

Shire of Wyndham-East Kimberley
Lessor

Territory Rent-A-Car PTY LTD (ACN 900 594 245)
Lessee

Lease

Booth No. 1 at East Kimberley Regional Airport

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THIS DEED is made

day of

2020

B E T W E E N

SHIRE OF WYNDHAM-EAST KIMBERLEY of PO Box 614, Kununurra, WA 6743 ("**Lessor**")

and

Territory Rent-A-Car PTY LTD (ACN 900 594 245) of level 11/24 Mitchell Street, (GPO Box 4444) Darwin, Northern Territory 0801 ("**Lessee**")

WHEREAS:

- A. The Lessor is the registered proprietor of the Land.
- B. The Leased Premises form part of the Land.
- C. The Lessee wishes to lease the Leased Premises from the Lessor.
- D. Subject to all necessary consents and approvals the Lessor has agreed to Lease the Leased Premises to the Lessee.

THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Lease, unless such an interpretation is excluded by or contrary to the context:

1.1 Definitions

The following terms are defined:

"Accountant" means a member of:

- (a) the Institute of Chartered Accountants in Australia;
- (b) CPA Australia; or
- (c) the National Institute of Accountants;

"Authorised Person" means:

- (a) an agent, employee, licensee, contractor or invitee of the Lessee;
- (b) any person visiting the Leased Premises with the express or implied consent of any person referred to in paragraph (a) of this definition; and
- (c) any person claiming under or through the Lessee;

"Authorised Use" means the use specified in item 1 of the Schedule;

"Base Rent" The commencing rent determined to be \$5,000.00 as adjusted by Clause 5.2(a) pa (excluding GST) as per the current market rent;

"Building" means:

- (a) any building, improvement or other permanent structure;
- (b) all plant, machinery, fixtures, fittings, furnishings and equipment; and
- (c) all Facilities,

now or hereafter constructed, made, erected, installed or situated on the Land within which the Leased Premises are situated;

"Business Day" means a day other than a Saturday, Sunday or State public holiday in Western Australia;

"Commencement Date" means the commencement date specified in item 2 of the Schedule;

"Common Areas" includes those parts of the Land that the Lessor has set aside (if any) as areas which are open to the public or otherwise available for access and egress, common use, amenity, or convenience by the Occupiers;

"Conditions Precedent" means the conditions referred to in clause 2.5(a);

"Consumer Price Index" means the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) Area (All Groups);

"CPI Rent Review Date" means a rent review date specified in item 7 of the Schedule as a "CPI Rent Review";

"Current CPI" means the Consumer Price Index number last published before the relevant Rent Review Date, or if an actuary is appointed under clause 5.2 to determine an index, the number certified by that actuary;

"End Date" means the date specified in item 3 of the Schedule;

"Event of Default" means the events specified in clause 18 of this Lease and clause 2.9(a) of the special clauses to this Lease;

"Facilities" means the water supply, drainage, sewerage, gas and electrical fixtures, fittings or appliances, in or on the Land or the Leased Premises;

"Final Period" means the period ending on Termination and commencing on the 1 July prior to Termination;

"Financial Year" means a year beginning on 1 July and ending on the following 30 June;

"First Period" means the period commencing on the Commencement Date and ending on the immediately subsequent 30 June;

"Further Term" means each further term specified in item 8(b) of the Schedule;

"Interest Rate" means the interest rate specified in item 5 of the Schedule;

"Gross Lettable Area" means the aggregate of all areas in the Land designated from time to time as lettable space (whether currently let or not) by the Lessor and measured under the applicable PCAL method of measurement for lettable area chosen by the Lessor;

"Land" means the land described in item 4(a) of the Schedule;

"Laws" means all statutes, rules, regulations, proclamations, ordinances, legislative instruments, local laws or by-laws present or future and includes applicable Australian Standards and Codes of Practice;

"Lease" means this deed and the Schedules and, where applicable, any appendices, plans or other attachments to this deed as amended from time to time;

"Lease Year" means a Financial Year or any other period of twelve (12) months nominated by the Lessor, and includes, where appropriate, the First Period and the Final Period;

"Leased Premises" means that part of Building on the Land described in item 4(b) of the Schedule;

"Lessee's Business" means the business carried on by the Lessee from the Leased Premises;

"Lessee's Fixtures" means each fixture and fitting installed by the Lessee in or on the Leased Premises with the Lessor's consent which is not, or is not re-classified as, a Lessor's Fixture in accordance with this Lease;

"Lessee's Obligations" means each covenant, obligation and duty contained or implied in this Lease or required by law to be performed by the Lessee, the Guarantors, or any Authorised Persons;

"Lessee's Proportion" means

- (a) one hundred percent (100%) with respect to any other expenses payable by the Lessee which is separately assessed on the Leased Premises; and
- (b) in regard to any other expenses payable by the Lessee which is not separately assessed on the Leased Premises, the proportion that the total floor area of the Leased Premises bears to the Gross Lettable Area;

"Lessee's Rights" means the Lessee's rights under this Lease or implied by law;

"Lessee's Turnover" is the aggregate of the prices charged or chargeable and other remuneration received or receivable for all merchandise sold, leased, hired or otherwise disposed of, services sold and or performed and all business of any nature whatsoever conducted in, at, from or upon the Leased Premises together with any tax on goods or services, sales tax or levy of a similar kind for goods or services the inclusion of which is not prohibited at law including:

- (a) orders which originated and/or are accepted at or from the Leased Premises;
- (b) orders which originated at any place other than the Leased Premises but where delivery is made at or from the Leased Premises;
- (c) mail, telephone, internet and e-mail or similar orders received or filled at or from the Leased Premises or directed thereto;
- (d) all deposits taken and not refunded to customers;
- (e) sales made or services provided by means of mechanical or vending devices at or from the Leased Premises;
- (f) service finance or interest charges made by the Lessee on any type of account which itself was or should have been included within this definition as part of the Lessee's Turnover; and
- (g) sales made and or services provided by any concessionaire or licensee at, in, from or upon the Leased Premises,

but does not include or, if included, there is to be deducted.

- (h) the amount of any GST, value added tax or any tax calculated in respect of sales by retailers payable in respect of gross sales to any federal or state government or any other relevant Authority.
- (i) the net amount of discounts actually allowed to any customer and which discounts were reasonably and properly allowed in the usual course of business;
- (j) uncollectible credit accounts to the extent that the same are written off by the Lessee provided that if any of those accounts are subsequently recovered then the amount thereof is to be included within the Lessee's Turnover for the period in which they were recovered;
- (k) any insurance premiums the Lessee's pays during the Term;
- (l) sales of the Lessee's fixtures and fittings;
- (m) the amount of any cash or credit refund allowed on a transaction the proceeds of which previously have been included as part of the Lessee's Turnover under this definition where the merchandise is returned and the sale is cancelled or fees for the services are refunded wholly or partly;
- (n) the amount of any instalment of purchase moneys refunded to customers where booking is cancelled;

"Lessor's Fixtures" means the Lessor's fixtures and fittings in or on the Leased Premises and any Lessee's Fixtures which are re-classified by the Lessor as Lessor's Fixtures in accordance with this Lease;

"Lessor's Works" means any construction, refurbishment, upgrade and renovation works carried out or to be carried out on or to the Leased Premises as notified to the Lessee by the Lessor from time to time;

"Lessor's Rights" means the rights of the Lessor under this Lease or implied by law, including without limitation the benefit of the Lessee's Obligations;

"Maintain" includes maintain, repair, renovate, replace, decorate and refurbish, and "Maintenance" and "Maintaining" have equivalent meanings;

"Occupiers" means any Lessee, licensee or other person with a right to occupy or use any part of the Land from time to time;

"Party" and "Parties" or "party" and "parties" mean respectively a party or parties to this Lease;

"PCAL" means the Property Council of Australia Limited (ACN 008 474 422);

"Plant and Equipment" means the plant and equipment used in connection with the provision of any Services or the heating, cooling, lighting, power or plumbing for the Leased Premises;

"Previous CPI" means the Consumer Price Index number last published before the date which is twelve (12) months before the relevant Rent Review Date, or if an actuary is appointed under clause 5.2 to determine an index, the number certified by that actuary;

"Rates and Taxes" means:

- (a) local government rates, levies and charges including but not limited to, rubbish removal and fire service rates, levies and charges;
- (b) land tax (including metropolitan region improvement tax) on a single holding basis;
- (c) water, drainage and sewerage rates, including but not limited to meter rents, charges for the disposal of storm water and excess water charges; and
- (d) rates, taxes, charges, duties and fees,

levied, charged, assessed or imposed by a Relevant Authority in respect of any part of the Leased Premises or the ownership or occupation of any part of the Leased Premises, together with any related interest, penalties, fines and expenses in connection with them but excluding any tax imposed by the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth);

"Relevant Authority" means any government, statutory, public or other authority or body having jurisdiction over the Leased Premises or any matter or thing relating to the Leased Premises;

"Rent" means the rent specified in item 6 of the Schedule as reviewed in accordance with this Lease;

"Rent Review Date" means each rent review date as specified in item 7 of the Schedule;

"Requirements" means any requirements, notices, orders or directions of

any Relevant Authority;

"Schedule" means a schedule to this Lease;

"Services" means any telecommunication, electricity, gas, oil, fuel, water or other similar commodity, facility or service in, to or on the Leased Premises or otherwise serving the Leased Premises or, where applicable, any other part of the Land;

"State" means the State of Western Australia;

"Term" means the term specified in item 8(a) of the Schedule;

"Termination" means the expiry of the Term by effluxion of time or by termination in accordance with this Lease;

"Works Conditions" means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (a) do so:
 - (i) at the Lessee's cost;
 - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, acting reasonably;
 - (iii) using only good quality materials;
 - (iv) in full compliance with:
 - (A) and only after obtaining the approvals of, all Relevant Authorities;
 - (B) and subject to the conditions of, the Lessor's consent in relation to those works;
 - (C) plans and specifications approved by the Lessor;
 - (D) all Requirements and Laws, including but not limited to Civil Aviation Safety Standards;
 - (v) using a qualified and competent contractor engaged by the Lessee (who has a public liability policy of not less than ten million dollars (\$10,000,000.00) and appropriate contract construction risk, workers compensation and other usual insurances, which insurance must note the rights and interest of the Lessor and evidence of which must be provided to the Lessor);
- (b) ensure that the Lessee and all its employees, agents, contractors and workmen employed in executing the relevant works:
 - (i) duly and punctually comply with the reasonable directions of the Lessor in relation to their conduct in and access to the Leased Premises and when going to and from the Land and Leased Premises; and

- (ii) do not do or permit any act or thing to be done which may be a nuisance or cause damage, disturbance or offence to the Lessor or other Occupiers;
- (c) if required by the Lessor, erect and maintain a fence around the Leased Premises during the erection and completion of the works and ensure that such fence is sufficiently sound, high and secure to prevent entry upon the Leased Premises by unauthorised persons and members of the public;
- (d) clean up the Leased Premises progressively during the construction, installation or demolition of the works as the case may be and promptly remove from the Leased Premises all rubbish and waste arising from such works; and
- (e) pay on demand to the Lessor:
 - (i) all the reasonable costs of the Lessor in connection with the relevant works including the Lessor's administrative and other reasonable costs of giving consent and the fees of any architect or other consultant used by the Lessor in connection with the relevant works EXCEPT THAT such costs do not include any costs or expenses incurred by the Lessor or entitled to be recovered by the Lessor in its capacity as the local government charged with the responsibility of approving such works; and
 - (ii) all costs and expenses incurred or arising as a consequence of any disruption caused by the Lessee or the Lessee's contractors on the Leased Premises in carrying out the relevant works; and

"Written Law" has the same meaning given to that term in the *Interpretation Act 1984* (WA).

1.2 Interpretation

The following interpretations shall apply:

- (a) words importing the singular shall include the plural and vice versa, words importing gender shall include the masculine, feminine and neuter genders and words importing persons shall include individuals, firms, associations, partnerships, government authorities, incorporated and unincorporated entities and corporations;
- (b) if two (2) or more persons by this Lease undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound both jointly and jointly and severally;
- (c) a reference to this Lease includes a reference to any Schedule, Recital, Part, Clause, Sub-Clause, paragraph or Annexure in or to this Lease, and in or to this Lease as amended, novated, supplemented, varied or replaced from time to time, and vice versa;

- (d) a reference to a statute, Act or Code, regulation or by-law or to any section, sub-section or paragraph thereof, includes any statutory amendment, replacement, consolidation, modification or re-enactment thereof from time to time, and for the time being in force, and all ordinances, by-laws, regulations, and other statutory instruments issued under them;
- (e) where the day or last day for doing an action or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is not a Business Day, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served, shall be deemed to be the next Business Day;
- (f) where any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29th, 30th or 31st day of a month which does not contain such a date, then references thereto shall be construed as references to the last day of that month;
- (g) a reference to any Party includes that Party in its own right and in its capacity as trustee of any trust (whether specified or not), and also includes that Party's executors, administrators, successors, substitutes and permitted assigns in accordance with this Lease, including any person taking by way of novation;
- (h) all headings and any table of contents or index have been inserted for convenience purposes only and shall not affect the interpretation hereof;
- (i) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (j) all references to monetary amounts are references to Australian dollars unless stated otherwise;
- (k) a reference to:
 - (i) a right includes a benefit, remedy, discretion, authority or power;
 - (ii) an obligation includes a warranty or representation;
 - (iii) a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (iv) provisions or terms of this Lease include a reference to both express and implied provisions or terms;
 - (v) writing includes any means or mode of representing or reproducing words in a tangible and permanently visible form, and includes facsimile transmissions.
 - (vi) signature and signing includes due execution by a corporation or other relevant entity;
 - (vii) a month means a calendar month;

- (viii) conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing; and
- (ix) an amount for which a person is contingently liable includes, without limitation, an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise;
- (l) each paragraph or sub-paragraph in a list is to be read independently from the others in that list;
- (m) no rule of construction of documents shall apply to the disadvantage of a Party, on the basis that that Party put forward this document or any relevant part of it;
- (n) “including” and similar expressions are not words of limitation;
- (o) a covenant, agreement, representation or warranty in favour of two (2) or more persons is for the benefit of them jointly and severally;
- (p) a reference to a statutory, professional or industry body includes a reference to a successor or substitute for that body;
- (q) unless repugnant to the context, a covenant by a Party to do or omit to do anything includes a covenant by an Authorised Person to do or omit to do that thing, and the Party is liable for all acts or omissions of an Authorised Person;
- (r) a general description of any matter or thing whatever shall not be read down if followed by any specific examples of that matter or thing;
- (s) derivatives of a word or expression defined in clause 1.1 have a corresponding meaning to that assigned to it in that clause; and
- (t) a reference to “Lessor” is a reference to the Shire of Wyndham East Kimberley only in its capacity as owner of the Leased Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority.
- (u) Covenants implied by Laws are not incorporated in the Lease, unless the relevant Law provides that certain covenants are to be implied and cannot be excluded by agreement.

2. OPERATIVE PART

2.1 Lease of Premises

In consideration of the Lessee agreeing to duly pay the Rent and other money payable under this Lease and to duly observe and perform the Lessee's Obligations, the Lessor leases the Leased Premises and grants the Lessee's Rights to the Lessee for the Term commencing on the Commencement Date subject to the reservation of the Lessor's Rights under this Lease.

2.2 Quiet enjoyment

The Lessor warrants that the Lessor has full capacity to grant this Lease and, if the Lessee duly pays the Rent and other money payable under this Lease and duly observes and performs the Lessee's Obligations, the Lessor agrees that the Lessee may quietly hold the Leased Premises and enjoy the Lessee's Rights during the Term without any disturbance from the Lessor or any person lawfully claiming through the Lessor, except to the extent that interruption, disturbance or interference arises because of the exercise of the Lessor's rights or is otherwise permitted by any provision of this Lease.

2.3 Access to Leased Premises

The Lessor shall permit access and egress across the Land on such roads as may be designated by the Lessor from time to time to the Leased Premises and the Lessor shall at all times endeavour to keep such roads open and unobstructed.

2.4 Lessee responsible as if owner

The Lessee is subject to the same responsibilities relating to persons and property during the Term as if the Lessee were the owner of the Leased Premises.

2.5 Conditions Precedent

(a) This Lease is subject to and expressly conditional upon the Lessor complying with the procedures set out in section 3.58 of the *Local Government Act 1995 (WA)* relating to disposal of property ("**Local Government Condition**");

(b) The Parties covenant and agree that:

Best endeavours

(i) where relevant, the Parties will each use their best endeavours to satisfy the Conditions Precedent;

Local Government Condition

(ii) the Lessor will bear all costs associated with satisfying the Local Government Condition;

2.6 Discretion of the Lessor in its capacity as Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed as an attempt to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Written Law and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development of the Land or carrying out of any Maintenance or other works by the Lessee in accordance with this Lease.

3. RESERVATION OF LESSOR'S RIGHTS

Without limiting any other provision of this Lease, the Lessor reserves the following rights:

3.1 Improvements to Leased Premises

The Lessor may at any time carry out improvements to the Leased Premises, including, without limitation:

- (a) construct new structures on the Land;
- (b) alter, add to, extend, reduce the size of, or otherwise modify, existing structures on the Land;
- (c) any other Lessor's Works,

but in exercising these rights, the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Lessee's Business;

3.2 Right to enter

- (a) The Lessee shall permit the Lessor to enter the Leased Premises at all reasonable times on the giving of reasonable notice, or immediately in the case of emergency, with or without workmen and materials to:
 - (i) view the state of repair of the Leased Premises and to ensure compliance with the Lessee's Obligations;
 - (ii) comply with any requirement or order of any Relevant Authority;
 - (iii) carry out any Maintenance, modification, installation or extension to the Leased Premises or the Land, the Plant and Equipment or cables, pipes or wires within the Leased Premises or the Land; and
 - (iv) view the Leased Premises with any persons interested in the Land or the Leased Premises;

except that the Lessor shall use the Lessor's reasonable endeavours not to cause any undue interference with the conduct of the Lessee's Business;

- (b) the Lessor may enter the Leased Premises at any time for the purpose of doing anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly; and
- (c) the Lessor's right of entry under this Clause 3.2 allows the Lessor to enter in the Leased Premises with or without workmen or other interested persons and, in the case of works that are required to be undertaken, with all necessary plant, equipment and materials to effect those works;

3.3 Common Areas

With respect to structures and Facilities in the Common Areas (if any), the Lessor may in its absolute discretion at any time, erect or modify such structures or Facilities;

3.4 Granting easements etc

The Lessor may grant easements of support or any other easements or similar rights over any part of the Land or the Leased Premises or dedicate, transfer or otherwise deal with any part of the Land or the Leased Premises in favour of another person for any reason whatsoever except that the Lessor shall not without the Lessee's prior consent do anything which will substantially and permanently derogate from the quiet enjoyment of the Lessee's Rights by the Lessee;

3.5 Re-classification of fixtures and fittings

The Lessor may by notice to the Lessee at any time or times re-classify any Lessee's Fixtures which it reasonably considers form an integral part of the Leased Premises as Lessor's Fixtures. Ownership of the Lessee's Fixtures specified in the notice will pass to the Lessor on the giving of the notice and the Lessee shall have no right of compensation against the Lessor for such re-classification; and

3.6 Managing Agent

The Lessor may appoint a Managing Agent to manage the Leased Premises and represent the Lessor in relation to this Lease. If the Lessor appoints a Managing Agent, the Managing Agent may exercise the Lessor's rights and powers under this Lease. The Lessor may at any time vary or terminate the authority of the Managing Agent. Any decision made by the Lessor overrides any decision made by the Managing Agent if there is any inconsistency between those decisions.

4. RENT

4.1 Subject to this clause 4, the Lessee must pay the Rent to the Lessor in the manner specified in item 6 of the Schedule at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, including without limitation by direct bank deposit, without deduction or set-off (including but not limited to equitable set-off).

4.2 The Lessee must give the Lessor a statement of the Lessee's Turnover for the previous three (3) completed calendar months ("Turnover Statement"), on the 15th day of May, August, November and February each Year.

4.3 The amount payable (if any) pursuant to Item 6(b) of the Schedule based on the Lessee's Turnover will be calculated from the Turnover Statement for the purposes of determining the Rent payable in accordance with item 6 of the Schedule. The amount calculated must be paid at the same time as the Turnover Statement is due.

4.4 The Lessee will keep and maintain accurate records ("records") from which the Lessee's Turnover can be verified, and will preserve them for at least two

(2) years after the end of each Lease year. The Lessee shall produce the records to the Lessor for inspection upon written request from the Lessor.

- 4.5 The Lessor may, at any time audit all records relating to the Lessee's Turnover. For the purposes of an audit, the Lessee must make those records available to the Lessor or its representative upon request (but no later than two (2) months after the end of each Financial Year) at a place which may be mutually agreed.
- 4.6 If the Lessee's Turnover shown by the Turnover Statement for any Lease year are found by the audit to be understated resulting in a further amount of rent being payable pursuant to Item 6 of the Schedule then the Lessee will pay to the Lessor the additional rent within 10 Business days of notification of the amount payable.
- 4.7 If the Lessee's Turnover shown by the Turnover Statement for any Lease year are found by the audit to be understated by more than five (5%) then the Lessee will pay to the Lessor the costs of the audit.
- 4.8 The Lessee will (if required) have a qualified Accountant prepare and certify at the Lessee's expense a statement of the Lessee's Turnover for each Lease Year. Each statement will be delivered to the Lessor within thirty (30) days after the end of each Lease Year.

5. RENT REVIEW

5.1 General

On each Rent Review Date, the Base Rent shall be reviewed in the manner set out in the following clauses of this clause 5.

5.2 CPI Rent Review

- (a) With effect from each CPI Rent Review Date, the Base Rent shall be reviewed so that it is the greater of the annual Base Rent payable immediately before the relevant CPI Rent Review Date or the sum calculated on the basis of the following formula:

$$\text{RR} = (\text{R} \times \text{CCPI}) \text{ divided by PCPI}$$

Where:

"RR" = the annual Base Rent as reviewed;

"R" = the annual Base Rent payable immediately before the relevant CPI Rent Review Date;

"CCPI" = the Current CPI; and

"PCPI" = the Previous CPI.

- (b) The Lessor may not earlier than three (3) months before a CPI Rent Review Date give the Lessee a notice setting out the amount of the reviewed Base Rent which shall be payable from the CPI Rent Review Date ("CPI Rent Review Notice"), except that the failure of the Lessor to give such a notice before the CPI Rent Review Date does not

preclude the Lessor from giving such a notice in respect of that CPI Rent Review Date at any later time.

(c) Determination of Current CPI or Previous CPI

If for the purposes of a CPI Rent Review under clause 5.2(a), the Consumer Price Index number is not published or, in the opinion of the Lessor there is a material change in the basis on which the Consumer Price Index is determined, or no Consumer Price Index number was published in the twelve (12) to fifteen (15) month period before the relevant CPI Rent Review Date for the purposes of determining the Previous CPI, then the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

- (i) in respect of the Current CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at that CPI Rent Review Date; and
- (ii) in respect of the Previous CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at the date which is twelve (12) months prior to that CPI Rent Review Date,

and the actuary's determination will be binding on the Lessor and the Lessee and the Lessor and the Lessee will pay the actuary's costs in equal shares.

5.3 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Base Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Base Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Base Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Base Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Base Rent until the Lessor notifies the Lessee of the reviewed Base annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Base Rent, any necessary adjustment is to be made within ten (10) Business Days of service of the rent review notice.

5.4 Not to cause Rent reduction

The Lessee shall not by any act or omission cause, directly or indirectly, the Rent to be reduced or impose on the Lessor any liability of the Lessee under this Lease unless obliged to do so by any Laws or with the consent of the Lessor.

6. RATES AND TAXES

- 6.1 The Lessee must pay to the Lessor within one (1) month, or if the demand is made to the Lessee by any Relevant Authority then to that authority on demand in full all Rates and Taxes separately assessed or imposed by any Relevant Authority or other service provider solely in respect of the Premises.
- 6.2 Except in the case of manifest error, a statement issued by the Lessor under clause 6.1 will be prima facie evidence of the matters stated in that statement.
- 6.3 If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease will be adjusted proportionally.

7. LESSEE TO PAY FOR SERVICES

7.1 Services separately assessed

The Lessee must pay to the Lessor or, if demand is made by a service provider, or Relevant Authority, to that service provider Relevant Authority, all amounts separately charged or assessed in respect of the Leased Premises or the Lessee for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any Facility, meter, wiring or other device necessitated by the use of a Service.

7.2 Services Not Separately Assessed

The Lessee must pay to the Lessor or, if demand is made by a statutory or other public authority, to that statutory or other public authority, the Lessee's Proportion of all amounts in respect of the Leased Premises or the Lessee not separately charged or assessed for or in connection with Services to or for the benefit of the Leased Premises or the Lessee, including supply charges and the cost of installation of any meter, wiring or other device necessitated by the use of a Service.

7.3 Bulk supplies Services

If the Lessor supplies any Services to the Leased Premises the Lessee must on demand pay to the Lessor the amount which the Lessee would have been charged by the original service provider, or statutory or other public authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or statutory or other Relevant Authority.

- 7.4 The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with the conditions of supply of Services imposed by the service provider or a Relevant Authority.

- 7.5 If any Service is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Service to the Leased Premises. For the avoidance of doubt, the Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Leased Premises.

8. USE OF LEASED PREMISES AND FACILITIES

8.1 Authorised Use

The Lessee shall not:

- (a) use the Leased Premises for any purpose other than the Authorised Use specified in item 1 of the Schedule or for any purpose for which the Leased Premises was not designed or designated; and
- (b) use each Facility, Service, item of Plant and Equipment or Lessor's Fixture for a purpose for which it was not designed or designated.

8.2 Licenses and Limitations

- (a) The Lessee accepts the Leased Premises for the Term with full knowledge of and subject to any existing prohibition, condition or restriction on the use of the Leased Premises.
- (b) If the carrying on of the Lessee's Business at the Leased Premises is permissible only with the consent, licence or authority under any Law, the Lessee shall obtain and maintain the currency of that consent, licence or authority and comply with that Law.
- (c) The Lessee shall not conduct any business in or from the Leased Premises at any time prohibited by any Law.

8.3 Comply with Directions

The Lessee:

- (a) shall comply with the Lessor's reasonable requirements for the use of each Facility, Service, item of Plant and Equipment and Lessor's Fixtures;
- (b) shall not do or omit to do any thing which might interfere with or impair the efficient supply or operation of each Facility, Service, item of Plant and Equipment or Lessor's Fixtures;
- (c) in the conduct of the Lessee's Business comply strictly with all relevant requirements imposed by any Law or Relevant Authority; and
- (d) shall comply with all rules, regulations, directions, orders and Requirements made in respect of the Land and in particular the East Kimberley Regional Airport including but not limited to the:
 - (i) East Kimberley Regional Airport operational manual as amended from time to time, the *Civil Aviation Act 1988* (Cth), the *Civil Aviation Safety Regulations 1998* (Cth) and the Manual of Standards issued pursuant those regulations; and
 - (ii) East Kimberley Regional Airport Transport Security Plan as amended from time to time, the *Aviation Transport Security Act 2004* (Cth) and the *Aviation Transport Security Regulations 2005* (Cth).

8.4 Airside Area Access

- (a) Access to the airside area of the East Kimberley Regional Airport is restricted pursuant to, and any person entering the airside area is required to comply with the:
 - (i) East Kimberley Regional Airport operational manual as amended from time to time, the *Civil Aviation Act 1988* (Cth), the *Civil Aviation Safety Regulations 1998* (Cth) and the Manual of Standards issued pursuant those regulations; and
 - (ii) East Kimberley Regional Airport Transport Security Plan as amended from time to time, the *Aviation Transport Security Act 2004* (Cth) and the *Aviation Transport Security Regulations 2005* (Cth).
- (b) The Lessee is responsible for ensuring that all persons entering or passing through the Leased Premises comply with the requirements of clause 8.4(a).

9. SECURITY OF LEASED PREMISES

9.1 The Lessee shall:

- (a) securely lock all doors, gates or other openings in, to or on the Leased Premises when the Leased Premises are unoccupied; and
- (b) if required by the Lessor install in and operate on the Leased Premises a security alarm system approved by the Lessor.

9.2 The Lessor may enter the Leased Premises at any time for any purpose in relation to security, but nothing in this Clause makes the Lessor responsible in any way for the security of the Leased Premises.

10. MAINTENANCE AND WORKS

10.1 Obligation to Maintain

The Lessee shall:

- (a) Maintain the Leased Premises in a good condition and state of repair, except in respect of:
 - (i) fair wear and tear; and
 - (ii) damage which is or will be reinstated from the proceeds of insurance;
- (b) promptly repair any damage to the Leased Premises for which the Lessee is responsible to the satisfaction of the Lessor;
- (c) keep the Leased Premises clean and free from rubbish;
- (d) Maintain the Lessor's Fixtures, the Lessee's Fixtures and the Facilities on or in the Leased Premises (if any) in good condition and where

necessary, replace that Lessor's Fixture, Lessee's Fixture or the Facility to the satisfaction of the Lessor except in respect of:

- (i) fair wear and tear; and
 - (ii) damage which is or will be reinstated from the proceeds of an insurance policy;
- (e) not do or omit to do anything which might cause the Leased Premises or the Lessee's Fixtures to deteriorate or become impaired except for fair wear and tear, to be obstructed, or to be in a condition other than a good and sanitary condition;
 - (f) maintain the Lessee's Fixtures in clean and good condition;
 - (g) promptly replace any broken glass in the Leased Premises or the Lessee's Fixtures;
 - (h) not without the Lessor's prior consent, install any electrical equipment on the Leased Premises and the Lessee's Fixtures which might overload the cables, switchboards or sub-boards through which electricity is connected to the Leased Premises and the Lessee's Fixtures;
 - (i) not without the Lessor's prior consent, erect or place on or in the Leased Premises and the Lessee's Fixtures any radio or television aerial or antenna; and
 - (j) keep all drains and other pipes in or connected to the Leased Premises and the Lessee's Fixtures properly cleaned and free-flowing;

10.2 Alteration and Substantial Works

The Lessee must not make any alteration to or addition to or demolish any part of the Leased Premises and the Lessee's Fixtures, or remove or alter any of the Lessee's Fixtures, Lessor's Fixtures, the Plant and Equipment or any Facility or Service in or on the Leased Premises and the Lessee's Fixtures without the prior written consent of the Lessor which consent may be granted or refused or granted subject to conditions at the absolute discretion of the Lessor EXCEPT THAT the Lessor shall not arbitrarily or unreasonably withhold its approval in the case of any mandatory alterations required by a Relevant Authority.

10.3 Standard for Maintenance and Works

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Leased Premises and the Lessee's Fixtures.

10.4 Remove Non-approved Works

If the Lessee carries out any works, or erects any building or structure, on the Leased Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and

remove any such works, building or structures and the Lessee shall carry out the same in accordance with the Lessor's directions.

11. POSITIVE COVENANTS

11.1 Costs and Expenses

The Lessee must pay to the Lessor or as the Lessor directs all the Lessor's costs, charges and expenses in connection with:

- (a) the negotiation, preparation, execution, settlement and stamping of this Lease;
- (b) any consent, approval or exercise of any right, waiver, variation, release, surrender or discharge in connection with this Lease, including but not limited to all costs and expenses of and incidental to the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA);
- (c) any inspection or report concerning the Leased Premises and the Lessee's Fixtures;
- (d) any breach of the Lessee's Obligations;
- (e) any work done at the request of the Lessee;
- (f) the exercise of attempted exercise of the Lessor's Rights; and
- (g) any action, suit or proceeding to which the Lessor is joined as a party as a result of the Lessee's occupation of the Leased Premises and the Lessee's Fixtures, and

such costs, charges and expenses include, but are not limited to:

- (h) taxes and fees and fines and penalties which may be payable in connection with this Lease;
- (i) all legal costs and expenses on a full indemnity basis; and
- (j) all interest which the Lessor is entitled to claim.

11.2 Reimburse Lessor Expenses

The Lessee shall pay to the Lessor on demand all money paid by the Lessor on behalf of the Lessee in the discharge of any of the Lessee's Obligations.

11.3 Report to Lessor

The Lessee shall report promptly to the Lessor or the Managing Agent in writing:

- (a) all damage or defects in the Leased Premises, the Lessee's Fixtures, the Lessor's Fixtures, the Plant and Equipment or the Facilities in or on the Leased Premises of which the Lessee is or ought to be aware;

- (b) any malfunction of any Plant and Equipment or Facility either on the Leased Premises or used by the Lessee;
- (c) any notice or order received from any court relating to the Leased Premises and the Lessee's Fixtures; and
- (d) any circumstances likely to be a danger or cause any damage or danger to the Leased Premises and the Lessee's Fixtures or any person in or on the Leased Premises and the Lessee's Fixtures of which the Lessee is aware;

11.4 Comply with Laws

The Lessee shall comply promptly with all Laws affecting the Leased Premises and the Lessee's Fixtures or the use of the Leased Premises and the Lessee's Fixtures;

11.5 Interest

The Lessee shall on demand by the Lessor, pay the Lessor interest on any Rent, or other money payable under this Lease which is not paid on the due date calculated at the Interest Rate specified in item 5 of the Schedule from the due date for payment until the date of actual payment.

12. **NEGATIVE COVENANTS**

The Lessee shall not:

- (a) except for reasonable quantities for normal applications in connection with the use of the Leased Premises and in the carrying out of the Lessee's Business, bring onto, store or use any chemical or inflammable substance in or the Leased Premises;
- (b) store goods on or in the Leased Premises other than those necessary in the carrying out of Lessee's Business;
- (c) without the Lessor's prior consent, place or operate in any part of the Leased Premises any radio, television, loud speaker, amplifier or other similar device;
- (d) except as is lawful and necessary and an ordinary incident of carrying out the Lessee's Business, do or carry on in the Leased Premises any activity which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Lessor or the Occupiers or the owners or occupiers of any nearby properties unless with the prior consent of any Relevant Authority and the Lessor;
- (e) place any rubbish on or in any part or the Leased Premises except in a suitable receptacle;
- (f) burn any rubbish in or on the Leased Premises, unless permitted by law and a necessary and ordinary incident of the Lessee's Business;
- (g) deliver or permit to be delivered goods or materials to or from the Leased Premises except in a manner which causes minimum interference to other Occupiers; and

- (h) in relation to the Common Areas (if any):
 - (i) cause an obstruction in any part of the Common Areas;
 - (ii) use any part of the Common Areas for purposes for which they are not designed;
 - (iii) leave any goods or articles in any part of the Common Areas; or
 - (iv) conduct any business from the Common Areas.

13. LESSEE'S OBLIGATION TO EFFECT INSURANCES

13.1 The Lessee shall effect and maintain in the names of the Lessor and the Lessee with an insurance company approved by the Lessor all policies of insurance relating to the Leased Premises and the Lessee's Fixtures or otherwise as reasonably required by the Lessor from time to time, including policies of insurance in respect of the matters referred to in item 10 of the Schedule and the Lessee shall:

- (a) supply to the Lessor current details of all insurance effected in accordance with this clause, including copies of certificates of insurance or policy documents and receipts for premiums as updated, amended or varied from time to time;
- (b) not without the Lessor's prior consent, alter the terms or conditions of any policy; and
- (c) ensure that each policy of insurance includes a provision for cross liability and waiver of subrogation rights in favour of the Lessor.

13.2 The Lessee must not by any act or omission cause or allow anything to be done which might result in any insurance policy effected under this Lease or in respect of the Leased Premises and the Lessee's Fixtures becoming void or voidable or which might increase the premium on any policy.

14. INDEMNITIES

14.1 General indemnity

Except to the extent contributed to by the Lessor, the Lessee shall indemnify and keep indemnified the Lessor against all losses, claims, damages, demands, costs and expenses for which the Lessor becomes liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:

- (a) which are caused or contributed to by the use or occupancy of the Leased Premises and the Lessee's Fixtures by the Lessee, an Authorised Person or any other person, except to the extent caused or contributed to by the Lessor;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand against the Lessee to do or refrain from doing any thing except to the extent that the Lessor is

obliged by this Lease to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

14.2 Nature of indemnity

The obligation of the Lessee to indemnify the Lessor under this Lease or at law is not affected by the obligation of the Lessee to effect insurance and all indemnities shall survive the termination of the Lease.

15. ASSIGNMENT

15.1 No assignment

The Lessee shall not assign, mortgage or charge the Lessee's leasehold estate in the Leased Premises and the Lessee's Fixtures, nor sublet, part with possession or dispose of the Leased Premises and the Lessee's Fixtures in any way.

15.2 Property Law Act excluded

Sections 80 and 82 of the *Property Law Act 1969* (WA) of the State are excluded.

15.3 Changes in beneficial ownership of shares

If the Lessee is a company whose shares are not listed on any Stock Exchange in Australia, a change in the beneficial ownership of more than fifty per cent (50%) of the shares or the redemption, cancellation or issue of shares in that company or any holding company of that company will be deemed to be an assignment of the Lessee's leasehold estate.

15.4 Lessor may consent to assignment

The Lessee will not be in breach of the covenant in clause 15.1 in respect of an assignment if the Lessor consents to the assignment. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
 - (i) the proposed assignee is a respectable and responsible person of good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the Lessee under this Lease;
 - (ii) there is no Rent or other money payable under this Lease due but unpaid; and
 - (iii) there is no unremedied breach of the Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term,
- (b) the Lessee procures the execution by the proposed assignee of an assignment of lease prepared by the Lessor's solicitors at the Lessee's cost which contains terms acceptable to the Lessor, including a covenant by the proposed assignee with the Lessor to pay all Rent and

other money payable under this Lease and to observe and perform all of the Lessee's Obligations;

- (c) if the proposed assignee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance of all of the Lessee's Obligations including payment of the Rent and other money payable under this Lease; and
- (d) the Lessee agrees that the covenants of the assignee are independent of the covenants of the Lessee in this Lease and will not release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the assignment of the Lease to the proposed assignee, particularly on the occurrence of an Event of Default by the proposed assignee or any other party.

15.5 Lessor may consent to sublease

The Lessee will not be in breach of the covenant in clause 15.1 in respect of a sublease of the whole or part of the Leased Premises and the Lessee's Fixtures if the Lessor consents to the sublease. The Lessor will not unreasonably withhold consent if the following criteria are satisfied:

- (a) the Lessee satisfies the Lessor that:
 - (i) the proposed sub-lessee is a respectable and responsible person of a good financial standing, with sound business acumen, with adequate business experience and who is capable of meeting all the financial commitments of the sub-lessee under a sublease of this Lease;
 - (ii) the sublease will be granted without any fine or premium, and at a rent per square metre of the subleased area at least equal to the Rent payable under this Lease;
 - (iii) there is no Rent or other money payable under this Lease due but unpaid; and
 - (iv) there is no unremedied breach of the Lessee's Obligations and there have been no substantial breaches of the Lessee's Obligations during the Term
- (b) the Lessee procures the execution by the proposed sub-lessee of a sublease approved by the Lessor or the Lessor's solicitors at the Lessee's cost which contains terms consistent in all respects with this Lease and acceptable to the Lessor;
- (c) if the proposed sub-lessee is a company, the directors or substantial shareholders of the company at the option of the Lessor guarantee to the Lessor the observance and performance by the proposed sub-lessee of all of the Lessee's Obligations as if the proposed sub-lessee were named in this Lease as the Lessee; and
- (d) the Lessee agrees that the covenants of the sub-lessee are independent of the covenants of the Lessee in this Lease and will not

release or relieve the Lessee from the Lessee's Obligations and the Lessee acknowledges that the Lessee will continue to be fully responsible for the Lessee's Obligations notwithstanding the sublease of the Lease to the proposed sub-lessee, particularly on the occurrence of an Event of Default by the proposed sub-lessee or any other party.

15.6 Lessor may consent to charge

- (a) The Lessee will not be in breach of the covenant in clause 15.1 in respect of a charge or mortgage if the Lessee obtains the Lessor's consent to that charge or mortgage.
- (b) The Lessor may consent to, or refuse to give its consent to, a charge or mortgage in its absolute discretion.

15.7 Compliance with Acts

The Lessor and the Lessee acknowledge that if in granting its consent to any assignment or sublease the Lessor has to first comply with or satisfy any obligations or requirements under any Written Law, including but not limited to the *Local Government Act 1995 (WA)*, including but not limited to section 3.58 of the *Local Government Act 1995 (WA)* ("**Assignment/Sublease Condition Precedent**"), then the Lessor's consent is made expressly conditional upon and subject to satisfaction of the Assignment/ Sublease Condition Precedent.

16. DAMAGE, DESTRUCTION OR RESUMPTION

16.1 Lease not to terminate on destruction of building

If the Leased Premises or any part of the Leased Premises or the Lessee's Fixtures or the Lessor's Fixtures are destroyed or damaged or rendered unfit for occupation in any manner during the Term:

- (a) the Lessor will not be obliged to rebuild the Building or the Lessee's or Lessor's Fixtures or any part of the Building or other Fixtures; and
- (b) this Lease will continue notwithstanding the condition of the Building or other Fixtures and such events will not be a basis for either the Lessee or the Lessor to terminate this Lease; and
- (c) there shall be no abatement of Rent, outgoings or other payments due pursuant to the Lease, and the Lessee shall continue to pay all money due pursuant to this Lease as and when due.

16.2 Definitions

In this clause 16:

- (a) "Rehabilitation Notice" means a notice given by the Lessor to the Lessee that the Lessor requires the Lessee to diligently proceed within a reasonable time to carry out the Rehabilitation Works;
- (b) "Reinstatement Notice" means a notice given by the Lessee to the Lessor that the Lessee intends to proceed within a reasonable time to carry out the Reinstatement Works;

- (c) “Rehabilitation Works” means the work necessary to remove from the Leased Premises all of the Lessee's Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property;
- (d) “Reinstatement Works” means the work necessary to:
 - (i) reinstate the Leased Premises and the Lessee's Fixtures; or
 - (ii) make the Leased Premises and the Lessee's Fixtures fit for occupation and use or accessible by the Lessee.

16.3 Rehabilitation Works

- (a) If the Leased Premises or any part of the Leased Premises or the Lessee's Fixtures or the Lessor's Fixtures are destroyed or damaged or rendered unfit for occupation in any manner during the Term, and the Lessor serves a Rehabilitation Notice on the Lessee then the Lessee shall:
 - (i) submit details of the Rehabilitation Works proposed for the Lessor's approval not less than ten (10) Business Days after service of the Rehabilitation Notice;
 - (ii) within twenty (20) Business Days after service of the Rehabilitation Notice commence the Rehabilitation Works and proceed with all due diligence to complete the Rehabilitation Works within a reasonable time;
 - (iii) comply with the Works Conditions in respect of all Rehabilitation Works.
- (b) If the Lessee does not comply with the obligation to carry out the Rehabilitation Works:
 - (i) the Lessee shall pay the Lessor within ten (10) Business Days after the Lessor requests payment, any costs reasonably incurred by the Lessor to perform the Rehabilitation Works.
 - (ii) The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

16.4 Reinstatement Works

- (a) If the Leased Premises and the Lessee's Fixtures are damaged or destroyed so as to render any part of the Leased Premises and the Lessee's Fixtures wholly or substantially:
 - (i) unfit for occupation and use by the Lessee; or
 - (ii) inaccessible having regard to the nature and location of the Leased Premises and the Lessee's Fixtures and the normal means of access to them;

the Lessee may serve a Reinstatement Notice.

- (b) If the Lessee serves a Reinstatement Notice on the Lessor then the Lessee shall:
 - (i) submit details of the Reinstatement Works proposed for the Lessor's approval not less than ten (10) Business Days after service of the Reinstatement Notice;
 - (ii) within twenty (20) Business Days after service of the Reinstatement Notice commence the Reinstatement Works and proceed with all due diligence to complete the Reinstatement Works within a reasonable time;
 - (iii) comply with the Works Conditions in respect of all Reinstatement Works.

16.5 Indemnity for Works

The Lessee shall indemnify the Lessor in respect of any loss or damage suffered by the Lessor, and any claim against the Lessor by any person, relating in any way to:

- (a) the Lessee failing to perform the Rehabilitation Works; or
- (b) the Lessor performing the Rehabilitation Works; or
- (c) the Lessee performing the Reinstatement Works.

16.6 Proceeds of Insurance

If the Leased Premises and the Lessee's Fixtures are damaged or destroyed the insurance proceeds if any will be paid out to the party whose interest in the property was insured, and where the interest was jointly insured then apportioned according to the value of the insured property owned by the respective Parties.

16.7 Resumption of Leased Premises

If the Land or any part of the Land is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Lessee, this Lease may be terminated without compensation or other liability by either the Lessor or the Lessee by thirty (30) calendar days' notice to the other but without affecting the rights of either party against the other in respect of any previous breaches of the provisions of this Lease.

17. LIMIT OF LESSOR'S LIABILITY

17.1 No warranties or representations

The Lessee acknowledges and agrees that:

- (a) all the Lessee's property in or on the Land and the Leased Premises shall be at the sole risk of the Lessee during the Term and the Lessor shall not be liable for any claim, loss or damage that the Lessee may suffer as a result of:

- (i) any fault in the construction or state of repair of the Leased Premises, the Lessee's Fixtures or the Lessor's Fixtures;
 - (ii) any defect in any of the Plant and Equipment, Facilities or the Services;
 - (iii) any flow, overflow, leakage or breakdown of any water, air-conditioning, gas, power or other source of energy whether from the Leased Premises or otherwise;
- (b) the Lessor gives no warranty as to the use to which the Leased Premises may be put; and
- (c) the Lessee has not relied on any representation or warranty of the Lessor in entering into this Lease and, for this purpose, the Lessee acknowledges that:
- (i) the Lessee has relied on the Lessee's own skill and judgment and has made the Lessee's own enquiries in determining the suitability of the Leased Premises for the Authorised Use and the Lessee's Business; and
 - (ii) the Lessee's occupation of the Leased Premises is conclusive evidence of the Lessee's acceptance of the Leased Premises as being in good order, repair and condition at the Commencement Date.

17.2 Lessor Not Liable

- (a) The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or machinery malfunction, interruption of Services or other event of a similar nature in or affecting or the Leased Premises.
- (b) The Lessee acknowledges and confirms that the Lessee's non-exclusive right to use the Common Areas (if any) is subject to the rights of the other Occupiers.

17.3 Lessor only liable while registered proprietor

Each Lessor is only liable for any breaches under this Lease occurring while that person is the registered proprietor of the Leased Premises.

17.4 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

18. **DEFAULT**

An Event of Default occurs if:

- (a) the Lessee fails to pay the Rent, the Variable Outgoings or other money payable under this Lease for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (b) the Lessee fails to perform any of the Lessee's Obligations other than the payment of moneys referred to in clause 18(a) for seven (7) Business Days after the Lessor has given written notice to the Lessee of the default;
- (c) distress is levied or a judgement, order, security or encumbrance is enforced against any property of the Lessee;
- (d) a receiver or receiver and manager or controller as defined in the *Corporations Act 2001* (Cth) is appointed in respect of any part of the Lessee's property;
- (e) a person is appointed under legislation to investigate or manage any part of the Lessee's affairs;
- (f) the Lessee ceases to carry on the Lessee's Business from the Leased Premises; or
- (g) where the Lessee is a company and:
 - (i) an application is made to a court for an order or an order is made that the Lessee be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Lessee;
 - (iii) except for the purposes of reconstruction or amalgamation, the Lessee enters into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of the Lessee's creditors;
 - (iv) the Lessee resolves to wind itself up or otherwise dissolve itself;
 - (v) the Lessee states that it is insolvent; or
 - (vi) the Lessee takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

19. LESSOR'S POWERS ON DEFAULT

19.1 Lessor's right of possession

On the occurrence of an Event of Default, the Lessor may without giving any further notice or demand enter the Leased Premises and re-take possession, and on re-entry, the Term will immediately determine.

19.2 Lessor may remedy Lessee's default

- (a) If an Event of Default occurs or the Lessee otherwise fails to perform any of the Lessee's Obligations, the Lessor may without prejudice to the Lessor's rights arising from the Event of Default or the failure to perform, remedy that Event of Default or the failure to perform as if the Lessor was the Lessee, at the Lessee's cost. The Lessee must pay to

the Lessor all liabilities incurred by the Lessor in remedying an Event of Default or failure to perform.

- (b) None of the following events constitutes a re-entry or forfeiture or waiver of the Lessor's rights to recover in full all Rent, Variable Outgoings and other money payable by the Lessee under the Lease:
 - (i) acceptance of the keys or other access devices for the Leased Premises;
 - (ii) entry to the Leased Premises by the Lessor for the purpose of inspection or for the purpose of showing the Leased Premises to prospective Lessees or to remedy an Event of Default; or
 - (iii) advertising the Leased Premises for re-letting.

19.3 No prejudice of Lessor's rights

Any re-possession or attempted re-possession of the Leased Premises by the Lessor or any demand for or acceptance of any of the Rent, Variable Outgoings or other money payable under this Lease will not:

- (a) prejudice or affect the Lessor's rights under this Lease;
- (b) release the Lessee from performing the Lessee's Obligations; or
- (c) be deemed an election by the Lessor as to the exercise of the Lessor's rights under this Lease or at law.

19.4 Exercise of rights by Lessor

The Lessor may exercise the Lessor's rights under this Lease or at law notwithstanding laches, neglect or waiver in respect of any breach of the Lessee's Obligations, and without giving notice except in accordance with this Lease or as required by law, and without having to prove default by the Lessee or the continuance of that default.

20. ESSENTIAL TERMS

20.1 Breach of Essential Terms

- (a) If the Lessee's conduct constitutes a breach of an essential term of this Lease and the Lessor elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation of this Lease, the Lessee shall compensate the Lessor for all loss or damage suffered by reason of or arising from the repudiation.
- (b) Clauses 4 ("Rent"), 5 ("Rent Review"), 6 ("Rates and Taxes"), 7 ("Variable Outgoings"), 9 ("Use of Leased Premises and Facilities"), 11 ("Covenant to Repair and Maintain"), 14 ("Lessee's Obligations to effect insurances"), 16 ("Assignment"), 29 ("Environmental"), 31 ("Car Park Bays") of this Lease are deemed to be essential terms. This is not an exhaustive list of the essential terms of this Lease.

20.2 Damage for Breach of Essential Terms

Any loss or damage for the unexpired residue of the Term suffered by the Lessor as a result of the Lessee's breach of an essential term may be recovered as damages at any time.

20.3 Lessor's Entitlement to Damages

The Lessor's entitlement to recover damages from the Lessee or any other person will not be limited or affected by any of the following:

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter the Leased Premises or terminate this Lease;
- (c) if the Lessor accepts the Lessee's repudiation; or
- (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

20.4 Lessor to Mitigate Damages

- (a) If the Lessee vacates the Leased Premises or if the Lessor accepts the Lessee's repudiation based on the Lessee's breach of an essential term of this Lease and terminates this Lease, the Lessor must take reasonable steps to mitigate its loss and endeavour to re-lease the Leased Premises on reasonable terms.
- (b) The entitlement to damages will be assessed on the basis that the Lessor has observed the obligation to mitigate damages.
- (c) The Lessor's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of law.

20.5 Calculation of Damages

Following repudiation by the Lessee if the Lessor terminates this Lease then, without prejudice to any other right or remedy, the Lessor may recover the difference between the aggregate of the Rent, the reasonable estimate of the Variable Outgoings and other money payable by the Lessee for the unexpired residue of the Term less any amount the Lessor obtains, or could in the Lessor's opinion reasonably be expected to obtain, by observing clause 20.4.

21. TERMINATION

21.1 Yield up Leased Premises

The Lessee shall on Termination surrender and yield up the Leased Premises to the Lessor in a condition consistent with the compliance of the Lessee's Obligations during the Term and deliver to the Lessor all keys, access cards and other security devices for the Leased Premises and the Land.

21.2 Remove Lessee's Fixtures

The Lessee shall:

- (a) prior to Termination or on the termination of any period of holding over, remove from the Leased Premises all of the Lessee's Fixtures and other property and any Lessor's Fixtures which the Lessor requires to be removed, and make good any damage caused to the Leased Premises by the removal of the Lessee's property,
- (b) comply with the Works Conditions in respect of the removal of property and making good specified in clause 22.2(a); and
- (c) submit details of the proposed removal works for the Lessor's approval not less than two (2) months prior to Termination, or in the event of the sooner determination of this Lease, on or prior to that sooner determination.

21.3 Making Good of Leased Premises on Termination

Subject to clause 21.2, the Lessee shall, unless the Lessor agrees to the contrary, prior to Termination or on the termination of any period of holding over, make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises.

21.4 Lessor Can Make Good

If the Lessee does not comply with the obligation to make good as set out in clause 21.3, the Lessee shall pay the Lessor within ten (10) Business Days after the Lessor requests payment, any costs reasonably incurred by the Lessor to make good the Leased Premises, the Facilities on the Leased Premises and those parts of the Plant and Equipment affected by the Lessee's occupation of the Leased Premises. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessee's default.

21.5 Dealing with Lessee's property not removed at Termination

The Lessor has the following rights in respect of the Lessee's property, including Lessee's Fixtures, which are not removed at Termination:

- (a) demolish and dispose of the Lessee's property or remove and store the Lessee's property in an alternative leased premises at the Lessee's cost;
- (b) to sell or dispose of the Lessee's property and apply the proceeds of sale towards payment of any unpaid Rent or other money payable under this Lease; or
- (c) to elect that the Lessee's property is the absolute property of the Lessor and to deal with the Lessee's property as the Lessor sees fit,

and the Lessee shall indemnify the Lessor in respect of any loss or damage suffered by the Lessor as a result of:

- (d) the Lessee failing to remove all of the Lessee's property by Termination; or
- (e) any claim against the Lessor by any person by reason of the exercise by the Lessor of its rights under this clause 21.5.

21.6 Lessee to continue to pay Rent and Variable Outgoings

If the Lessee fails to make good the Leased Premises as specified in clause 21.3, or fails to remove the Lessee's property by Termination, then until the Leased Premises are restored in accordance with this Lease or the Lessor elects to take the absolute property in the Lessee's property left after Termination, the Lessee shall continue to pay the Rent and the Variable Outgoings as if the Lessee were holding over in the Leased Premises.

22. **OPTION OF RENEWAL**

If and only if no earlier than six (6) months or no later than three (3) months before the date of Termination, the Lessee gives notice to the Lessor exercising an option of renewal for a Further Term, and the Lessor is satisfied that:

- (a) there is no Rent, Outgoings or other money payable under this Lease which is due but unpaid;
- (b) there is no unremedied breach of the Lessee's Obligations;
- (c) the Lessee has correctly and punctually observed and performed all of the Lessee's Obligations up to the expiry of the Term; and
- (d) there have been no breaches of any of the essential terms of this Lease during the Term,

the Lessor will grant the Lessee a lease of the Premises for the relevant Further Term at the Rent payable immediately before Termination as varied and reviewed pursuant to this Lease and otherwise on the same terms and conditions of this Lease except for:

- (e) the provision of renewal unless there is more than one (1) Further Term in which event the number of Further Terms will be reduced by the Further Term then exercised; and
- (f) any incentive or inducement to enter into this Lease or any waiver or abatement of Rent or Outgoings or any other payment to the Lessee or any benefit given to the Lessee, which is expressly excluded and which will not apply to a Further Term.

23. **HOLDING OVER**

If after Termination the Lessee continues in possession of the Leased Premises, the Lessee shall be deemed to be holding over as a monthly Lessee at a rent equal to the greater of the Rent payable immediately before Termination reviewed by reference to the CPI or the Rent payable immediately before Termination, and shall be reviewed in the same manner on each anniversary of the date of Termination and the Lessee's right to remain in possession of the Leased Premises shall be subject to the continued performance of the Lessee's Covenants and may be determined by either party giving the other party one (1) months' notice of termination.

24. POWER OF ATTORNEY

The Lessee for valuable consideration:

- (a) irrevocably appoints the Lessor and (if the Lessor is a company) every director and secretary of the Lessor (jointly and severally) the Lessee's attorney for the purpose of:
 - (i) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and
 - (ii) doing anything else the Lessee is obliged to do under this Lease but does not do when required,
- (b) undertakes to ratify all that the attorney does or causes to be done under this clause; and
- (c) indemnifies the Lessor in respect of:
 - (i) losses arising from any act done under this clause; and
 - (ii) the Lessor's costs and expenses of and incidental to the withdrawing of any caveat mentioned in this clause.

25. TRUSTEE PROVISIONS

If the Lessee has entered into this Lease in the capacity of trustee, whether or not the Lessor has any notice of the trust, the Lessee:

- (a) is taken to enter into this Lease both as trustee and in the Lessee's personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee's Obligations under this Lease;
- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Lessor for any default by the Lessee;
- (c) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and
- (d) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

26. SPECIAL CONDITIONS

- 26.1 The special conditions (if any) set out in item 12 of the Schedule shall be deemed to be incorporated into and form part of this Lease as if fully set out in the body of this Lease.
- 26.2 If there is any inconsistency between the provisions of this Lease generally and the special conditions, the special conditions shall prevail to the extent of the inconsistency.

27. MISCELLANEOUS

27.1 Lessee not to permit prohibited matters

If under this Lease the Lessee is required to do or is prohibited from doing any act, matter or thing the Lessee must also ensure that the Authorised Persons comply with that requirement or prohibition.

27.2 Cost of Complying with Obligations

Unless otherwise stated in this Lease, the Lessee must pay the cost of performing or complying with every obligation of the Lessee under this Lease.

27.3 Schedules

The Schedules shall form part of this Lease.

27.4 Lessor's consent

The Lessor may give a conditional or unconditional consent or approval at its absolute discretion to any matter in this Lease without giving any reasons for refusal of consent or approval.

27.5 Proper Law and Jurisdiction

This Lease is governed by the law in force in the State, or where applicable, the Commonwealth of Australia, and the parties consent to the jurisdiction of the courts of the State.

27.6 Time for payment

Any amount payable by the Lessee to the Lessor unless otherwise specified must be paid to the Lessor within seven (7) Business Days after the Lessor gives a notice to the Lessee requiring payment.

27.7 Time of the essence

Time shall be of the essence in all respects.

27.8 Certificates

A certificate signed by the Lessor or the Lessor's solicitors about a matter or a sum payable is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

27.9 Exercise of rights by Lessor

The Lessor may exercise each right, power or remedy at its discretion, separately or concurrently with any other right, power or remedy, and:

- (a) a single or partial exercise of a right, power or remedy does not prevent a further exercise of that right, power or remedy;
- (b) a failure to exercise or any delay in the exercise of a right, power or remedy does not prevent its exercise;

- (c) the rights, powers and remedies of the Lessor are cumulative with and not exclusive of the rights, powers and remedies provided by law; and
- (d) any demand made shall not in any way be deemed to constitute a waiver by the Lessor of any breach or non-observance of a Lessee's Obligation and shall not prejudice any other right of the Lessor in relation to such breach.

27.10 Lessor may act by agent

All acts and things which may be done by the Lessor may be done by a solicitor, agent, employee or contractor of the Lessor, including, without limitation, the Managing Agent.

27.11 Variation

This Lease may not be varied except in writing signed by all of the Parties.

27.12 Giving of notice

Any notice, approval, consent or other communication given under this Lease:

- (a) shall be in writing and in English;
- (b) may be served on the recipient:
 - (i) personally; or
 - (ii) by leaving it at, or sending by pre-paid post to:
 - a. the recipient's last known personal address or place of business, in any case; or
 - b. the Leased Premises, in the case of the Lessee; or
 - c. the registered office or principal place of business, in the case of a corporation; and
 - (iv) by facsimile transmission sent to the recipient's facsimile number (if known);
- (c) will be deemed to be served:
 - (i) if served personally, at the time of handing the notice to the recipient;
 - (ii) if left at the recipient's last known address, last known place of business, the Leased Premises, a registered office or principal place of business, then at the time of leaving the notice;
 - (iii) if sent by pre-paid post, on the second Business Day after the date of posting;
 - (iv) if sent by facsimile transmission, on the same date as transmitted (if transmitted prior to 4:00pm on a Business Day) or the next Business Day (if transmitted at or after 4:00pm on a Business Day, or on a day not being a Business Day),

- (d) if given by the Lessor, may be signed by the Lessor or a solicitor or agent of the Lessor;
- (e) where persons having the same interest in respect of the subject matter of the Lease are to notify any other party or are to be notified, notification to or by anyone of them is sufficient notification to or by all of them.

27.13 No moratorium

The provisions of any Law which extends a date for paying money under this Lease or which abrogates, nullifies, postpones or otherwise affects any provision in this Lease shall not apply to limit the terms of this Lease.

27.14 Further assurances

Each Party shall execute and do all acts and things necessary to give full force and effect to this Lease.

27.15 Effect of execution

This Lease binds each person who executes it notwithstanding the failure by any other person to execute this Lease.

27.16 Severance

If any part of this Lease is or becomes unenforceable or void or voidable, that part will be severed from this Lease and those parts that are unaffected shall continue to have full force and effect.

27.17 Goods and services tax

- (a) In the Lease:

“GST” means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“GST Law” has the same meanings as in the GST Act;

“Tax Invoice” includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

- (b) Words used in this clause which have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.
- (c) The Rent and other moneys payable under this Lease have been calculated without regard to GST, and the Lessor and the Lessee agree that the Lessor shall be entitled to charge an additional amount if the Lessor becomes subject to GST as a result of the grant of this

Lease or any supply to the Lessee under or in connection with this Lease, and the following provisions shall apply:

- (i) the Lessee must do everything reasonably requested by the Lessor to ensure this Lease is treated as taxable for the purposes of the GST, the Lessee must pay the GST to the Lessor at the same time as the payment to which the GST relates, and the Rent and other amounts payable under this Lease are exclusive of GST;
- (ii) the Lessee must pay to the Lessor on demand any GST charged on goods and services acquired or payable or paid by the Lessor in connection with this Lease or the Leased Premises, including but not limited to any GST payable in connection with or in respect of the provision of any Services and the Rent; and
- (iii) where the liability of the Lessee under this clause cannot be separately determined, the Lessee must pay to the Lessor on demand an amount which is equal to the Lessee's proportion of the relevant GST.

27.18 Entire Agreement

This Lease constitutes the entire agreement between the Parties and contains all the representations, warranties, covenants and agreements of the Parties in relation to the subject matter of this Lease. This Lease supersedes all previous correspondence or documentation relating to the Lessee's leasehold interest in the Leased Premises.

27.19 Headings

Except in the Schedules, the headings used in this Lease are for reference only and shall not affect the interpretation of this Lease.

27.20 Termination

The Termination of this Lease does not affect the Lessee's obligation to pay any money or do any act which is payable or which is to be done after Termination as provided by this Lease.

27.21 Counterpart

- (a) This Lease may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This Lease is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine or email:
 - (i) must be treated as an original counterpart;
 - (ii) is sufficient evidence of the execution of the original; and
 - (iii) may be produced in evidence for all purposes in place of the original.

28. ENVIRONMENTAL MATTERS

28.1 Lessee's Environmental Covenants

The Lessee must:

- (a) comply with all Environmental Laws including, without limitation, obtaining all necessary permits, authorisations and approvals required for the Lessee to carry out the Authorised Use on the Leased Premises;
- (b) take all practicable precautions to ensure that no Contamination of the Leased Premises or the Environment in the vicinity of the Leased Premises occurs;
- (c) not discharge into any stormwater drain any trade effluent, Hazardous Material or Waste, other than that which is authorised by the relevant Government Authority;
- (d) immediately notify the Lessor if:
 - (i) a Contamination Event occurs on the Leased Premises; or
 - (ii) an Environmental Notice is served on the Lessee;
- (e) if a Contamination Event occurs and irrespective of whether an Environmental Notice has been served on the Lessee, promptly take all usual and reasonable actions at the Lessee's own cost and in accordance with best industry practice for the Remediation of the Leased Premises and any land in the vicinity of the Leased Premises to a condition, as far as practicable, as if the Contamination Event had not occurred;
- (f) at the Lessee's own cost, comply with every Environmental Notice issued in respect of, or arising from, the Lessee's occupation or use of the Leased Premises, whether the notice is served on the Lessor or the Lessee;
- (g) allow the Lessor and its employees and contractors:
 - (i) after receiving reasonable notice from the Lessor, access to the Leased Premises to conduct environmental audits or inspections from time to time; and
 - (ii) immediate access to the Leased Premises to conduct an inspection following a Contamination Event; and
- (h) pay the reasonable costs of any reputable environmental consultant appointed by the Lessor to undertake an inspection from time to time of the Leased Premises to verify the Lessee's compliance with this clause 28.

28.2 Remediate Contamination

- (a) Without limiting the Lessee's obligation under clause 28.1(e), the Lessee must ensure that at the expiration of the Term it has

Remediated any Contamination of the Leased Premises or any land in the vicinity of the Leased Premises caused by the Lessee, to the absolute satisfaction of the Lessor.

- (b) Subject to clause 28.2(e), not later than six months before the expiration of the Term, the Lessee must arrange for a reputable environment consultant approved by the Lessor (whose approval must not be unreasonably withheld) to:
 - (i) carry out an investigation of Contamination at the Leased Premises;
 - (ii) prepare a report with respect to any (if any) Contamination at the Leased Premises; and
 - (iii) prepare a Remediation Notice (if applicable).
- (c) Subject to clause 28.2(d), the Lessee must promptly carry out all the works specified in the Remediation Notice to the satisfaction of the Lessor, and at the Lessee's sole cost.
- (d) The Lessee is under no obligation to carry out remedial works in respect of Contamination of the Leased Premises shown to exist at the Commencement Date, except to the extent that the Lessee has disturbed the Contamination in a manner which creates a risk of harm to people or the Environment.
- (e) If this Lease is terminated by the Lessor prior to the expiration of the Term, the Lessor may:
 - (i) arrange for the investigation of Contamination referred to in clause 28.2(a) and for the preparation of a Remediation Notice (if applicable); and
 - (ii) carry out the works specified in the Remediation Notice, at the Lessee's expense, and the Lessee will indemnify the Lessor under clause 28.3(a).
- (f) For the avoidance of doubt, this clause 28.2 is for the benefit of the Lessor and can only be waived by the Lessor.

28.3 Environmental Indemnity

- (a) Without limiting clause 14 of the Lease the Lessee indemnifies the Lessor and the Lessor's employees in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee's breach of any of the Lessee's Environmental Covenants.
- (b) Without limiting clause 28.3(a) above, in the event that the Lessee fails to promptly comply with its obligations under clauses 28.1(e), the Lessor shall be at liberty to carry out all of the said obligations at the cost of the Lessee, which cost shall be recoverable from the Lessee on demand.

28.4 Event of Default and Essential Term

For the avoidance of doubt, a failure by the Lessee to perform or comply with any of its obligations under this clause 28 is an Event of Default and a breach of an essential term of the Lease.

28.5 Definitions

In this clause 28:

- (a) “Contamination” means the affectation of land (including any surface water, ground water or other waters and airspace) by any matter or substance, including but not limited to a solid, liquid, gas, odour, heat, sound, vibration or radiation which:
 - (i) makes or may make such land or the surrounding Environment:
 - (A) unsafe or unfit for habitation or occupation by persons or animals;
 - (B) environmentally degraded; or
 - (C) not comply with any Environmental Law; or
 - (ii) otherwise gives rise to a risk or possible risk of harm to human health or the Environment;
- (b) “Contamination Event” means any incident originating on the Leased Premises involving:
 - (i) any Contamination or likely Contamination of the Leased Premises, or the Environment in the vicinity of the Leased Premises; or
 - (ii) the unlawful disposal of Waste in a manner which harms or is likely to harm the Environment;
- (c) “Environment” means all components of the earth, including:
 - (ii) land, air and water;
 - (iii) any layer of the atmosphere;
 - (iv) any organic or inorganic matter and any living organism including humans;
 - (v) human made or modified structures and areas;
 - (vi) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
 - (vii) ecosystems with any combinations of the above;
- (d) “Environmental Law” means any law, whether statute or common law (including the laws of negligence and nuisance), concerning the Environment and includes laws concerning:

- (i) the carrying out of uses, works or development or the subdivision of land;
- (ii) emissions of substances into the atmosphere, waters and land;
- (iii) pollution and contamination of the atmosphere, waters and land;
- (iv) production, use, handling, storage, transportation and disposal of:
 - (A) Waste;
 - (B) Hazardous Materials; and
 - (C) dangerous goods;
- (v) conservation, heritage and natural resources;
- (vi) threatened and endangered and other flora and fauna species;
- (vii) the erection and use of structures; and
- (viii) the health and safety of people,

whether made or in force before or after the date of this Lease;

- (e) “Environmental Notice” means any direction, order demand or other requirement to take any action or refrain from taking any action in respect of the Leased Premises or its use from any Government Authority in connection with any Environmental Law;
- (f) “Government Authority” means any state, federal or local government department or authority, government Minister, governmental, semi-governmental, administrative or judicial person or any other person (whether autonomous or not) charged with the administration of any applicable Laws;
- (g) “Hazardous Material” means material which, because it is toxic, corrosive, flammable, explosive or infectious or possesses some other dangerous characteristics, is potentially dangerous to the Environment when stored or handled or when any part of the Environment is exposed to it;
- (h) “Lessee’s Environmental Covenants” means the Lessee’s obligations under clause 28.1, together and each of them separately;
- (i) “Remediation” includes the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of any Contamination, and “Remediated” and “remediate” has a corresponding meaning;
- (j) “Remediation Notice” means a statement of the works necessary to remediate any Contamination at the Leased Premises or the surrounding Environment to an appropriate standard;

- (k) "Waste" means any discarded, rejected, unwanted, surplus or abandoned substance whether or not:
 - (i) it is intentionally discarded;
 - (ii) it has a value or use; or
 - (iii) it is intended for sale, recycling, reprocessing, recovery or purification; and

29. BANK GUARANTEE

- 29.1 The Lessee must deliver to the Lessor on or before the Commencement Date a guarantee or unconditional performance bond from a trading bank conducting business in Australia in a form and on terms approved by the Lessor ("Bank Guarantee") in favour of the Lessor to secure payment to the Lessor of the amount specified in item 11 of the Schedule ("Security Amount").
- 29.2 If:
- (a) the Lessee fails to pay Rent, the Outgoings or other moneys payable under this Lease on the due date; or
 - (b) there occurs any other default by the Lessee under this Lease,
- the Lessor may present the Bank Guarantee to the relevant bank to pay the Lessor the Security Amount without reference to the Lessee and despite any notice from the Lessee to the Bank not to pay the Lessor any money.
- 29.3 Within ten (10) Business Days (and no later) after the Lessor receives payment of the full amount of the Security Amount under the Bank Guarantee, the Lessee must deliver to the Lessor a further Bank Guarantee on substantially the same terms as the Bank Guarantee initially delivered to the Lessor under this clause.
- 29.4 Payment under the Bank Guarantee does not limit the rights of the Lessor under this Lease or operate as a waiver of the Lessee's default of any of the Lessee's Obligations under this Lease.
- 29.5 Any part of the amount paid under the Bank Guarantee subsequently determined by the Lessor to be in excess of the loss incurred by the Lessor resulting from the Lessee's initial default, or any other default of the Lessee, will be paid to the Lessee after the Lessor determines the amount of the excess.
- 29.6 Not more than three (3) months after the expiration of the Lease Year in which Termination occurs if the Bank Guarantee has not become presentable under this Clause 29, the Lessor will promptly release the Bank Guarantee to the bank provided that there is then:
- (a) no Rent, Variable Outgoings or other moneys payable under this Lease; and
 - (b) no act, matter or thing in respect of which the Lessor has or may have a claim against the Lessee.

30. CAVEATS AND REGISTRATION OF LEASE

30.1 Registration

- (a) The Lessee may register this Lease but must not lodge an absolute caveat over the Leased Premises to protect the interest of the Lessee under this Deed and the Lessee must surrender any registered lease and withdraw any caveat lodged by or on behalf of the Lessee over the Leased Premises on Termination of the Lease.
- (b) In consideration of the Lessor leasing the Leased Premises to the Lessee, the Lessee irrevocably appoints the Lessor and every officer of the Lessor as defined by the Corporations Act to be attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee to sign and lodge at Landgate, Perth, a surrender of lease and a withdrawal of any caveat lodged by or on behalf of the Lessee and not surrendered or withdrawn on Termination of the Lease, and the Lessee;
 - (i) undertakes to ratify all that the attorney does or causes to be done under or by virtue of this sub-clause; and
 - (ii) indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this sub-clause, and the Lessor's costs and expenses of and incidental to the surrendering of the Lease and withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Leased Premises.

30.2 Lessee must withdraw Caveat and any Registered Encumbrances

- (a) The Lessee on or before the Termination of the Lease must:
 - (i) withdraw any caveat lodged by the Lessee over the Leased Premises;
 - (ii) discharge any mortgage or other registered encumbrance relating to any liability of the Lessee registered over the Leased Premises;
 - (iii) surrender any registered lease over the Leased Premises;
 - (iv) execute a withdrawal of caveat in a form approved or any other document that may be required to remove any encumbrance on the certificate of title for the Leased Premises, and to execute a deed or surrender of lease in the form approved or any other document that may be required in order to remove any lease or notification of it as an encumbrance on the Certificate of Title for the Leased Premises; and
 - (v) if requested by the Lessor, do all things necessary to assist in the cancellation of any qualified title for the Leased Premises.
- (b) The Lessee hereby indemnifies, and shall keep indemnified, the Lessor against all loss or damage suffered by the Lessor as a result of the Lessee's failure to comply with clause 30.2(a) on or before termination of the Lease.

31. CAR PARK BAYS

31.1 Definitions

In this Lease:

- (a) "Car Bays" means six (6) car park bays in the Car Park, known as bays 1 – 6 on the plan attached as Annexure "B", which subject to clause 31.2 (e) have been designated by the Licensor for use by the Licensee pursuant to this License;
- (b) "Car Park" means the part of the Land designated by the Licensor from time to time as being for the purpose of parking motor vehicles;
- (c) "Car Park Rent" means the of sum of one thousand two hundred dollars (\$1,200.00) per annum plus GST per Car Park Bay; and
- (d) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (e) "Licence" means the licence to use the Car Bays granted by this clause 31;
- (f) "Licensee" means the Lessee; and
- (g) "Licensor" means the Lessor.

31.2 Licence

- (a) In consideration of the payment by the Licensee of the Car Park Rent, the Licensor grants to the Licensee, for a term equal to the Term, an exclusive licence to use and occupy the Car Bays for the purpose of parking the Licensee's fleet motor vehicles only.
- (b) This Licence continues for so long as the Licensee remains the Lessee under the Lease and for any additional term that results from the exercise of any option of renewal contained in the Lease.
- (c) This Licence does not confer upon the Licensee any estate or proprietary interest in any part of the Car Bays.
- (d) The legal possession and control of the Car Bays remains vested in the Licensor.
- (e) The Licensor reserves the right to change the designation of the Car Bays at any time.
- (f) The Licensee acknowledges and agrees that any request for additional car bays is subject to availability. Any additional car bays granted to the Licensee will be subject to the same Car Park Rent payable immediately before the grant as varied and reviewed pursuant to this Licence and otherwise on the same terms and conditions of this Licence.

31.3 Licensee's Obligations

The Licensee must:

- (a) ensure that the Car Bays are used only for the purpose of parking motor vehicles;
- (b) ensure that all of the Licensee's motor vehicles are parked in the Car Bays and are kept within the defined area of the Car Bays;
- (c) ensure that all of the Licensee's motor vehicles are kept locked, are not left with the engine running, do not contain any inflammable liquid or gas (except fuel stored in the proper manner and used for propulsion of the motor vehicle) and do not drip oil or any other harmful substance on the floor of the Car Park or the Land;
- (d) keep the Car Bays, the Car Park and the Land free of rubbish and debris;
- (e) not obstruct the Car Park or the Land;
- (f) not permit or allow any motor vehicle to be washed in the Car Bays or any mechanical work to be carried out on any motor vehicle in the Car Bays, except in the case of emergency repairs;
- (g) not permit or allow a motor vehicle to tow or push any other motor vehicle in the Car Park;
- (h) not do or omit to do any act, matter, or thing, which might be harmful, offensive or illegal, or cause a nuisance, damage or disturbance to the Licensor or any user or occupier of the Car Park or the Land;
- (i) comply with all legislation affecting the Car Park or the use of the Car Park;
- (j) observe and comply with the rules and regulations made by the Licensor from time to time for the use of the Car Park;
- (k) promptly notify the Licensor in writing of any claims against the Licensee or the Licensor or in respect of which the Licensee or the Licensor may become liable arising out of the use of the Car Bays by the Licensee or any Authorised Persons;
- (l) follow all reasonable instructions given by the Licensor or any managing agent on behalf of the Licensor for the use of the Car Park and the parking of motor vehicles therein; and
- (m) not write, paint, affix or erect notices, advertisements, signs or other devices in the Car Bays or in the Car Park without the written consent of the lessor.

31.4 Car Park Rent

- (a) From the Commencement Date, the Licensee must pay to the Licensor the Car Park Rent in accordance with Item 6 of the Schedule without

deduction or set off, except that the first and last payments will be apportioned on a daily basis in respect of periods of less than a month.

- (b) The Car Park Rent will be reviewed annually on the anniversary of the Commencement Date and in accordance with the method of rent review specified in item 7(a) of the Schedule.
- (c) No delay by the Licensor in enforcing the review of the Car Park Rent prevents the Licensor from requiring at any time that the Car Park Rent must be reviewed with effect from the relevant Review Date. The reviewed Licence Fee is payable from (and including) the relevant Rent Review Date irrespective of when it is determined. The Licensee must continue making payments of the Car Park Rent applying immediately before the Review Date until the Car Park Rent is determined and any adjustment is to be made when the next instalment is due after the reviewed.

31.5 Term & Assignment

- (a) If the Licensee validly renews the Term, then the Licence shall be deemed to have been renewed or extended for a further period coinciding with the Further Term.
- (b) It is a condition of the Licence that the Lease shall not be determined and shall not be assigned without the contemporaneous assignment of the Licence and that the Licence of the Car Bays shall not be assigned without the contemporaneous assignment of this Lease and that on the happening of any such events the Licence shall be forthwith determinable by notice in writing to the Licensee.

31.6 Termination

- (a) The Licence granted herein terminates when the Lease terminates unless the Licence granted herein terminates earlier under clause 31.6(b).
- (b) The Licensor is entitled to immediately terminate the Licence granted herein by notice to the Licensee if:
 - (i) the Licensee ceases to be the Lessee under the Lease;
 - (ii) the Licensee vacates the premises it occupies under the Lease;
 - (iii) any part of the Car Park Rent is unpaid for fourteen (14) calendar days after written demand for payment has been made; or
 - (iv) the Licensee fails to observe any covenant, obligation or duty contained or implied in this Licence for fourteen (14) calendar days after written demand has been made to the Licensee specifying the breach.

31.7 Disclaimer

- (a) The parking of motor vehicles shall at all times be at the risk of the Licensee.

- (b) The Licensor is not responsible for:
 - (i) the safe custody of any motor vehicle, or any article in any motor vehicle, parked in the Car Bays or elsewhere in the Car Park; or
 - (ii) any claim by the Licensee:
 - A. arising from the exercise of the Licensor's rights under this Licence;
 - B. in connection with the Licensee or any Authorised Person being permitted to park a motor vehicle under this Lease; or
 - C. for damage to any motor vehicle, chattel or thing, unless the claim was due in whole or in part to a negligent act or omission on the part of the Licensor.

31.8 Indemnity

Except to the extent caused or contributed to by the act or negligence of the Licensor, the Licensee shall indemnify and keep indemnified the Licensor against all losses, claims, damages, demands, costs and expenses for which the Licensor becomes liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:

- (a) which are caused or contributed to by the Licensee's use or occupation of the Car Bays; and
- (b) resulting from an act or omission of the Licensee.

31.9 GST

- (a) Words used in this clause which have a defined meaning in the GST Act have the same meanings as in the GST Act unless the context indicates otherwise.
- (b) The Car Park Rent and other moneys payable under this Licence have been calculated without regard to GST, and the Licensor and the Licensee agree that the Licensor shall be entitled to charge an additional amount if the Licensor becomes subject to GST as a result of the grant of this Licence or any supply to the Licensee under or in connection with this Licence.
- (c) The Licensee must do everything reasonably requested by the Licensor to ensure this Licence is treated as taxable for the purposes of the GST, the Licensee must pay the GST to the Licensor at the same time as the payment to which the GST relates, and the Licence Fee and other amounts payable under this Lease are exclusive of GST.

31.10. Car Parking Levy

If a government or local authority imposes a charge on car parks, the Licensee must pay or reimburse the Licensor the amount of any such charge payable by the Licensor in respect of the Car Bays used by the Licensee.

31.11 Sale of Land

During the term of this Licence if the Licensor sells the Land, the Licensor may give notice to the Licensee of the sale and upon receipt of that notice the Licensee shall consent to an assignment of the Licensor's interest in this Deed to the purchaser of the Land to take effect from the date of completion of the sale of the Land.

SCHEDULE

Item 1 **Authorised Use**

Agent office for the hire of motor vehicles

Item 2 **Commencement Date**

1 February 2020

Item 3 **End Date**

31 January 2030

Item 4 **Land and Leased Premises**

(a) Land

Lot 200 on Deposited Plan 66654 being the whole of the land contained in Certificate of Title Volume 2760 Folio 199 and being commonly known as "East Kimberley Regional Airport".

(b) Leased Premises

That part of the Land known as Booth No. 1, having an area of approximately five point six square metres (5.6m²) square metres and hatched in black on the plan in Annexure "A" to this Lease.

Item 5 **Interest Rate**

Eleven percent (11%) per annum

Item 6 **Rent**

Subject to clause 4 and any rent review, the Rent is the greater of:

(a) the Base Rent plus GST; or

(b) The rent determined to be the greater of \$5,000.00) pa or 8.5% of gross turn-over (excluding GST) as per month;

The Rent is calculated quarterly and paid on the same date the Turnover Statement is due.

Item 7 **Rent Review Dates**

The Base Rent shall be reviewed on the following dates in accordance with the mechanism set out alongside each date:

| Date | Method |
|--|-----------------|
| (a) Annually on the anniversary of the Commencement Date during the Term and the Further Term except where stated in (b) and (c) of item 7 | CPI Rent Review |

| | |
|--|-----------------|
| (b) For the purposes of clause 22 "Option" | CPI Rent Review |
| (c) For the purposes of clause 23 "Holding Over" | CPI Rent Review |

Item 8 **Term and Option for Further Term**

(a) Term

The term shall be for a period of three (5+5) years commencing on the Commencement Date and ending on the End Date.

(b) Further Term

Two (5+5) years commencing on 1 February 2020 and expiring on 31 January 2030

Item 9 **Lessee's Insurance Obligations**

Without affecting any further insurance to be effected by the Lessee as specified by the Lessor in writing to the Lessee, the Lessee shall effect policies of insurance in respect of:

- (a) public liability insurance for an amount not less than ten million dollars (\$10,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor;
- (b) the full insurable value on a replacement or reinstatement basis of the Lessee's Fixtures against fire, explosion, earthquake, aircraft, riot, civil commotion, flood, lightning, storm, tempest, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown or malfunction, and malicious acts or omissions;
- (c) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in or about the Leased Premises;
- (d) the full insurable value on a replacement or reinstatement basis of all plate glass windows and doors forming part of the Leased Premises; and
- (e) any other matter or thing which the Lessor reasonably requires by notice to the Lessee,

on the terms specified in clause 13 of the Lease.

Item 10 **The Lessor's Fixtures**

The Lessor's Fixtures shall include but not be limited to the following:

- (a) Concession booth

Item 11 **Bank Guarantee/Security Amount**

Not applicable

Item 12 **Special Conditions**

Subject to the Lessor's written approval, the Leased Premises must not be used or occupied as a primary office space for the Lessee's Business.

Executed by the Parties as a deed

LESSOR:

The Common Seal of the **SHIRE OF WYNDHAM-EAST KIMBERLEY** was hereunto affixed in the presence of:

Signature of Shire President

Signature of Chief Executive Officer

Print Name

Print Name

LESSEE:

EXECUTED by **Territory Rent-A-Car**)
(ACN 900 594 245) in accordance with)
section)
127 of the *Corporations Act 2001*:)

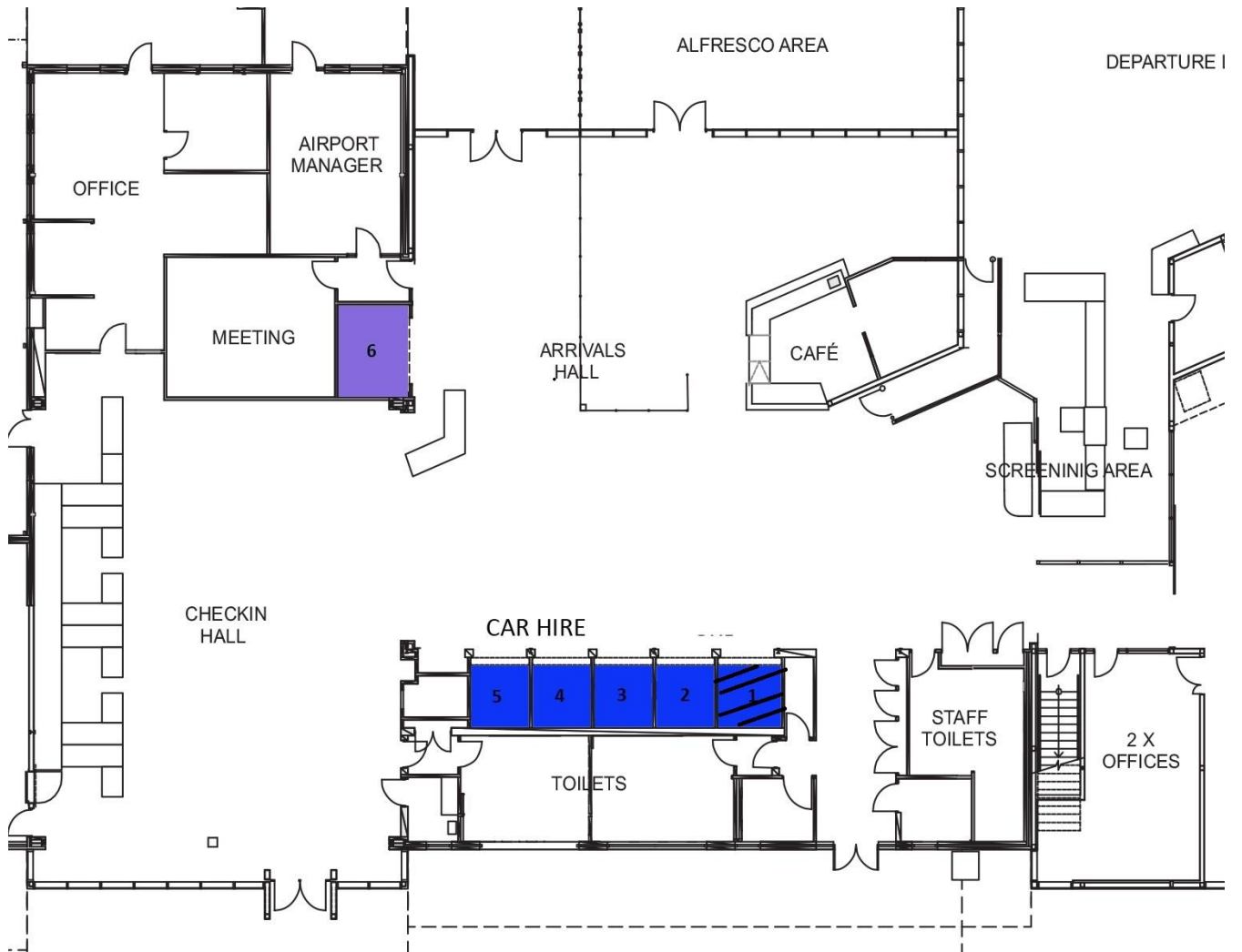
Signature of Director/ Secretary

Signature of Director

Name of Director/ Secretary

Name of Director

ANNEXURE "A"
PLAN WHICH IDENTIFIES LEASED PREMISES



ANNEXURE "B"
PLAN WHICH IDENTIFIES CAR BAYS

