lease as if fully set out herein.
- (b) If there is any inconsistency with the terms, covenants and conditions of this Lease and the Special Conditions, then the Special Conditions shall prevail.

### **38.2 Time Is Of The Essence**

Time shall be of the essence of this Lease in all respects.

### **38.3 Landlord's Discretion In Exercising Rights**

- (a) The Landlord may exercise a right or remedy or give or refuse its approval or consent in any way it considers appropriate (including by imposing conditions), unless this lease expressly states otherwise.

- (b) If the Landlord does not exercise a right or remedy fully or at a given time, the Landlord may still exercise it later.
- (c) The Landlord is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this lease.

#### **38.4 Approvals & Consents**

By giving its approval or consent the Landlord does not make or give any warranty or representation as to any circumstance relating to the subject matter of the approval or consent.

#### **38.5 Rights & Obligations Are Unaffected**

Rights given to the Landlord under this lease and the Tenant's liabilities under it are not affected by anything which might otherwise affect them by law.

#### **38.6 Variation & Waiver**

- (a) Subject to clause 38.6(b) and clause 38.6(c) below, a provision of this lease, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- (b) If there are changes to the law affecting leases:
  - (i) the Landlord shall have the absolute right to amend this lease so that it may conform to the new law; and
  - (ii) the Landlord shall give the Tenant one month's written notice of the Landlord's intent to amend the lease to conform to the new laws.
- (c) IF:
  - (i) clause 6;
  - (ii) clause 7; and
  - (iii) clause 11,

apply to this lease, THEN the Landlord may, upon serving not less than 30 days' written notice on the Tenant, convert the nature of this lease to a gross lease to the effect that from the expiration of the notice ("the Variation Date"):

- (1) the Rent due and payable by the Tenant from the Variation Date shall be calculated in accordance with the following formula:

$$\mathbf{GR = X + Y}$$

Where:

**GR** = the gross annual rent payable from and including the Variation Date;

**X** = the annual rent payable on the day immediately prior to the Variation Date; and

**Y** = the aggregate amount payable under clause 6, clause 7 and clause 11 of this lease for the 12 months immediately preceding the Variation Date.

- (2) the Rent due and payable by the Tenant from the Variation Date reviewed on the dates and in the manner specified by clause 5;
- (3) Item 14, Item 15 and Item 17 of Schedule 1 shall be amended to "Not Applicable".

### **38.7 Indemnities**

The indemnities in this lease are continuing obligations, independent from the Tenant's other obligations under this lease and continue after this lease expires or is terminated. It is not necessary for the Landlord to incur expense or make payment before enforcing a right of indemnity under this lease.

### **38.8 Construction**

- (a) The terms and conditions of this lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions, whether in respect of the Premises or otherwise, shall be deemed to be implied or arise between the parties by way of any collateral or other agreement.
- (b) No rule of construction applies to the disadvantage of the Landlord because the Landlord was responsible for the preparation of, or seeks to rely on, this lease or any part of it.
- (c) IF any provision of this lease:
  - (i) is declared void; or
  - (ii) if effective, would render either:
    - (1) this lease; or
    - (2) any provision in this lease,

void or unenforceable

THEN that provision shall have no force or effect whatsoever and shall be ineffective and severed from this lease to the extent necessary to avoid that consequence without affecting the validity and enforceability of this lease.

- (d) The Landlord does not in any way or for any purpose become a partner of the Tenant in conduct of the Tenant's Business or otherwise or joint venturer or a member of a joint enterprise with the Tenant.

### 38.9 Exclusion Of Statutory Provisions

- (a) In this lease:
  - (i) sections 80 and 82 of the Property Law Act 1969 and the covenants, powers and provisions implied in leases by sections 92, 93 and 94 of the Transfer of Land Act 1893 do not apply; and
  - (ii) words used in any of the form of words in column one of the twelfth schedule of the Transfer of Land Act 1893 do not imply a covenant under section 94 of that Act.
- (b) The application to this lease of any present or future moratorium or Act (State or Federal) having the effect of:
  - (i) extending the Term;
  - (ii) reducing or postponing the payment of rentals hereby reserved or any part thereof;
  - (iii) otherwise affecting the operation of the covenants, conditions and stipulations on the part of the Tenant to be performed and/or observed;
  - (iv) providing any compensation rights or privileges at the expense of the Landlord in favour of the Tenant,

is hereby expressly excluded and negated so far as such exclusion and negation is lawful.

### 38.10 Warranties & Undertakings

The Tenant warrants that it:

- (a) has relied only on its own enquiries in connection with this lease and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf; and
- (b) was made aware of the Rules then current when signing this lease.

The Tenant agrees to comply on time with undertakings given by or on behalf of the Tenant in connection with this lease.

### 38.11 Applicable Law

This Lease shall be governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of its Courts.

### 38.12 Inconsistent law

To the extent permitted by law, this lease prevails to the extent it is inconsistent with any law.

### 38.13 Supervising Legislation

Any present or future legislation which operates to vary the obligations of the Tenant in connection with this lease with the result that the Landlord's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### 38.14 Counterparts

This lease may consist of a number of copies, each signed by one or more parties to this lease. If so, the signed copies are treated as making up the one document.

### 38.15 Serving Documents In Court Proceedings

Without preventing any other method of service, any document in a court action may be served on a party by being delivered or left at that party's address for service of notice under clause 36.

### 38.16 Caveats

- (a) The Tenant may not:
  - (i) lodge a caveat on the title to the Land, except a subject to claim caveat noting the Tenant's interest under this lease (if this lease is not registered but must be to ensure that it is enforceable against the Landlord's successors in title); or
  - (ii) allow a caveat lodged by a person claiming through the Tenant to remain on that title.
- (b) If the Tenant lodges a caveat permitted by this clause, the Tenant agrees to do everything necessary to permit registration of any dealing if its rights under this lease are protected.
- (c) The Tenant agrees to withdraw that caveat on the earliest of registration, the transfer or assignment, and expiry or termination of this lease.
- (d) The Tenant agrees, upon request of the Landlord, to:
  - (i) subordinate its lease to any mortgage of the Landlord's interest in the Land so as to give such mortgage (whether under the *Transfer of Land Act 1893* or otherwise) priority over this lease;
  - (ii) withdraw its caveat within 10 business days of receiving notice from the Landlord of the Landlord's request to subordinate the lease to the mortgage,

PROVIDED THAT the mortgagee named in the mortgage agrees in writing for the benefit of the Tenant that, as long as the Tenant is not in default under this lease:

- (1) this lease nor any of the rights of the Tenant under this lease shall be terminated or modified (except as provided for in this lease);
  - (2) the Tenant's quiet enjoyment and possession of the Premises shall not be disturbed or interfered with by any sale, action or proceeding under the mortgage.
- (e) The Tenant irrevocably appoints the Landlord and each of the Landlord's directors jointly and severally as attorney of the Tenant to execute any documentation required to withdraw the Tenant's caveat to permit the subordination of this lease to the mortgage.

### **38.17 Consent To Use & Disclose Personal Information**

Each party consents to its Personal Information being:

- (a) used by the Landlord in connection with the Landlord's business, including in connection with:
  - (i) the purchase, development, sale and leasing of land, including the Land;
  - (ii) the proposed sale of an interest in the Landlord's business;
  - (iii) raising finance;
  - (iv) the management of the Land and the Landlord's portfolio of land;
  - (v) internal reporting;
  - (vi) reporting to any Related Body Corporate, financier or advisor of the Landlord;
  - (vii) direct marketing (such as tenants' newsletters);
  - (viii) the management of this lease; and
  - (ix) any use specified in any privacy statement; and
- (b) disclosed by the Landlord:
  - (i) if required or authorised by law; or
  - (ii) to anyone or more of the following:
    - (1) any Related Body Corporate, financier or advisor of the Landlord;
    - (2) any person in connection with a proposed sale of an interest in the Landlord's business, including purchasers of the Land;
    - (3) any agent engaged by the Landlord and notified to the party;

- (4) any contractor or service provider involved in the management or maintenance of the Building or any works in connection with the Building;
- (5) any head landlord or concurrent lessee;
- (6) the owners corporation and, if relevant, the building management committee for the Building,

any of whom may be located outside Australia; or

- (iii) if the party consents.

**SCHEDULE 1**  
**PARTICULARS OF LEASE**

Item 1	<b>Landlord</b> [REDACTED]						
Item 2	<b>Tenant</b> <b>RIVER NOMINESS PTY LTD [ACN 109 054 239] c/- PKF</b> Perth, Level 8, 905 Hay Street, Perth, Western Australia as trustee for the <b>SP Unit Trust</b> , trading as <b>Pure Earth</b>						
Item 3	<b>Land &amp; Building</b> 324 Horton Road, Woottating, Western Australia and being more particularly described as Lot 13 on Diagram 87525 and being the whole of the land described in Certificate of Title Volume 2026 Folio 553.						
Item 4	<b>Premises</b> The whole of the Land and Building as described in Schedule 2.						
Item 5	<b>Term Of Lease</b> 10 years.						
Item 6	<b>Commencement Date</b> <u>15-€</u> day of <u>€C..J</u> <u>20</u> <u>€V..</u>						
Item 7	<b>Expiry Date</b> :SD"-/' day of <u>V'-t..nQ</u> <u>203</u>						
Item 8 Clause 3.2	<b>Further Term</b> Not Applicable.						
Item 9 Clause 32.(b)	<b>Period For Exercise Of Option To Renew Lease</b> Not Applicable.						
Item 10 Clause 4	<b>Rent</b> [REDACTED] per annum (plus GST) payable in monthly instalments of [REDACTED] (plus GST) on the first calendar day of each month.						
Item 11 Clause 5	<b>Rent Reviews</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><i>Date of Review</i></th> <th style="text-align: right;"><i>Type Of Review</i></th> </tr> </thead> <tbody> <tr> <td>30 June 2025</td> <td style="text-align: right;">Market</td> </tr> <tr> <td>30 June 2026</td> <td style="text-align: right;">Fixed</td> </tr> </tbody> </table>	<i>Date of Review</i>	<i>Type Of Review</i>	30 June 2025	Market	30 June 2026	Fixed
<i>Date of Review</i>	<i>Type Of Review</i>						
30 June 2025	Market						
30 June 2026	Fixed						

	30 June 2027	Fixed
	30 June 2028	Market
	30 June 2029	Fixed
	30 June 2030	Fixed
	30 June 2031	Market
	30 June 2032	Fixed
	30 June 2033	Fixed
	30 June 2034	Market
<b>Item 12</b> Clause 5.1(a)(ii)	<b>Margin On CPI Rate</b> 0%.	
<b>Item 13</b> Clause 5.2	<b>Fixed Rent Review Percentage</b> 4%.	
<b>Item 14</b> Clause 6	<b>Tenant's Contribution Towards Variable Outgoings</b> Yes Monthly Contributions payable in advance on the first calendar day of each month. Tenant's Percentage of Outgoings: 100%.	
<b>Item 15</b> Clause 7	<b>Tenant's Contribution For Rates &amp; Taxes</b> Yes	
<b>Item 16</b> Clause 8	<b>Tenant's Contribution For Services Charges</b> Yes	
<b>Item 17</b> Clause 11	<b>Tenant's Contribution For Landlord's Insurance Premiums</b> Yes	
<b>Item 18</b> Clause 14.1	<b>Permitted Use Of Premises</b> Waste Processing. Business Name: Pure Earth.	
<b>Item 19</b> Clause 14.2	<b>Trading / Operating Hours</b> 7am to 5pm (weekdays) 8am to 4pm (Saturday) 8am to 4pm (Sunday).	
<b>Item 20</b> Clause 13.1	<b>Interest Rate</b> 5%.	

<p><b>Item 21</b> Clause 22.1</p>	<p><b>Tenant's Insurance</b></p> <ol style="list-style-type: none"> <li>1. public liability insurance for at least \$ [REDACTED] or as varied by notice from the Landlord to the Tenant;</li> <li>2. plate glass insurance;</li> <li>3. workers' compensation insurance;</li> <li>4. loss of profits insurance;</li> <li>5. insurance for the Tenant's Property for burglary, theft and water damage; and</li> <li>6. any other type of insurance that is required by law or which, in the Landlord's reasonable opinion, a prudent tenant would take out in connection with the Tenant's Business on the Premises.</li> </ol>
<p><b>Item 22</b> Clause 20.1</p>	<p><b>Dates For Redecoration &amp; Refurbishment</b> Not Applicable.</p>
<p><b>Item 23</b> Clause 20.2</p>	<p><b>Dates For Repainting Premises</b> Not Applicable.</p>
<p><b>Item 24</b> Clause 33</p>	<p><b>Guarantor</b> Not Applicable.</p>
<p><b>Item 25</b> Clause 34</p>	<p><b>Bank Guarantee</b> Not Applicable.</p>
<p><b>Item 26</b> Clause 35</p>	<p><b>Bond</b> Not Applicable.</p>
<p><b>Item 27</b> Clause 36</p>	<p><b>Landlord's Address of Service</b></p> <p>[REDACTED]</p> <p>Property Trust c/- PKF Perth Level 8, 905 Hay Street Perth WA 6000</p> <p>email: <a href="mailto:paul@purearth.com.au">paul@purearth.com.au</a></p> <p><b>Tenant's Address of Service</b></p> <p>River Nominees Pty Ltd as trustee for the SP Unit Trust c/- PKF Perth Level 8, 905 Hay Street Perth WA 6000</p> <p>email: <a href="mailto:paul@purearth.com.au">paul@purearth.com.au</a></p>
<p><b>Item 28</b> Clause 21</p>	<p><b>Tenant's Signage Rights</b> No Restriction..</p>
<p><b>Item 29</b></p>	<p><b>Special Conditions</b></p>

Clause 38.1	None.
<b>Item 30</b>	<b>Warranties By Landlord</b>
Clause 14.3	Not Applicable.

SCHEDULE 2  
FLOOR PLAN



**EXECUTED BY THE PARTIES AS A DEED**

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[Redacted signature block]

Signed for and on behalf of )  
**RIVER NOMINEES PTY LTD** )  
**[ACN 109 054 239]** )  
as trustee for the **SP Unit Trust** )  
by authority of its directors and pursuant to )  
section 127 of the *Corporations Act 2001* by: )

*Aarif*

Director

**SEAN THADEUS CURTIS**

Full Name

Director

Full Name