

LEASE

KUNUNURRA CHILD CARE CENTRE
RESERVE 50120
(Lot 506 on Deposited Plan 61898)

SHIRE OF WYNDHAM EAST KIMBERLEY
("Lessor")

AND

EWIN CENTRE CHILDCARE SERVICES INCORPORATED
("Lessee")

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BETWEEN:

SHIRE OF WYNDHAM EAST KIMBERLEY of PO Box 614, Kununurra, Western Australia
(Lessor) AND

EWIN CENTRE CHILDREN'S SERVICES ABN XX XXX XXX of PO Box 379, Kununurra,
Western Australia (Lessee)

WHEREAS:

- A. The Land is reserved to the Crown and has been placed under the care, management and control of the Lessor by the Minister for Lands with power to lease for a term not exceeding 21 years, subject to the consent of the Minister, as per the Management Order.
- B. The Lessor has agreed, subject to the Minister's consent, to grant the Lessee a lease of the Premises in accordance with the terms and conditions contained in this Lease.
- C. The Minister for Lands indicates its approval of this Lease by endorsing its consent.

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:

"Amounts Payable" means the Rent and any other money payable by the Lessee under this Lease.

"Appurtenances" means all drains, toilets, grease traps, wash basins, bathrooms, water, gas and electrical fittings, air-conditioning plant and equipment and any other service contained in or about the Premises.

"Authorised Person" means:

- (a) an agent, employee, licensee or invitee of the Lessor: and
- (b) any person visiting the Premises with the express or complied consent of any person mentioned in paragraph (a).

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

"CEO" means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease.

"Commencement Date" means the commencement date specified in **item 2** of Schedule 1.

"Committee" means the management committee of the Lessee.

"Consumer Price Index" means the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) Area (All Groups) and "CPI" has a corresponding meaning. If the CPI is discontinued or in the Lessor's opinion does not reflect the increase in the cost of living for the City of Perth, the index which will be used will be an index specified by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.

"Contamination" has the meaning as defined in the *Contaminated Sites Act 2003* (WA).

"Council" means the council of the Lessor.

"Current CPI" means the Consumer Price Index number last published before the relevant Rent Review Date.

"Encumbrance" means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat.

"End Date" means the date specified in **item 2** of Schedule 1.

"Event of Default" means the events specified in clause 14 of this Lease.

"Further Term" means each further term specified in **item 8** of Schedule 1.

"Good Repair" means good and substantial tenantable repair and in clean, good working order and condition;

"LAA" means the *Land Administration Act 1997* (WA).

"Land" means the land described in **item 1** of Schedule 1.

"Laws" means all statutes, rules, regulations, proclamations, ordinances 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.

"Lessee's Agents" includes:

- (a) the sublessees, employees, agents, contractors, invitees and licenses of the Lessee; and
- (b) any person on the Premises by the authority of a person specified in paragraph (a).

"Lessee's Covenants" means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by any person other than the Lessor.

"Lessor's Covenants" means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be observed and performed by the Lessor.

"Lessor's Fixtures and Fittings" means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement date or at any time during the Term.

"Management Order" means the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of "Child Care Centre".

"Minister" means the Minister for Lands, a body corporate under section 7 of the LAA.

"Notice" means each notice, demand, consent or authority given or made to any person under this Lease.

"Party" means the Lessor or the Lessee according to the context.

"Permitted Use" means the use of the Premises specified in **item 4** of Schedule 1.

"Premises" means the premises described in **item 1** of Schedule 1.

"Previous CPI" means the Consumer Price Index number last published before a date 12 months before the relevant CPI Rent Review Date, or if an actuary is appointed under this Lease to determine an index, the number certified by that actuary.

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

"Rent" means the rent specified in **item 5** of Schedule 1 as reviewed in accordance with this Lease.

"Rent Review Date" means each rent review date as specified in **item 6** of Schedule 1.

"Schedule" means a schedule to this Lease.

"Term" means the term specified in **item 2** of Schedule 1 and, where appropriate, any Further Term granted under this Lease.

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

"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 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;
- (t) a reference to "Lessor" is a reference to the Shire of Wyndham East Kimberley only in its capacity as Primary Interest Holder of the Premises and not in its capacity as a Relevant Authority, and separate and distinct from its capacity as a Relevant Authority; and
- (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. Minister for Lands Consent

- (1) This Lease is subject to and conditional on prior approval of the Minister for Lands under the *Land Administration Act 1997*.
- (2) The parties acknowledge that a copy of the Minister for Lands' consent pursuant to section 18 of the *Land Administration Act 1997* is annexed to this Lease as **Annexure 1**.

3. Operative part

3.1 Lease of Premises

The Lessor leases the Premises to the Lessee for the Term subject to:

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable;
- (c) the performance and observance of the Lessee's Covenants; and
- (d) the reservation of the Lessor's rights under this Lease.

3.2 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 Covenants, the Lessor agrees that the Lessee may quietly hold and enjoy the Premises 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.

4. Rent and Other Payments

4.1 Rent

The Lessee must pay the Rent to the Lessor in the manner specified in **item 5** of Schedule

1 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.

4.2 Outgoings

- (1) The Lessee must pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises:
 - (a) local government rates, specified area rates, taxes, service and other charges and including charges for rubbish and garbage removal;
 - (b) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connections;
 - (c) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (d) land tax and metropolitan regional improvement tax on a single ownership basis;
 - (e) premiums, excess and other costs arising from the insurance obtained by the Lessor pursuant to **clause 6.2**. For the avoidance of doubt, the parties agree:
 - (i) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and
 - (ii) such insurance will include insurance for the full replacement value of buildings;
 - (f) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 4.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

4.3 Interest

The Lessee shall on demand by the Lessor, pay the Lessor interest on any Amounts Payable under this Lease which is not paid on the due date calculated at the Interest Rate specified in **item 7** of Schedule 1 from the due date for payment until the date of actual payment.

4.4 Costs

The Lessee covenants with the Lessor to:

- (a) Pay to the Lessor on demand:
 - (i) all duty, fines and penalties payable under the Duties Act 2008 and other statutory duties or taxes payable on or in connection with this Lease;
 - (ii) all registration fees in connection with this Lease; and

- (iii) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies;
- (b) to pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
 - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (ii) any breach of covenant by the Lessee or the Lessee's Agents;
 - (iii) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (iv) any work done at the Lessee's request; and
 - (v) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.4** or any matter arising out of this Lease.

5. Rent review

5.1 Review on Rent Review Date

- (a) On each scheduled Rent Review Date, the 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 Rent Review Date, the Rent shall be reviewed so that it is the greater of the Rent Payable immediately before the relevant Rent Review Date and the amount of Rent in the sum calculated on the basis of the following formula:

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

Where:

- "RR" = the annual Rent as reviewed;
- "R" = the annual Rent payable immediately before the relevant Rent Review Date;
- "CCPI" = the Current CPI; and
- "PCPI" = the Previous CPI.

- (b) Determination of Current CPI or Previous CPI

If for the purposes of a rent review, 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 Rent Review Date for the purposes of determining 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 Current CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at that Rent Review Date; and
- (ii) in respect of Previous CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at a date twelve (12) months

prior to that 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 Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual 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 Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed 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 Rent, any necessary adjustment is to be made within twenty eight (28) 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. Insurance

6.1 Insurance Required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value;
- (c) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary;
- (d) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or on the Premises; and
- (e) any other policy of insurance which the Lessor may reasonably require or specify from time to time.

6.2 Building Insurance to be Effected by Lessor

The Lessor shall effect and keep effected insurance to the full insurable value on a

replacement or reinstatement value basis of the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

6.3 Details and Receipts

In respect of the insurances required by **clause 6.1** the Lessee must:

- (a) upon renewal of any insurance policy immediately forward to the Lessor copies of Certificates of Currency and details of the insurances as held by the Lessee;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately:
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

6.4 Lessee may be Required to pay Excess on Insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1** and **clause 6.2**.

6.5 Not to Invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might:

- (a) render any insurance effected under **clause 6.1** and **clause 6.2** on the Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

6.6 Report

The Lessee must report to the Lessor promptly in writing and in an emergency verbally:

- (a) any damage to the Premises of which she is or might be aware; and
- (b) any circumstances of which she is aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

6.7 Settlement of Claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clause 6.1** and **clause 6.2**.

6.8 Lessor as Attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 6.1** and **clause 6.2**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 6.1** and **clause 6.2**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

7. Indemnity

7.1 Lessee Responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

7.2 Indemnity

- (1) The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor or the Minister for Lands, in respect of:
 - (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,
 caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
 - (i) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
 - (ii) any work carried out by or on behalf of the Lessee on the Premises;
 - (iii) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
 - (iv) the presence of any Contamination, pollution or environmental harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
 - (v) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
 - (vi) an act or omission of the Lessee.

7.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

7.4 No Indemnity for Lessor's Negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

7.5 Release

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, pollution or environmental harm in, on or under the Premises or surrounding area,

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8. Limit of Lessor's Liability

8.1 No Liability for Loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

8.2 Limit of Liability for Breach of Lessor's Covenants

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is registered as the proprietor in fee simple in the Premises.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

9. Maintenance, Repair and Cleaning

9.1 Generally

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's Fixtures and Fittings and Appurtenances) in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation:
 - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); or
 - (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees).
- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:
 - (a) any electrical fittings and fixtures;
 - (b) any plumbing;
 - (c) any air-conditioning fittings and fixtures; or
 - (d) any gas fittings and fixtures,in or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.
- (3) The Lessee must take such reasonable action as is necessary to:
 - (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

9.2 Lessor's Responsibilities

- (1) For the avoidance of doubt, the Lessor is responsible for all structural repairs and

major repairs and/or replacement of any sewerage, plumbing, electrical or air-conditioning fittings and fixtures to the Premises EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee or the Lessee's Agents, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or the Lessee's Agents. The parties agree that nothing in this clause means or implies that the Lessor is responsible for the day to day maintenance and repair of any sewerage, plumbing, electrical or air-conditioning fittings and fixtures to the Premises.

- (2) Notwithstanding paragraph (1) above, the Lessee acknowledges and agrees that the Lessor may have limited, or no, funds set aside within its budget for structural maintenance of the Premises, and as a consequence the Lessor will not be able to rectify any major maintenance or structural defect or problem unless it has sufficient monies set aside in its budget for such purpose and/or the Lessor's Council has approved such expenditure.
- (3) Notwithstanding any other provision of this Lease, the Lessee will be responsible for any repair or replacement which is necessary because of any act or omission of or on the part of the Lessee or the Lessee's Agents, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or the Lessee's Agents.

9.3 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

9.4 Repair

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's Fixtures and Fittings which are or which become damaged.

9.5 Responsibility for Securing the Premises

The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

9.6 Maintain Surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.
- (2) The Lessee agrees that any pruning of trees must be undertaken by a qualified tree surgeon.
- (3) If any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (4) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (5) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

9.7 Lessor's Fixtures and Fittings

The Lessee covenants and agrees that the Lessor's Fixtures and Fittings will remain the property of the Lessor and must not be removed from the Premises at any time.

9.8 Pest Control

The Lessee must keep the Premises free of any pests and vermin and the cost of extermination will be borne by the Lessee.

9.9 Painting

- (1) The Lessee must prior to expiry of the Further Term paint with at least 2 coats of paint those parts of the Premises usually painted internally.
- (2) All painting carried out on the Premises must be carried out by a registered painting contractor; and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
 - (a) do so in a proper manner using good quality materials;
 - (b) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
 - (c) comply with all reasonable directions given or requests made by the Lessor; and
 - (d) be finished in a proper and workmanlike manner.

9.10 Drains

- (1) The Lessee must keep and maintain the waste pipes drains and conduits originating in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

10. Use

10.1 Restrictions on Use

- (1) Generally

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

- (2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

- (3) No nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on

the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(4) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(5) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) No signs

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(7) No smoking

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

(8) Consumption of alcohol

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

(9) Sale of alcohol

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

(10) Removal of rubbish

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

(11) No pollution

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(12) No commercial use

The Lessee must not and must not suffer or permit a person to use the Premises for any business or commercial purpose (other than the Permitted Purpose) without the prior written consent of the Lessor.

10.2 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

10.3 Lessee to Observe Copyright

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

10.4 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

10.5 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 10**.

11. Alterations

11.1 Restriction

The Lessee must not without prior written consent:

- (a)
 - (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
- (b) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (c) subject to the performance of the Lessee's obligations in **clause 9** remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

11.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may:

- (a) consent subject to conditions; and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in **clause 11.1**:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

11.3 Cost of Works

All works undertaken under this **clause 11** will be carried out at the Lessee's expense.

11.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

12. Lessor's Right of Entry

12.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any

term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this **clause 12.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

12.2 Costs of rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 11.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

13. Statutory Obligations and Notices

13.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 10**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

13.2 Indemnity of Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 13.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 13.1**.

14. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

15. Default

15.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Covenants for twenty eight (28) days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 2015* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the Permitted Use for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

15.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 15.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 18**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

15.3 Lessor May Remedy Breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

15.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

15.5 Essential Terms

Each of the Lessee's Covenants in **clauses 4** (Rent and Other Payments), **6** (Insurance), **7** (Indemnity), **9** (Maintenance, Repair and Cleaning), **10** (Use), **20** (Assignment, Subletting and Charging) and **23** (Goods and Services Tax), is an essential term of this Lease but this clause **15.5** does not mean or imply that there are no other essential terms in this Lease.

15.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the covenant set out in this **clause 15.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 15.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

16. Damage or Destruction of Premises

16.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render

the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee, and in case of any dispute arising under this provision the same will be referred to arbitration under the provisions of the *Commercial Arbitration Act 1985* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the aware appears to have been overpaid.

16.2 Total Damage of Destruction

If the premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee either party may be notice in writing to the other of them given within sixty (60) days after the event elect to cancel and terminate this lease. The term will terminate upon such notice being given and the Lessee must vacate the premises and surrender the same to the Lessor, but such termination will be without prejudice however to the liability of the Lessee under this Lease up to the date of termination.

17. Option to Renew

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in:
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on terms and conditions similar to this Lease other than this **clause 17** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

18. Holding Over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) The Lessee shall not be entitled to hold over for a more than twelve (12) months after the expiry of the Term.
- (3) To avoid doubt, the Lessee is obliged during any holding over period to pay any other outgoings payable by the Lessee under this Lease as if the holding over period was included in the Term.

19. Obligations on Termination

19.1 Peacefully Surrender

- (1) On Termination the Lessee must:

- (a) peacefully surrender and return to the Lessor the Premises in at least the condition that was approved for the most recent development of the Premises and otherwise in a condition consistent with the performance of the Lessee's obligations under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

19.2 Restore Premises & Remove Lessee's Property Prior to Termination

Prior to Termination, the Lessee at the Lessee's expense must:

- (a) restore the Premises to a condition consistent with the performance by the Lessee of the Lessee's Covenants under this Lease, fair wear and tear excepted; and
- (b) remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

19.3 Lessor Can Remove Lessee's Property on Re-entry

- (1) On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.
- (2) The Lessor may, at any time after the expiration or sooner determination of the Term, give the Lessee a notice (**Abandonment Notice**) requiring the Lessee to remove all fixtures, fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with the requirement of this clause (**Remaining Items**). On the Lessee's receipt of an Abandonment Notice, the Lessee shall have SEVEN (7) days within which to remove all Remaining Items and failing removal within that SEVEN (7) day period, all Remaining Items still on the Premises or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor or disposed off at anytime and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable.

19.4 Obligations to Continue

The Lessee's obligations under this **clause 19** will continue, notwithstanding the end or Termination of this Lease.

20 Assignment, Subletting and Charging

20.1 No Assignment or Sub-letting without Consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor, the Minister for Lands, and any other persons whose consent is required under the terms of this Lease or at law.

20.2 Change in Ownership of Shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001* (Cth) will be deemed to be an assignment of the leasehold estate created by this Lease and the Lessee must give the Lessor written notification of the change in ownership of shares within fourteen (14) days of the change.

20.3 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or Sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if:

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the Permitted Use;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by:
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease, to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; andto which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

20.4 Where Sublessee is a Community Group

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 20.3(c)**.

20.5 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

20.6 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

20.7 Costs for Assignment and Sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting, whether or not the assignment or sub-letting proceeds.

20.8 No Mortgage or Charge

The Lessee must not mortgage nor charge the Premises.

21. Disputes

21.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**the Lessor's Representative**) who shall convene a meeting within ten (10) days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**the Original Meeting**).

21.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 21.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within ten (10) days of the Original Meeting or such other date as is agreed to by the parties between the CEO and the President of the Lessee for the purpose of resolving the dispute.

21.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 21.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

21.4 Payment of Amounts Payable to Date of Award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

22. Caveat

22.1 No Absolute Caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor or the Minister for Lands, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

22.2 CEO & Lessor as Attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally:

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate:

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

22.3 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.

22.4 Indemnity

The Lessee indemnifies the Lessor against:

- (a) any loss arising directly from any act done under this clause; and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under this clause.

23. Goods and Services Tax

23.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may

apply to the Amounts Payable or other money payable under the Act;

- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

23.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 23.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

23.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 23.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

23.4 No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

23.5 Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

23.6 Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

23.7 Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

24. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such

applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

25. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

26. Acts by Agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

27. Governing Law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

28. Statutory Powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

29. Notice

29.1 Form of Delivery

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

29.2 Service of Notice

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 29.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 29.1(b)**, on the second business day following the date of posting of the Notice.

29.3 Signing of Notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;

- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

30. Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

31. Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

32. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

33. Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the effect to this Lease.

34. Payment of Money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

35. Waiver

35.1 No General Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

35.2 Partial Exercise of Right Power or Privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

SCHEDULE 1

Item 1 Land and Premises

Land: Reserve 50120, being Lot 506 on Deposited Plan 61898, 1 Chestnut Avenue, Kununurra

Premises: The whole of the Land together with all buildings, alterations, additions and improvements on the Land or erected on the land during the term including without limitation all carpets and floor coverings, window treatments (including but not limited to curtains and blinds), the Lessor's Fixtures and Fittings and all additions or modifications and replacements.

Item 2 Term and Commencement Date

Term: 3 years

Commencement Date: 1 July 2019

End Date: 30 June 2022

Item 3 Further Term

Further Term: 2 years

Item 4 Use of Premises

Permitted Use: Child Care Centre and uses reasonably ancillary thereto.

Item 5 Rent

The Rent is eleven thousand seven hundred and thirteen dollars and eighty two cents (\$11,713.82) per annum plus GST.

The lessee will be invoiced for the lease rental from 1 July annually; where leases are commenced other than 1 July the lease rental will be invoiced for the proportion of the year to 30 June, to align future lease payments to 1 July.

Item 6 Rent Review Dates

The Rent Review period will be annually on the 1 July on the following dates:

1 July 2020

1 July 2021

1 July 2022

1 July 2023

Item 7 Interest Rate

As adopted though the Shire of Wyndham East Kimberley Adopted budget to a maximum of Eleven per cent (11%) per annum

Item 8 Public Liability Insurance

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 a policy of insurance in respect of public liability insurance for an amount not less than twenty million dollars (\$20,000,000.00) for any one incident or such greater amount as may be specified from time to time by the Lessor.

SIGNING PAGE

Executed by the parties as a deed

The COMMON SEAL of the **SHIRE OF
WYNDHAM EAST KIMBERLEY** was
affixed by the authority of a resolution
of the Council in the presence of:

Shire President

Print Full Name

Chief Executive Officer

Print Full Name

The COMMON SEAL of the EWIN
CENTRE CHILDREN'S SERVICES
INCORPORATED was affixed in the
presence of:

Chairperson

Print Full Name

Vice Chairperson

Print Full name

ANNEXURE 1 – MINISTER FOR LANDS' CONSENT

1

DRAFT

ANNEXURE 2 - LEASE PLANS

DRAFT