



# Woorabinda Aboriginal Shire Council

|                      |                         |                   |                |
|----------------------|-------------------------|-------------------|----------------|
| Policy Name          | Property Leasing Policy |                   |                |
| Policy Number        | S010                    | Approval Date     | 28 May 2025    |
| Policy Category      | Statutory Policy        | Resolution Number | OM 5 2025 - 72 |
| Policy Owner         | Chief Executive Officer | Review Date       | Annually       |
| Policy Maintained by | CEO                     |                   |                |
| Version              | V1                      | Superseded        | N/A            |

**NOTE:** Council regularly reviews and updates its policies and procedures. The latest controlled version can be obtained from the Policy Register by contacting Council.

## 1. INTRODUCTION

### 1.1 Policy Statement

Woorabinda Aboriginal Shire Council is committed to supporting strong and connected communities through providing access to Council owned or managed land and facilities for the delivery of services and opportunities which contribute to building safe, strong and self-reliant communities.

## 2. POLICY

### 2.1 Policy Objective

Is to guide both Council, staff and prospective tenants to ensure legislative process and procedural compliance, whilst ensuring the consistent, fair and impartial approach to the allocation and occupation of Council owned and managed properties.

- To maximise the community benefit and use of Council owned and controlled land and facilities
- Ensuring equitable, needs based distribution of facilities and land
- Ensuring consistent tenure conditions
- Defining responsibilities and costs associate with the construction, maintenance and management of Council properties
- Recognising charitable organisations role in community and providing adjusted leasing arrangement in extenuating circumstances for consideration by Woorabinda Aboriginal Shire Council.

- To provide adequate housing to assist in the recruitment and retention of necessary and professional staff in recognition of the geographic factor is a significant determinate to accommodation needs.

## 2.2 Policy Application

Woorabinda Aboriginal Shire Council Policy Framework sets out the interrelationships of adopted governance and operational actions to comply with Legislative requirements at a Local, State, Commonwealth and International level. It includes rules, guidelines, practice, procedures and administrative actions.

## 2.3 Related Practice Documents

- Commercial Tenancy – Attachment A
- Community Services Tenancy – Attachment B
- Staff Residential Tenancy – Attachment C

## 3. REFERENCE DOCUMENTS

| REFERENCE DOCUMENTS   |
|---|
| <i>Local Government Act 2009</i>                                    |
| <i>Local Government Regulation 2012</i>                             |
| <i>Qld Retail Shop Leases Act 1994</i>                              |
| <i>Qld Residential Tenancies and Rooming Accommodation Act 2008</i> |
| <i>Qld Property Law Act 1974</i>                                    |
| ASSOCIATED DOCUMENTS  |
| <i>WASC Debt Management Policy</i>                                  |
| <i>Leasing and Tenancy Agreements</i>                               |

# Policy into Practice Document

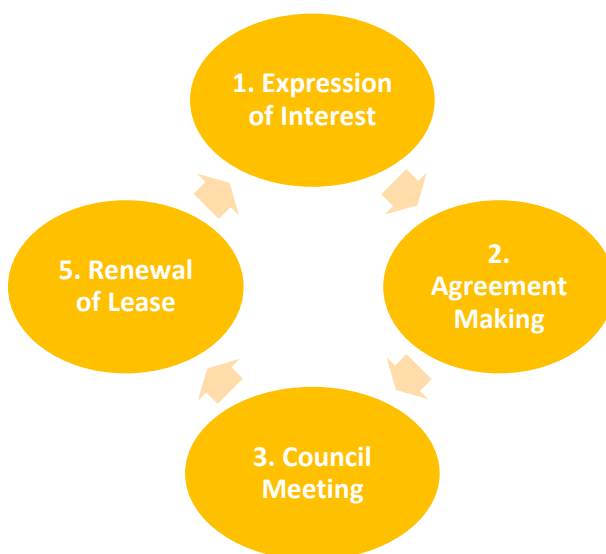
Corporate Policy Number: CP002-A-23

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## Commercial Tenancy – Attachment A

### Application

Woorabinda Aboriginal Shire Council provides leasing agreements to commercial entities to undertake commercial activities



### Functions

#### 1. Expression of Interest

Should a premises be vacant, an Expression of Interest will be sought for commercial tenants, comprising:

- 1.1 A Public Notice for Expression of Interest is approved and prepared for distribution through flyers, emails, social media and advertisement in the community newsletter/s.
- 1.2 On receipt of an Expression of Interest an inspection of premises to assess fit for purpose, fixed assets and the condition of the premises.
- 1.3 CEO refers request for Commercial Leasing to the Council Property Leasing Portfolio Panel for consideration and assessment to be prepared for Council consideration.
- 1.4 CEO informs organisations that 'Agreement' to be finalized for Council approval through resolution at a meeting. In some instances more than one (1) organisation may be asked to progress to 'Agreement Making'

## **2. Agreement Making**

Initial draft will be provided to organisations for consideration and further negotiation of specific terms and conditions.

- 2.1 Steps are taken to finalise draft agreement to standard inclusions and/or additional conditions as recommended by the Council Property Portfolio Panel.
- 2.2 The draft Agreement to be negotiated with organisations to progress to acceptance of terms and conditions.
- 2.3 Once agreed by all parties the Final Agreement to be tabled at a Council Meeting, or meeting of Trustees under s82 of the Local Government Act 2009, for consideration and approval.

## **3. Council Meeting**

Commercial Leases will be subject to appropriate conditions as imposed by a resolution of Council, utilising the Standard Terms of Leasing Agreement in Attachment D.

- 3.1 Preparation of a Council Briefing Report will include premise condition report, draft tenancy agreement and business profile.
- 3.2 Lease fees or will be calculated on the recommendations of a commercial valuer, comprising as a minimum:
  - 3.2.1 analysis of market value;
  - 3.2.2 rate per square metre;
  - 3.2.3 fixtures and features; and
  - 3.2.4 premise condition.
- 3.3 As resolved by Council the successful organisation will be issued an offer to Lease Premises.
- 3.4 Once the offer has been accepted and executed by all parties, Agreements to be recorded on the Property Leasing Register to be monitored by Corporate Services.

### **Further Reference:**

[Qld Law Society, 'A Legal Guide to Business Leases'](#)

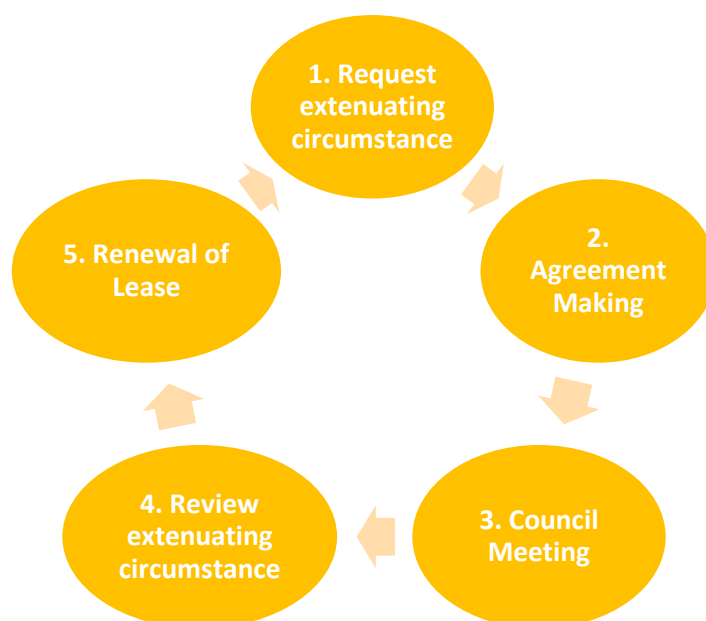
# Policy into Practice Document

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## Community Tenancy – Attachment B

### Application

Woorabinda Aboriginal Shire Council recognize the important role that Aboriginal Community Controlled and other Charitable organisation have in conducting activities that benefit the community. Council is committed to ensure fair and consistent tenure conditions, however acknowledge that some conditions and terms may be negotiated between Council and individual organisation in extenuating circumstance.



### Functions

#### 1. Request for Extenuating Circumstances

Charitable organisations will be required to provide a written request to apply extenuating circumstances against the schedule of fees and charges. They will also need to include evidence to support the request such as Financial and/or Operational Reports, ACNC Certification or Organisation's Constitution Objectives.

- 1.1 Request for Extenuating Circumstance detailing rational for consideration to deviate from the standardized schedule of fees and charges to be recording in the Property Leasing Register
- 1.2 Rental for extenuating circumstances are set for Council properties at a reduced rate is considered if the organisation or community groups delivering:

- 1.2.1 Community services aligned with Council's goals and priorities
- 1.2.2 Significant community value to Woorabinda; and
- 1.2.3 Have no capacity to generate income for the purpose of entering into the contractual arrangement at a materially minimal cost.

## **2. Agreement Making**

Initial draft based on standard terms and conditions in Attachment D, will be provided to organisations for consideration and further negotiation of specific terms and conditions.

- 2.1 Steps are taken to finalise draft agreement to standard inclusions and/or additional conditions as recommended by the Council Property Portfolio Panel.
- 2.2 The draft Agreement to be negotiated with organisations to progress to acceptance of terms and conditions.
- 2.3 A shared contribution can be negotiated for the maintenance and upkeep of a property by way of an amendment to the terms of condition.
- 2.4 Once agreed by all parties the Final Agreement/s to be tabled at a Council Meeting for consideration and approval.

## **3. Council Meeting**

Community Leases will be subject to appropriate conditions utilising the Standard Terms of Leasing Agreement in Attachment D.

- 3.1 Preparation of a Council Briefing Report will include premise condition report, draft tenancy agreement, business profile and if relevant a Maintenance Agreement
- 3.2 Lease fees or will be calculated on the recommendations of a commercial valuer, comprising as a minimum:
  - 3.2.1 analysis of market value;
  - 3.2.2 rate per square metre;
  - 3.2.3 fixtures and features; and
  - 3.2.4 premise condition.
- 3.3 As resolved by Council the successful organisation to be issued an offer to Lease Premises.
- 3.4 Once the offer has been accepted and executed by all parties, Agreements to be recorded on the Property Leasing Register to be monitored by Corporate Services.

## **4. Review of Extenuating Circumstances**

During the period of the Lease organisations circumstance may have changed due to increased or decreases of revenue, service delivery needs or charitable status.

- 4.1 Twelve (12) months prior to end of lease of every two (2) years Council to notify Community Tenant that a review of Extenuating Circumstance to be undertaken.
- 4.2 Community Tenants will be required to provide an update to any changes to extenuating circumstances.

## **Further Reference:**

[Queensland Civil and Administrative Tribunal \(QCAT\) – Retail shop lease disputes.](#)

# Policy into Practice Document

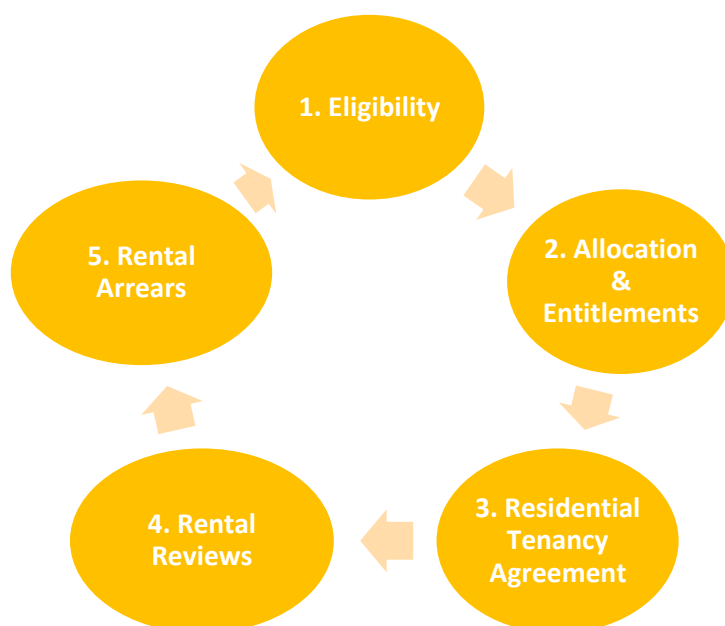
Corporate Policy Number: CP002-C-23

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## Staff Residential Tenancy – Attachment C

### Application

Woorabinda Aboriginal Shire Council owns and manages housing options for employees and charitable organisations staff. Offering safe and secure housing assist in attracting workers to deliver essential services by supporting, cost efficient accommodation in Woorabinda.



### Functions

#### 1. Eligibility

In all instances the level of accommodation provided will be dependent upon the available of housing at the time of appointment and the family requirements of staff members.

- 1.1 Where a housing vacancy exists, consideration is given to promoting this as part of the attraction and retention strategy in the recruitment process may be subject to Housing Fringe Benefit Tax.
- 1.2 To be eligible, an applicant must be employed by Woorabinda Aboriginal Shire Council or a Community controlled organisation that has a Commercial Lease Agreement with Council. Consideration will be given to: (not limited too)
  - 1.2.1 Position Classification & Salary Package
  - 1.2.2 Employment duration
  - 1.2.3 Rental History

- 1.2.4 Personal and/or Family circumstances
- 1.3 Council Staff Housing application is required to be completed and recorded on a 'Waiting List'.
- 1.4 In unique circumstances the Council Property Leasing Portfolio Panel may provide advice on housing eligibility and/or approval

Council will endeavour to provide housing for an employee if their accommodation circumstances change within Woorabinda

## **2. Allocation & Entitlements**

The Council Property Leasing Portfolio Panel reviews and recommends applicants Staff Housing Allocations. The day to day management of staff accommodation, including allocation, tenancy agreements, tenant occupancy issues, occupancy changes, maintenance, tenant liability is the responsibility of the Corporate Services Manager.

- 2.1 Corporate Services Manager will provide an update to the Council Property Portfolio Panel on vacancies.
- 2.2 Consideration to be given to staff housing waiting list and positions to be advertised.
- 2.3 To enable advance planning for staff housing allocation, the Corporate Service Manager will provide updates of vacancy rates at a Council Ordinary meeting once a quarter.
- 2.4 If a staff member is deemed to be ineligible, their application will be removed from the waiting list.
- 2.5 Staff no longer eligible for staff housing due to: (not limited to)
  - 2.5.1 Rental Arrears
  - 2.5.2 Breaches to Liquor Licensing Act.
  - 2.5.3 Noise related complaints
  - 2.5.4 Property Damage
  - 2.5.5 Unregistered Occupants

## **3. Rental Reviews**

Rent reviews occur at lease renewal time and are adjusted in accordance with conditions of occupancy and upgrades and compliant with the Residential Tenancies Act.

- 3.1 Routine inspections are carried out quarterly to ensure the property is well cared for by the tenant.
- 3.2 The tenant will be provided 7 days' notice of entry to undertake an inspection that will include:
  - 3.2.1 Cleaning and tidying the property
  - 3.2.2 Routine cleaning
  - 3.2.3 Removing any mould from surfaces
  - 3.2.4 Repairing any damage
  - 3.2.5 Lawn mowing and gardening
  - 3.2.6 Tidying up outside areas (eg decks, patios)
- 3.3 During inspection any significant breach is found, the Corporate Services Manager may issue the tenant a breach notice to rectify the issue.
  - 3.3.1 Using the property of an illegal purpose
  - 3.3.2 Exceeding the number of occupants allowed to live at the property
  - 3.3.3 Keeping a pet at the property without the Council permission



### 3.3.4 Rental Arrears

#### 4. Rental Arrears

If a tenant does not pay all the rent on the day it is due and falls more than seven (7) days behind, Council can issue a Notice to remedy breach. If the breach notice expires and rent remains unpaid, Council can provide a Notice to Leave. Remedy options are provided to tenants such as:-

- 4.1 Payroll deduction
- 4.2 Assessment of Rental Price to overcome financial hardship
- 4.3 Multi Tenancy arrangement to reduce burden on finances

Council can seek an order from the Queensland Civil and Administrative Tribunal (QCAT) to terminate a tenancy for significant breaches such as rental arrears.

#### Further Reference:

[Qld Residential Tenancies Authority](#)

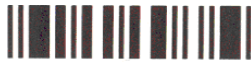
# Policy into Practice Document

Corporate Policy Number: CP002-C-23

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## **Lease – Attachment D**

Dealing Number



## OFFICE USE ONLY

**Privacy Statement**

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|  |   |                               |
|--|---|-------------------------------|
| <b>1. Lessor</b><br>WOORABINDA ABORIGINAL SHIRE COUNCIL DEED OF GRANT<br>IN TRUST THE GRANTEE TO HOLD THE SAID LAND IN TRUST<br>FOR THE BENEFIT OF ABORIGINAL INHABITANTS AND FOR NO<br>OTHER PURPOSE WHATSOEVER | <b>Lodger</b> (Name, address, E-mail & phone number)<br>Preston Law<br>P.O. Box 707N<br>15 Spence Street<br>North Cairns QLD 4870<br>Email: info@prestonlaw.com.au<br>Ph: 07 4052 0700 Ref: JC:223743 | <b>Lodger Code</b><br>BE 3192 |
|--|---|-------------------------------|

|  |                               |
|--|-------------------------------|
| <b>2. Lot on Plan Description</b><br>TBC | <b>Title Reference</b><br>TBC |
|--|-------------------------------|

|  |                                    |
|--|------------------------------------|
| <b>3. Lessee</b> Given names      Surname/Company name and number<br>TBC | (include tenancy if more than one) |
|--|------------------------------------|

**4. Interest being leased**  
 FEE SIMPLE

**5. Description of premises being leased**  
 TBC

**6. Term of lease**  
 Commencement date/event: TBC  
 Expiry date: TBC and/or Event:  
 #Options: TBC  
 #Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years)

**7. Rent/Consideration**  
 See attached Schedule

**8. Grant/Execution**

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

Woorabinda Aboriginal Shire Council

..... Signature

.....

..... full name

Mayor

..... qualification      /      /

.....

Chief Executive Officer

**Witnessing Officer**

**Execution Date**

**Lessor's Signature**

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**9. Acceptance**

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

..... signature

..... full name

..... qualification      /      /

.....

**Witnessing Officer**

**Execution Date**

**Lessee's Signature**

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

## 1. REFERENCE SCHEDULE

|                                       |  |
|---------------------------------------|--|
| Name and Address of Lessor:           | <b>WOORABINDA ABORIGINAL SHIRE COUNCIL DEED OF GRANT IN TRUST THE GRANTEE TO HOLD THE SAID LAND IN TRUST FOR THE BENEFIT OF ABORIGINAL INHABITANTS AND FOR NO OTHER PURPOSE WHATSOEVER</b><br><u>Postal Address</u><br>112 Munns Drive, Woorabinda QLD 4713<br><u>Address for Hand Delivery</u><br>112 Munns Drive, Woorabinda QLD 4713<br><u>Email Address</u><br>ceo@woorabinda.qld.gov.au |
| Name and Address of Lessee:           | <b>[TBC]</b><br><u>Postal Address</u><br><b>[TBC]</b><br><u>Address for Hand Delivery</u><br><b>[TBC]</b><br><u>Email Address</u><br><b>[TBC]</b>  |
| Name and Address of Guarantor:        | <b>[TBC]</b><br><u>Postal Address</u><br><b>[TBC]</b><br><u>Address for Hand Delivery</u><br><b>[TBC]</b><br><u>Email Address</u><br><b>[TBC]</b>  |
| Address of Premises:                  | <b>[TBC]</b>   |
| Term:                                 | <b>[TBC]</b>   |
| Options to Renew                      | <b>[TBC]</b>   |
| Rent - First Year of Term:            | <b>[TBC]</b>   |
| Rent Review Date                      | Annually on each anniversary of the Commencement Date  |
| Rent Review Method                    | An increase of 4% to the Rent payable in the previous Rent Year  |
| Security Amount                       | <b>[TBC]</b>   |
| Rates Component                       | <b>[TBC]</b>   |
| Insurances to be taken out by Lessee: | Plate glass insurance<br>Public risk insurance - \$20,000,000.00 per claim<br>Lessee's property and fittings at Premises   |
| Permitted Use:                        | <b>[TBC]</b>   |
| Guarantor:                            | <b>[TBC]</b>   |

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Lease, the following terms have the following meanings unless the context otherwise requires:

**Appurtenances** means all mechanical ventilation, stop-cocks, alarm systems, fire prevention and extinguishing equipment, lavatories, grease traps, water apparatus, gas fittings, electrical fittings and apparatus and other services at the Buildings or the Premises, as the context requires.

**Authority** means any federal, state or local government authority or body.

**Bank Guarantee** means an unconditional and irrevocable undertaking (or any replacement or addition to it under clause 4.7) by an Australian trading bank and on terms acceptable to the Lessor acting reasonably to pay on demand the Security Amount. The Bank Guarantee must not contain an expiry date.

**Buildings** means all improvements from time to time existing on the Land and improvements developed in conjunction with the Land and where appropriate, includes the Land.

**Commencement Date** means the date of commencement of this Lease as specified in Item 6.

**Contaminated Land** has the meaning given in the EP Act.

**Creditable Acquisition, GST, GST Exclusive Market Value, Input Tax Credit, Supply and Tax Invoice** each has the meaning attributed to each of those terms in the GST Law.

**Default Rate** means the rate of 10% per annum.

**EP Act** means the *Environmental Protection Act 1994* (Qld).

**Expiry Date** means the date of expiry of this Lease as specified in Item 6, and, where applicable, includes the last day of any further term if this Lease contains an Option to Renew, and the Option to Renew is exercised.

**Force Majeure** means delay or inability to perform caused by war, whether declared or not, insurrections, strikes, lockouts or other industrial disturbance, inability to obtain materials, unavailability of equipment, fire, cyclone, flood, storm or other severe action of the elements, accidents, government or statutory restrictions or from other causes whether like or unlike the foregoing which are unavoidable or beyond the reasonable control of either party but shall not include, for the avoidance of doubt, a lack of funds or the unserviceability of plant and equipment (for any reason).

**GST Date** means the date which this Lease becomes subject to GST under the GST Law.

**GST Law** means that term as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantor** means the person described in the Reference Schedule.

**Item** means the relevant item number of the Form 7 of which this Schedule forms part.

**Land** means the land described in Item 2.

**Law** means any statute, regulation or ordinance made by an Authority and includes the applicable common law.

**Lease** means this Form 7 Lease and Form 20 Schedule and any schedules or annexures.

**Lessee** means the Lessee named in Item 3, and its successors in title and assigns.

**Lessor** means the Lessor named in Item 1 and its successors and assigns.

**Lessor Assets** means the Lessor's Fixtures and any improvements or alterations thereto and any other personal property (as that term is defined in the PPSA) provided by the Lessor to the Lessee under this Lease at any time.

**Lessor's Fixtures** includes all Appurtenances, equipment, fittings, fixtures and furnishings of whatever nature supplied from time to time at the Premises by the Lessor.

**Month** or **Monthly** means respectively calendar month or calendar monthly.

**Outgoings** means the total of all amounts paid by the Lessor or for the payment of which the Lessor may be or become liable or as otherwise provided in this clause in any one Outgoings Year in respect of the Land, the Premises, the Buildings or any part of them, or in respect of the provision of any Services to any of them during the Term including:

- (a) rates, taxes (excluding land tax), levies and charges imposed by any Authority and levies and charges imposed under or pursuant to strata, community title or similar legislation; and
- (b) taxes, levies, imposts, deductions, charges, assessments, outgoings, impositions, withholdings and duties imposed by any Authority including any tax imposed as a consequence of the Lessor having an estate or interest in the Premises, the Building or the Land but excluding:
  - (i) any GST or like tax imposed because this Lease is a taxable supply; and
  - (ii) any income tax or capital gains tax; and
- (c) insurance premiums and other charges (including stamp duties and the amount of any excess or deductible associated with a claim made by the Lessor) for public liability insurance, workers compensation insurance and insurance of the Buildings against fire with extended cover endorsement for vandalism, malicious mischief, earthquake, flood, water damage, boiler and pressure vessel explosion, fusion, and mechanical breakdown in broad cover form with repair and replacement terms and other risks determined by the Lessor in its absolute discretion including, but not limited to, consequential and economic loss; and
- (d) the cost of operating, supplying, maintaining, servicing, repairing and renovating of all Services from time to time provided by the Lessor;
- (e) all management and administration costs (including employment overheads, fees paid to agents, consultants and auditors whether internal or external) relating to managing, controlling and administering the Centre and the collection of rental and other moneys, whether performed within the Centre or not; and
- (f) supplying, maintaining, repairing and replacing Services and upgrading them to comply with requirements of Authorities and all laws; and
- (g) charges for the supply of Services except those which are separately metered to the Lessee; and
- (h) any costs incurred by the Lessor to maintain ongoing compliance of essential services and fire matters;
- (i) auditor's fees for audits of Outgoings; and
- (j) indoor and outdoor gardening and landscaping.

**Option to Renew** means the option or options, exercisable by the Lessee in accordance with this Lease, to renew this Lease for a further term or terms, but only if an Option to Renew is specified in the Reference Schedule.

**Payee** means the party receiving the Payment.

**Payer** means the party making the Payment.

**Payment** means:

- (a) the amount of monetary consideration (exclusive of GST); or
- (b) the GST Exclusive Market Value of any non-monetary consideration; or
- (c) any amount required to be paid by the Payer to the Payee for a Supply under this Lease.

**Permitted Use** means the permitted use described in the Reference Schedule.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;

**Premises** means the Land and any of the Lessor's Fixtures.

**Rates Component** means [TBC].

**Reference Schedule** means the schedule in clause **Error! Reference source not found.** of this Lease.

**Register** means the Personal Property Securities Register.

**Rent** means the annual sum specified in the Reference Schedule and where the context requires, any instalment/s of Rent.

**Rent Review** means the review of the Rent in each Rent Year in the manner prescribed in the Reference Schedule.

**Rent Year** means each separate year of the Term, with the first Rent Year commencing on the Commencement Date and each subsequent Rent Year commencing on the anniversary of the Commencement Date in each succeeding year.

**Security Amount** means the amount stated in the Reference Schedule.

**Services** means all services of any nature from time to time provided to the Premises and/or the Buildings and/or the Land or available for use, and includes any electronic medium, electricity, lighting, gas, fire services, airconditioning, water, sewerage, waste collection, and the fittings and equipment utilised for such services.

**Supply** has the meaning provided for that word in the GST Law.

**Term** means the term of this Lease, being the period from and including the Commencement Date to and including the Expiry Date.

## 2.2 Interpretation

- (a) Words importing the singular number include the plural and vice versa.
- (b) Reference to a person includes any corporation and vice versa.
- (c) The respective obligations of each party under this Lease are separate and independent, and continue throughout the Term and any period of renewal and holding over (unless the context provides otherwise).
- (d) If any term of this Lease becomes unenforceable, that term will not affect the validity of the remaining terms of this Lease.
- (e) Reference to a Law includes all Laws amending or replacing a Law.

- (f) Reference to an Authority or body that have ceased to exist or been reconstituted, will constitute a reference to the Authority or body established in lieu of the initial Authority or body.
- (g) Where two or more persons are Lessees, the obligations of the Lessee (as the case may be) under this Lease bind them jointly and each of them severally.
- (h) Headings and sub-headings have been included for ease of reference only and have no bearing on the construction of this Lease.

### **3. GRANT OF LEASE**

The Lessor grants and the Lessee accepts a lease of the Premises on the terms and conditions set out in this Lease.

### **4. RENT AND OTHER CHARGES**

#### **4.1 Payment of Rent**

Rent is payable monthly in advance in equal instalments on the first day of each month.

#### **4.2 Rent Reviews**

- (a) Rent Reviews occur yearly and in the manner set out in the Reference Schedule.
- (b) If the Reference Schedule specifies a fixed percentage for a particular review date, the Rent is increased by that percentage on the relevant review date.
- (c) If the Lessor does not undertake a Rent Review for a Rent Year, then the Lessor may at any time throughout the Term or after the Expiry Date recover from the Lessee the difference between the Rent that was paid by the Lessee and the Rent that ought to have been paid had the Rent Review occurred.

#### **4.3 Payment of other charges**

- (a) The Lessee must pay, or is responsible for ensuring the payment of, all Outgoings during the Term by the due date for payment, whether or not imposed on the Lessor, the Lessee, the Premises or the Services.
- (b) The Lessee must pay all operating expenses associated with the use of the Premises, including but not limited to telephone and telecommunications, and costs associated with obtaining any relevant permits, licences and authorisations.
- (c) The Lessee is responsible for establishing accounts in its own name wherever possible.
- (d) Where accounts are not separately established in the Lessee's name for an item of Outgoings or an operating expense or are received by the Lessor for an area larger than the Premises, the Lessee shall be required to reimburse the Lessor for a proportion of those costs which the Lessor considers to be reasonable, within fourteen (14) days of receipt of a tax invoice from the Lessor.

#### **4.4 Costs of Lease**

The Lessee must pay upon demand the following expenses:

- (a) survey fees and registration fees associated with the registration of this Lease;
- (b) the Lessor's solicitors' costs (on a solicitor and own client basis) of and incidental to the preparation, execution and registration of this Lease;



- (c) the Lessor's solicitors' costs (on a solicitor and own client basis) for the preparation, execution and registration of any new lease, variation to or extension of lease.

#### 4.5 **Costs of notices, re-entry and consents**

The Lessee must, upon demand by the Lessor, pay all costs (on a solicitor and own client basis) and expenses incurred by the Lessor in relation to:

- (a) any notice lawfully given to the Lessee pursuant to this Lease and any actions taken to enforce the performance of the Lessee's obligations under this Lease;
- (b) the lawful determination or attempted determination of this Lease, or the lawful re-entry or attempted re-entry by the Lessor into the Premises;
- (c) the surrender of this Lease (including any duty and registration fees);
- (d) the consideration of any consents by the Lessor requested by the Lessee pursuant to the terms of this Lease; and
- (e) the Lessor, without fault, being made a party to litigation commenced by or against the Lessee (other than litigation between the parties), and arising directly or indirectly from the Lessee's occupation of the Premises.

#### 4.6 **Method**

The Lessee must pay the Rent, Outgoings, GST and any other money it owes the Lessor on time and by direct debit (or such other method that the Lessor reasonably requires) to the Lessor without set-off, counterclaim, withholding or deduction. If required by the Lessor, the Lessee must sign an order on the Lessee's bank debiting the Lessee's account and crediting the Lessee's account.

#### 4.7 **Security Amount**

##### (a) **Provision of Security**

On or before the Commencement Date, the Lessee must give the Lessor a Bank Guarantee for the Security Amount as security for the performance of the Lessee's obligations under this Lease. The Bank Guarantee must:

- (i) be in favour of the Lessor and its successors and assigns;
- (ii) state that it is in respect of the Lessee's obligations under the Lease of the Premises;
- (iii) not be restricted to specific expenses such as rent;
- (iv) refer to the Lessee's full name and not the Lessee's trading name; and
- (v) not specify an expiry date.

##### (b) **Security Deposit in lieu of Bank Guarantee**

Despite the provisions of clause 4.7(a), the Lessor may, in the Lessor's sole and absolute discretion, accept from the Lessee a bank cheque or other form of monetary security equalling the Security Amount in lieu of a Bank Guarantee ("**Security Deposit**"). In the event that the Lessor accepts the Security Deposit, the parties acknowledge and agree that a reference to the Bank Guarantee in this clause 4.7 will be deemed to include a reference to the Security Deposit. The Lessor will be under no obligation to invest the Security Deposit.

(c) **Lessor's right to call**

If the Lessee does not comply with any of its obligations under this Lease (including any period of holdover or any extension of this Lease), whether the Lease is registered or not, then the Lessor may call on the Bank Guarantee without notice to the Lessee and apply the amount of the Security Deposit (or part of it) to remedy the obligation breached by the Lessee. Payment under the Bank Guarantee does not limit the rights of the Lessor under the Lease or operate as a waiver of the Lessee's default of any of the Lessee's obligations under the Lease.

(d) **Obligation to replace**

If the Lessor calls on the Bank Guarantee, then the Lessor may give the Lessee a notice asking it for a replacement or additional Bank Guarantee so that the amount guaranteed equals the Security Amount. The Lessee must deliver the replacement or additional Bank Guarantee to the Lessor not later than 14 days after the Lessor asks for it.

(e) **Return of Bank Guarantee**

When the Lease ends and the Lessee has vacated and made good the Premises in accordance with the terms of this Lease, then unless the Lessor has commenced proceedings against the Lessee, the Lessor must promptly return to the Lessee any part of the Bank Guarantee not needed to recover the Lessor's loss.

(f) **Change of Lessor**

If for any reason the Lessor named in this Lease ceases to be the Lessor, then the Lessee must promptly do whatever is necessary on the Lessee's part to give the new Lessor the benefit of the Bank Guarantee and, if necessary, promptly arrange to deliver a new replacement Bank Guarantee in favour of the new Lessor.

**4.8 Goods and Services Tax**

- (a) Subject to sub-clause (b), any Payment required to be made under this Lease after the GST Date will be increased by any GST payable by the Payee for that Supply. The Payee will deliver a Tax Invoice for the Payment to the Payer at or before the Payment becoming due.
- (b) Where a Payment is a repayment of, or contribution to, a Creditable Acquisition made by the Payee, the Payment will (prior to the increase provided for under sub-clause (a)) be discounted by the amount of the Input Tax Credit to which Payee is entitled for that Creditable Acquisition under the GST Law.

**5. OCCUPATION OF PREMISES**

**5.1 Use and conduct**

- (a) The Lessee must not use the Premises for any use other than the Permitted Use.
- (b) The Lessor does not warrant that the Premises are, or will remain, suitable for the Lessee's use and any warranties as to the suitability of the Premises implied by Law are negated.
- (c) The Lessee must:
  - i) conduct the Permitted Use at the Premises in an orderly manner;
  - ii) comply with all Laws, and obtain and maintain all licences and approvals required at Law to carry on the Lessee's business from the Premises;

- iii) promptly notify the Lessor in writing of any damage sustained to the Premises or defective operation of the Appurtenances;
  - iv) lock all exterior doors and windows in the Buildings when the Premises are not in use;
  - v) keep the Premises free of rodents, vermin and any infectious diseases.
- (d) The Lessee must not:
- i) without the Lessor's prior written consent, mark or damage the Premises, or erect any partitions, fittings or signs to the Premises;
  - ii) use any form of light, power or heat (other than an apparatus for heating beverages, auxiliary power during any power failure or, electricity or gas supplied through meters);
  - iii) interfere with the Services or Appurtenances, or use the Appurtenances for any purpose other than those for which they were constructed;
  - iv) carry on or permit to be carried on any offensive or illegal act, or any act which may void or invalidate any insurances effected by the Lessor in respect of the Buildings and Lessor's Fixtures or any other part of the Premises;
  - v) bring upon the Premises any explosive, flammable or corrosive fluid except that normally used by the Lessee in its business, and only if such fluids are safely confined in containers.
- (e) Subject to the Lessor's rights under this Lease, the Lessee may occupy the Premises during the Term without interruption by the Lessor.

## 5.2 Obligations under EP Act

- (a) The Lessor does not warrant that the Land is not Contaminated Land. The Lessee acknowledges and agrees that it has made the necessary inspections and enquiries to satisfy itself whether or not the Land is Contaminated Land.
- (b) The Lessee must not permit its employees, agents or others (with or without invitation) who may be at or around the Premises to cause the Land to become Contaminated Land. If it does become Contaminated Land, the Lessee must immediately take such remediation measures as reasonably required by the Lessor and the chief executive under the EP Act. If the Lessee fails to take such measures, the Lessor may take such remediation measures as the agent of the Lessee and at the expense of the Lessee, which will constitute a liquidated debt immediately due and owing by the Lessee to the Lessor and payable on demand made by the Lessor.
- (c) The Lessee must indemnify and keep indemnified the Lessor against any claim, damage, liability of expense which the Lessor may be, or becomes, liable (during or after the Term) because the Lessee fails to comply with sub-clause (b).

## 6. PERSONAL PROPERTY SECURITIES

- 6.1 Notwithstanding anything to the contrary express or implied in this Lease, the parties agree that the Lessor retains full title to the Lessor Assets and title will not at any time pass to the Lessee notwithstanding:
- (a) the delivery or collection of the Lessor Assets to/by the Lessee (as the case may be); and/or

- (b) the possession and use of the Lessor Assets by the Lessee.
- 6.2 The Lessee acknowledges that the Lessee has the right to possess the Lessor Assets as a mere bailee only and will deal with the Lessor Assets in such a manner which enables it to be clearly identified as Lessor Assets belonging to the Lessor and does not have any right to pledge the Lessor's credit in connection with the Lessor Assets and agrees not to do so.
- 6.3 The Lessee acknowledges and agrees that:
- (a) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Lessor Assets without the express written consent of the Lessor;
  - (b) it will, if requested by the Lessor, return the Lessor Assets to the Lessor following non-fulfilment of any obligation of the Lessee (including payment of moneys) without limiting any other right the Lessor may have;
  - (c) it will deliver up the Lessor Assets at the end of the Term and give the Lessor or its agents or authorised representatives the right to enter any premises occupied by the Lessee and any premises where the Lessor believes any Lessor Assets may be stored (without liability for trespass or any resulting damage) and to use the name of the Lessee and to act on its behalf, if necessary, to recover possession of the Lessor Assets and agrees to indemnify the Lessor and its agents and/or authorised representatives from any damage, injury and/or loss arising from such recovery or attempted recovery of the Lessor Assets from the Lessee's possession or control;
  - (d) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Lessor Assets on trust for and as agent for the Lessor immediately when they are receivable or are received; and
  - (e) the Lessor may recover as a debt due and immediately payable by the Lessee all amounts owing by the Lessee to the Lessor in any respect even though title to the Lessor Assets has not passed to the Lessee.
- 6.4 The Lessee acknowledges and agrees that notwithstanding any other provision of this Lease:
- (a) the PPSA applies to any provision of the Lessor Assets by the Lessor to the Lessee;
  - (b) the Lessor Assets are commercial property;
  - (c) by agreeing to and/or accepting or adopting this Lease the Lessee grants a purchase money security interest to the Lessor in the Lessor Assets to secure the Lessor's interest in the Lessor Assets and all moneys owing or payable by the Lessee under this Lease and any other moneys payable by the Lessee to the Lessor from time to time on any account whatsoever;
  - (d) if a purchase money security interest is not able to be claimed on the Lessor Assets by the Lessor for any reason, the Lessor will have a security interest in the Lessor Assets;
  - (e) the Lessee agrees that the Lessor's security interest in the Lessor Assets covered by this Lease may be registered on the Register and the Lessee agrees to do all things necessary and required by the Lessor to effect registration of the Lessor's security interest on the Register in order to give the Lessor's security interest the best priority possible and anything else the Lessor requests the Lessee to do in connection with the PPSA without delay;
  - (f) the Lessee warrants that all information provided by the Lessee to the Lessor, including but not limited to the Lessee's details, including the entity, name, ACN or ABN and

address set out in this Lease is correct in all respects and must not change its name, address or other details set out in this Lease without providing the Lessor with at least 20 business days prior written notice;

- (g) the Lessee unconditionally and irrevocably appoints the Lessor as its attorney to do any of the acts and matters set out in this clause headed 'Personal Property Securities' in the event that the Lessee fails, delays or declines to execute such documents or do such acts;
- (h) the Lessee agrees that it will not grant a security interest or other encumbrance in the Lessor Assets whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Lessor, which the Lessor may refuse to provide or grant in its absolute and unfettered discretion. The Lessor may request and the Lessee must provide any information that the Lessor requires, acting reasonably, in order to fully consider whether to grant its consent;
- (i) the Lessor's security interest in the Lessor Assets extends to any proceeds, in all present and after acquired property including without limitation book debts and accounts receivable arising from the Lessee dealing with the Lessor Assets;
- (j) it has received value as at the date of first delivery of the Lessor Assets and has not agreed to postpone the time for attachment of the security interest granted to Lessor under this Lease;
- (k) the Lessor Assets are located in Australia at the date of the provision of the Lessor Assets and the Lessee warrants that the Lessor Assets will remain located in Australia for the Term of the Lease;
- (l) neither the Lessor or the Lessee will disclose any information to any interested person unless required to do so under the PPSA;
- (m) the Lessee waives its right under the PPSA:
  - i) to receive a copy of any verification statement, financing change statement, or any notice that the Lessor intends to sell the Lessor Assets or to retain the Lessor Assets on enforcement of the security interest granted to the Lessor under this Lease or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
  - ii) to object to a proposal by the Lessor to dispose of or purchase or retain the Lessor Assets in satisfaction of any obligation owed by the Lessee to Lessor;
  - iii) to receive a statement of account following the sale of the Lessor Assets; and
  - iv) to redeem the Lessor Assets;
- (n) the Lessee will not give (or allow any person to give) to the Lessor a written demand requiring the Lessor to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the Register a financing change statement under the PPSA; and
- (o) a default by the Lessee under any other security agreement of and under which a security interest has granted to any other party in respect of the Lessor Assets and/or any default under such security agreement which results in an exercise of rights under the PPSA is deemed to be a breach of this Lease.

6.5 The parties agree that the Lessor is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

**6.6 Further Supplies**

The parties acknowledge and agree that any provision of any additional Lessor Assets made by the Lessor to the Lessee during the Term which is not specifically set out in this Lease is deemed to form part of this Lease and is subject to the terms of this Lease.

**6.7 Enforcement**

- (a) The enforcement provisions contained in this Lease are in addition to any rights available to the Lessor under the PPSA and apply to the maximum extent permitted by law.
- (b) Without limitation to clause 6.7(a) and any other provision of this Lease section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

**6.8 Interpretation**

A term used in this clause is taken to have the meaning defined under the PPSA.

**7. MAINTENANCE AND REPAIR OF PREMISES**

**7.1 Obligation to clean, repair and maintain**

- (a) The Lessee must:
  - i) keep the Premises (including the external surfaces) clean and tidy;
  - ii) maintain the exterior parts of the Premises in good order and condition (including but not limited to weeding the gardens and mowing the lawns); and
  - iii) not allow any accumulation of useless property or rubbish at the Premises.
- (b) The Lessee must maintain the Premises and all Services in good condition as at the Commencement Date, except for:
  - i) fair wear and tear, subject to the express obligations of the Lessee in this clause 7.1, and then only if the Lessee has taken all reasonable measures to ensure that any damage attributed to fair wear and tear will not contribute to any further damage to the Premises, and the wear and tear is not a result of the Lessee's wilful or negligent acts or omissions;
  - ii) damage caused by an event of Force Majeure;
  - iii) damage by a structural defect at the Premises, provided that damage is not caused or contributed to by the Lessee.
- (c) Without limiting the generality of sub-clause (b), the Lessee must:
  - i) maintain the doors, locks, ablution facilities, windows and fittings of the Premises in good condition and efficient working order as at the Commencement Date;
  - ii) replace any broken light bulbs, tubes or glass at the Premises;
  - iii) keep and maintain any signs at the Premises in good repair and of good appearance;

- iv) maintain the waste pipes, drains and conduits within the Premises in a clean and free-flowing condition and employ a licensed tradesperson to clear any blockages;
- v) maintain the Appurtenances in good condition and efficient working order; and
- vi) where an airconditioning system has been installed at the Premises, enter into and keep current service and repair contracts for the airconditioning system.

## 7.2 No alterations without consent

- (a) The Lessee must not make any alterations or improvements ("**Works**") to the Premises or Services without the Lessor's prior written consent, which (should it be forthcoming) will include the following conditions:
  - i) The Lessee must provide detailed plans of the Works to the Lessor who may, at the Lessee's cost, refer the plans to the Lessor's architect for its approval;
  - ii) The Lessee must obtain all relevant Authority approvals to the Works before commencing the works. If required by the Lessor, the Lessee must construct the Works under the supervision of the Lessor's architect (with the cost of the supervision to be borne by the Lessee);
  - iii) The Works must be carried out in a proper and workmanlike manner, and at the cost of the Lessee, by contractors who have a current public liability insurance policy for at least \$20,000,000.00 and have previously been approved by the Lessor; and
  - iv) The Lessee must indemnify and keep indemnified the Lessor against all claims, expenses and losses incurred by the Lessor relating to the construction of the Works.
- (b) For avoidance of doubt, any Works installed by the Lessee shall remain part of the Premises upon termination of this Lease and the Lessor shall not be liable to pay any amount to the Lessee in compensation for the Works.

## 8. RESERVATIONS

### 8.1 Right of entry

The Lessor reserves the right to:

- (a) at all reasonable times enter and view the Premises. If the Lessor considers it necessary, the Lessor may leave a notice at the Premises requiring the Lessee, within a stated period, to carry out a repair or take the required action for the Lessee to comply with the terms of this Lease;
- (b) at all times effect any works to the Premises considered necessary by the Lessor for the safety or preservation of the Premises or to comply with any Laws. The Lessor will (except in an emergency, the existence of which shall be determined by the Lessor acting reasonably) carry out the works in a manner which minimises, so far as practicable, interruption to the Lessee's business; and
- (c) at all reasonable times of the day enter the Premises with prospective lessees of the Premises during the period of three calendar months immediately preceding the Expiry Date.

### 8.2 Third party interests

- (a) The Lessee must during the Term permit any person having any interest in the Premises superior to or concurrent with the Lessor to exercise the Lessor's and that person's lawful rights.
- (b) The Lessor reserves the right to grant, and the Lessee's rights under this Lease are subject to, any easements or arrangements the Lessor makes regarding the Land for the purposes of providing access to the Land or the provision of any services to the Land, provided that such easements do not substantially interfere with the Lessee's rights under this Lease.

## **9. INSURANCES, INDEMNITIES AND GUARANTEE**

### **9.1 Insurances**

- (a) The Lessee must take out and maintain in the Lessee's name with the Lessor's interest noted, a standard public liability insurance policy with an insurance company approved by the Lessor, for at least the amount specified in the Reference Schedule. If required by the Lessor, the Lessee must extend this policy to cover risks of an insurable nature regarding any indemnities that the Lessee has provided to the Lessor under this Lease.
- (b) The Lessee must take out and maintain a plate glass insurance policy in the Lessee's name with the Lessor's interest noted, against the breakage of all plate and other glass in the Premises. The policy must be with an insurance company approved by the Lessor.
- (c) The Lessee must take out and maintain an insurance policy to the replacement value of the Lessee's property and fittings at the Premises.
- (d) If requested by the Lessor, the Lessee must produce to the Lessor evidence of any insurance policies (including renewals) effected by the Lessee under this clause 9.1.
- (e) The Lessee must not do anything which could:
  - i) prejudice any insurance of the Premises or property in the Premises;
  - ii) increase the premium for that insurance without the Lessor's consent.
- (f) If the Lessee does anything that increases the premium of any insurance the Lessor has in connection with the Premises, the Lessee must pay the amount of that increase to the Lessor on demand.

### **9.2 Indemnities**

- (a) The Lessee occupies and uses the Premises at its own risk. The Lessor is not liable in any circumstances to the Lessee for any damage to the Lessee's property in or about the Premises, interruption to the Services or Appurtenances nor any loss of profits by the Lessee.
- (b) The Lessee must indemnify and keep indemnified the Lessor (during and after the Term) against all actions, losses and expenses incurred by the Lessor:
  - i) for any loss, damage, death or injury caused by, or incidental to, the Lessee's use of the Premises or by the escape of any water, fire, gas, electricity or other such agent from the Premises, except where the Lessor has caused or contributed by negligence, wilful act or omission;
  - ii) which are caused by, or incidental to, the Lessee's failure to comply with this Lease.



- (c) Notwithstanding anything in this Lease to the contrary, the Lessor will not be in default of this Lease for a remediable breach, unless the Lessee has given written notice to the Lessor of the breach, and the Lessor has failed to remedy the breach within a reasonable period of time.

### **9.3 Guarantee**

This Lease is conditional upon the execution by the Guarantor of the Guarantee and Indemnity which is Annexure A to this Lease.

## **10. SUBLETTING AND ENCUMBERING**

### **10.1 Subletting and encumbering**

The Lessee must not without the Lessor's prior written consent (which may be withheld or given subject to such conditions required by the Lessor in the Lessor's absolute discretion):

- (a) sublet or in any manner part with possession of the Premises; or
- (b) mortgage or otherwise encumber the Lessee's interest in this Lease.

### **10.2 Assignment**

The Lessee must not assign this Lease without the prior written consent of the Lessor provided that such consent will not be unreasonably withheld if:

- (a) the Lessee has, at least thirty (30) days before the proposed assignee intends to take possession of the Premises pursuant to an assignment, makes a written request for the Lessor's consent together with:
  - i) in relation to each proposed assignee:
    - (A) their full names and addresses;
    - (B) an up-to-date summary of assets and liabilities prepared by and signed by an accountant;
    - (C) any other information reasonably required by the Lessor to establish the proposed assignee's financial position; and
- (b) the Lessee proves to the Lessor's reasonable satisfaction that:
  - i) the proposed assignee is respectable, suitably qualified and capable of carrying on the Permitted Use and performing the obligations on the part of the Lessee under this Lease; and
  - ii) the proposed assignee is of sufficiently substantial financial standing, having regard to both its net assets and revenue, that a reasonable person would consider that the proposed assignee is able to meet the Lessee's payment obligations under this Lease for the entire duration of the unexpired term including any option terms.

### **10.3 Lessor's consent**

Any consent by the Lessor to a proposed assignment given under this clause is conditional upon each of the following occurring before the proposed assignee takes possession of the Premises:

- (a) the Lessee and the proposed assignee entering into a deed of consent with the Lessor in the form reasonably required by the Lessor;
- (b) the proposed assignee providing the Lessor with a guarantee and indemnity signed by the proposed guarantor in favour of the Lessor in the form required by the Lessor;
- (c) the proposed assignee providing the Lessor with a Bank Guarantee for the Security Amount;
- (d) the Lessee and the proposed assignee complying with the Lessor's reasonable requirements in relation to the documentation, stamping and registration of the intended assignment;
- (e) any default by the Lessee under this Lease arising up to the date of completion of the proposed assignment being remedied; and
- (f) the Lessee paying to the Lessor the Lessor's reasonable legal costs of the giving of its consent.

#### **10.4 Change of Control**

If the Lessee is a corporation (which is neither listed nor wholly owned by a corporation whose shares are listed on the official list of the Australian Stock Exchange Limited), a change in the effective control of the corporation is deemed to be an assignment of this Lease and the Lessee may not make that change unless it obtains the Lessor's prior written consent and complies with clauses 10.2 and 10.3 (except for clause 10.3(a)) of this Lease.

### **11. DEFAULT OF LESSEE**

#### **11.1 Lessor may rectify**

- (a) If the Lessee fails to perform any of its obligations under this Lease, the Lessor may, in its absolute discretion (as the agent of the Lessee) do all such things and incur such expenses as are necessary to perform these obligations.
- (b) All of the Lessee's costs associated with or incidental to taking a step under subclause (a) of this clause shall be recoverable from the Lessee as a liquidated debt and shall be payable on demand.

#### **11.2 Overdue payments**

- (a) If the Lessee fails to pay any money payable on demand within 14 days of the Lessor's demand, or fails to pay any other money due under this Lease by the due date for payment, the Lessee must pay to the Lessor interest accruing daily at the Default Rate:
  - i) on the money owing from the payment due date until the money is paid; and
  - ii) upon any judgment the Lessor obtains against the Lessee from the date of the judgment until the debt is satisfied.
- (b) Interest is capitalised on the last day of each month and payable on the first day of the next month. The interest is recoverable in the same manner as the Rent in arrears.
- (c) If an amount of Rent, or any other money due under this Lease, remains unpaid by the Lessee, interest at the Default Rate accrues on that unpaid amount from the date it fell due for payment.
- (d) Without prejudice to any other remedy, the Lessor may sue the Lessee for any money owing by the Lessee under this Lease. Neither the institution of legal proceedings nor

the entering of judgment by a court will bar the Lessor from bringing any subsequent suits against the Lessee for any other money owing by the Lessee to the Lessor under this Lease.

### **11.3 Definition of default**

The Lessee will be in default of this Lease, if:

- (a) any part of the Rent is in arrears for 7 days, whether demanded or not;
- (b) any money (other than the Rent) payable by the Lessee under this Lease on demand is not paid within 14 days of the Lessor making such a demand, or if any other money payable by the Lessee under this Lease is not paid by the payment due date;
- (c) the Lessee fails to comply with a term of this Lease;
- (d) the Lessee or the Guarantor (except for the purpose of reconstruction) becomes bankrupt, insolvent, under administration, in liquidation or receivership, or otherwise without full capacity;
- (e) the Lessee's interest under this Lease is taken in execution under any legal process;
- (f) the Guarantor fails to perform any obligation under the provisions of the Lease or of any guarantee or indemnity given under this Lease;

### **11.4 Rights upon default**

- (a) If the Lessee defaults under this Lease, the Lessor may (without prejudice to any other rights):
  - i) subject to any prior notice required by Law, re-enter and take possession of the Premises and eject the Lessee and any persons in possession of the Premises (which may be by force, if necessary), from which time this Lease will be terminated;
  - ii) terminate this Lease by giving written notice to the Lessee;
  - iii) recover from the Lessee or the Guarantor any loss the Lessor suffers;
  - iv) apply the Security Amount to any loss the Lessor suffers;
  - v) by giving written notice to the Lessee, elect to convert the unexpired residue of the Term to a monthly tenancy. The Lease will be terminated and the Lessee will hold the Premises from the Lessor pursuant to clause 12.6 (Holding over).
- (b) Upon re-entry to the Premises, the Lessor may remove any fittings, additions, signage, chattels or other property at the Premises and store them at the cost of the Lessee (those costs are payable by the Lessee to the Lessor on demand) without being guilty of conversion or liable for any loss or damage to these items. If the Lessee fails to claim the items within 14 days of removal, those items are deemed abandoned by the Lessee and will the Lessor may elect to either:
  - i) retain the property, from which time such items shall become the property of the Lessor without the Lessor being in any way liable to pay compensation for the retention of the property; or
  - ii) remove any fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such

removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.

## **12. END OF LEASE**

- 12.1 The Lessee must at the end of the Lease peacefully yield up the Premises in the condition required by clause 7.1 (Obligation to clean, repair and maintain) and clause 12.2, and return to the Lessor all keys and security devices relating to the Premises.
- 12.2 The Lessee must during the last 14 days of the Term remove the fittings, additions, signage and other branding it has erected or affixed to the Premises during the Term or purchased with the consent of the Lessor from a previous lessee, and the Lessee must make good any damage caused in the removal.
- 12.3 At the end of the Lease, the Lessor may elect to either:
- (a) deem any fittings, additions, signage, chattels or other property not removed from the Premises as abandoned and such items shall become the property of the Lessor; or
  - (b) remove any fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.
- 12.4 The Lessee must, during the last 14 days of the Term, paint the interior parts of the Premises which have been previously painted with two coats of first quality paint in a workmanlike manner and in the colour as directed in writing by the Lessor.
- 12.5 The ending of this Lease does not affect any of the Lessor's rights against the Lessee on account of any antecedent breach by the Lessee of a term of this Lease.
- 12.6 **Holding over**
- (a) If the Lessee remains in occupation of the Premises after the expiration of the Term with the consent of the Lessor, the Lessee becomes a monthly tenant. The Lessee continues to pay the same amount of Rent and other money under this Lease in accordance with this Lease.
  - (b) The monthly tenancy created under sub-clause (a) will continue on the same terms of this Lease (so far as the terms can be applied to a monthly tenancy) until either party gives the other party one month's written notice terminating the tenancy. However, if the Lessee is in default, the Lessor may give one month's written notice to the Lessee terminating the tenancy.

## **13. OPTION TO RENEW**

- 13.1 This clause applies if an Option to Renew is specified in the Reference Schedule.
- 13.2 If the Lessee punctually and properly performs its obligations under this Lease, the Lessee has the option, which must be exercised by notice in writing to the Lessor no earlier than six (6) months prior to the Expiry Date and no later than three (3) months prior to the Expiry Date, to renew this Lease for the option period first specified in the Reference Schedule, commencing on the day after the Expiry Date and continuing on the same terms as this Lease, except that:
- (a) Rent will be reviewed in accordance with the Rent Review Method specified in the Reference Schedule; and
  - (b) this clause has no further effect unless the Reference Schedule refers to more than one option period, in which case the number of remaining option periods shall be reduced by one upon each occasion on which the Lessee exercises an option to renew.

## **14. GENERAL PROVISIONS**

### **14.1 Power of attorney**

The Lessee irrevocably appoints the Lessor to be the true and lawful attorney of the Lessee to do the following acts on the Lessee's behalf:

- (a) If the Lessor has lawfully terminated this Lease (proof of which will be the declaration of the Lessor), the Lessor may execute and do all things necessary to register a surrender of this Lease;
- (b) to do all things necessary and sign all such documents as may be necessary to deal with the Lessor's Property in accordance with the enforcement provisions of this Lease, the PPSA or otherwise, if the Lessor is in default of this Lease;
- (c) Substitute the Lessor as the attorney with a purchaser of the Premises for the reversion of this Lease.

### **14.2 Native Title**

The parties acknowledge that this Lease is not intended to extinguish any native title as may continue to exist in relation to the Land the subject of this Lease.

### **14.3 Consent**

Subject to anything in this Lease to the contrary, any consent which the Lessor is requested to provide under this Lease may, at the absolute discretion of the Lessor, be granted, refused, granted subject to conditions or withdrawn at any time.

### **14.4 Waiver**

- (a) A waiver by either party of a term of this Lease will only be effective if it is made in writing by that party. The waiver will not extend to, and act as, a waiver of a term generally.
- (b) If the Lessee is in breach of this Lease, the acceptance by the Lessor of money from the Lessee does not act as a waiver of the Lessor's rights regarding that breach.
- (c) A delay by the Lessor to exercise its rights under this Lease does not act as a waiver of those rights.

### **14.5 Severance**

If a provision of this Lease is void or unenforceable it must be severed from this Lease and the provisions that are not void or unenforceable are unaffected by the severance.

### **14.6 Service of notices**

- (a) A notice required to be given by one party to another under this Lease is effectively served, if it is in writing and:
  - i) served personally or left for the Lessee at the Premises, upon which the notice will be deemed to have been served immediately;
  - ii) sent by email to the other party's email address, upon which the notice will be deemed to be served at the time the email was transmitted by the sender, provided the sender does not immediately indicate a malfunction in the transmission;

- iii) forwarded by post addressed to the party at the address specified in the Reference Schedule notice will be deemed to be given on the next week day (other than a public holiday) after which it was posted.
- (b) A party must as soon as possible advise the other party of its new facsimile and address details, if these change from that listed in the Reference Schedule.

**14.7 Time of the essence**

Time is of the essence in respect of the parties' obligations under this Lease.

**14.8 Effect of legislation**

Unless mandatory by Law, any Law (present or future) will not apply to this Lease if it has the effect of prejudicially affecting any of the Lessor's rights under this Lease or is inconsistent with the terms of this Lease.

**14.9 Entire agreement**

- (a) The provisions of this Lease, and any consents given under it, contain the entire agreement as concluded between the parties and no oral or collateral agreements are of any effect.
- (b) No representation by the Lessor regarding the Premises will form an implied or other term of this Lease. The Lessee acknowledges that it has not been induced into this Lease by any representation, made by the Lessor or its agents, that is not included in this Lease.

**14.10 Mortgagee's consent**

If the consent of any person or body (including a mortgagee) to this Lease or to the extension of this Lease is required, the Lessee must immediately upon request by the Lessor execute any documents necessary to facilitate the granting of this consent.

**14.11 Lessee's costs**

The Lessee must perform all of its obligations under this Lease at its own cost, unless otherwise specified in this Lease.

**14.12 Electronic communication**

The Lessee confirms it consents to receiving this Lease and any notices or communications pursuant to this Lease by electronic communication.

## **Annexure A**

### **Guarantee and Indemnity**

#### **1. Consideration**

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into the Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

#### **2. Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

- (a) under the Lease, even if the Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and
- (b) in connection with its occupation of the Premises, including, but not limited to, the obligations to pay money.

#### **3. Indemnity**

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against any liability or loss arising from, and any costs, charges or expenses incurred in connection with:

- (a) the Lessee's breach of the Lease; or
- (b) the Lessee's occupation of the Premises,  
including, but not limited to, a breach of the obligations to pay money; or
- (c) a representation or warranty by the Lessee in the Lease being incorrect or misleading when made or taken to be made; or
- (d) a liquidator disclaiming the Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

#### **4. Interest**

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. Interest is calculated on monthly rests at the Default Interest Rate.

#### **5. Enforcement of rights**

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

#### **6. Continuing security**

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

#### **7. Guarantee not affected**

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- (a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;
- (c) any transfer of a right of the Lessor;
- (d) the termination, surrender or expiry of, or any variation, assignment, licensing, extension or renewal of or any reduction or conversion of the Term;
- (e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (f) any change in the Lessee's occupation of the Premises;
- (g) the Lease not being registered;
- (h) the Lease not being effective as a lease;
- (i) the Lease not being effective as a lease for the Term;
- (j) any person named as Guarantor not executing or not executing effectively the Lease;
- (k) a liquidator disclaiming the Lease.

#### **8. Suspension of Guarantor's rights**

Until all money payable to the Lessor in connection with the Lease or the Lessee's occupation of the Premises is paid, the Guarantor may not:

- (a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or
- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with the Lease; or
- (c) make a claim or enforce a right against the Lessee or its property; or
- (d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due.

#### **9. Reinstatement of guarantee**

If a claim that a payment to the Lessor in connection with the Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

#### **10. Costs**



The Guarantor agrees to pay or reimburse the Lessor on demand for:

- (a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and
- (b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 10 then against other obligations under guarantee and indemnity.

## 11. Assignment

The Lessor may assign its rights under this guarantee and indemnity.

## 12. Interpretation

- (a) A reference in this guarantee and indemnity to “the Lease” is a reference to the foregoing lease and to any holding over under it.
- (b) Expressions used in this guarantee and indemnity which are capitalised (namely “**Default Rate**”, “**Lessor**”, “**Lessee**”, “**Premises**”, , “**Term**” and “**Guarantor**” have the meanings ascribed to them in the Lease.
- (c) If the Guarantor consists of more than one person the obligations of each Guarantor are joint and several.

The Guarantor has signed this Deed of Guarantee and Indemnity this                      day                      of                      202    .

**SIGNED SEALED and DELIVERED** by **TBC** as )

Guarantor in the presence of: )

)

)

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)

Signature

..... )

Witness Signature )

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Witness a Justice of the Peace/Solicitor/ )

Commissioner for Declarations )

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