



Department of
**Local Government, Sport
and Cultural Industries**

National Redress Scheme for Institutional Child Sexual Abuse

**Department of Local Government, Sport
and Cultural Industries**

Information Paper

3 February 2020

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1. SUMMARY - WA LOCAL GOVERNMENT: ROYAL COMMISSION AND REDRESS

The Western Australian Government (the State), through the Department of Local Government, Sport and Cultural Industries (DLGSC), has been consulting with the WA local government sector and other key stakeholders on the Royal Commission into Institutional Responses to Child Sexual Abuse (in 2018) and the National Redress Scheme (in 2019).

The consultation throughout 2019 has focused on the National Redress Scheme (the Scheme) with the aim of:

- raising awareness about the Scheme;
- identifying whether WA local governments are considering participating in the Scheme;
- identifying how participation may be facilitated; and
- enabling advice to be provided to Government on the longer-term participation of WA local governments.

Following this initial consultation and feedback gathered, the State Government considered a range of options regarding WA local government participation in the Scheme and reached a final position in December 2019.

DLGSC, supported by the Departments of Justice and Premier and Cabinet, will again engage with WA local governments in early 2020, to inform of the:

- State's decision and the implications for the sector (see [Section 4](#));
- Support (financial and administrative) to be provided by the State; and
- Considerations and actions needed to prepare for participation in the Scheme from 1 July 2020 (see [Section 5](#)).

DLGSC's second phase of engagement with WA local governments is summarised in the table below:

Description and Action	Agency	Timeline
Distribution of Information Paper to WA Local Governments	DLGSC	3 February 2020
WALGA hosted webinar	DLGSC / DPC	18 February 2020
Metro and Country Zone meetings	WA LG's / DLGSC	19 to 24 February 2020
State Council meeting – Finalisation of Participation arrangements	WALGA	4 March 2020
WALGA hosted webinar – Participation arrangements	DLGSC/ DPC	Mid-March 2020

Further information about the Royal Commission is available at [Appendix A](#) and the National Redress Scheme at [Appendix B](#) of this Information Paper.

The information in this Paper may contain material that is confronting and distressing. If you require support, please [click on this link](#) to a list of available support services.

2. CURRENT SITUATION - WA LOCAL GOVERNMENT PARTICIPATION IN THE NATIONAL REDRESS SCHEME

The WA Parliament passed the legislation required to allow for the Government and WA based non-government institutions to participate in the National Redress Scheme. The *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* (WA) took effect on 21 November 2018.

The WA Government commenced participating in the Scheme from 1 January 2019.

The State Government's Redress Coordination Unit within the Office of the Commissioner for Victims of Crime, Department of Justice:

- Acts as the State Government's single point of contact with the Scheme;
- Coordinates information from State Government agencies to the Scheme; and
- Coordinates the delivery of Direct Personal Responses (DPR) to redress recipients (at their request) by responsible State Government agencies to redress recipients.

CURRENT TREATMENT OF WA LOCAL GOVERNMENTS IN THE SCHEME

Under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), Local Governments may be considered a State Government institution.¹

There are several considerations for the State Government and Local Governments (both individually and collectively) about joining the Scheme.

The State Government considers a range of factors relating to organisations or bodies participation in the Scheme, before their inclusion in the declaration as a State Government institution. These factors include the capability and capacity of the agencies or organisations to:

- Respond to requests for information from the State Government's Redress Coordination Unit within prescribed timeframes;
- Financially contribute to the redress payment made by the Scheme on behalf of the agency or body; and
- Comply with the obligations of participating in the Scheme and the Commonwealth legislation.

A decision was made at the time of joining the Scheme to exclude WA local governments from the State Government's declaration. This was to allow consultation to occur with the local government sector about the Scheme, and for fuller consideration to be given to the mechanisms by which the sector could best participate in the Scheme.

¹ Section 111(1)(b).

3. CONSULTATION TO DATE WITH WA LOCAL GOVERNMENT SECTOR

The Department of Local Government, Sport and Cultural Industries (DLGSC) has been leading an information and consultation process with the WA local government sector about the Scheme. The Departments of Justice and Premier and Cabinet (DPC) have been supporting DLGSC in the process, which aimed to:

- Raise awareness about the Scheme;
- Identify whether local governments are considering participating in the Scheme;
- Identify how participation may be facilitated; and
- Enable advice to be provided to Government on the longer-term participation of WA local governments.

DLGSC distributed an initial *Information and Discussion Paper* in early January 2019 to WA local governments, the WA Local Government Association (WALGA), Local Government Professionals WA (LG Pro) and the Local Government Insurance Scheme (LGIS). Between March and May 2019, DLGSC completed consultations that reached 115 out of 137 WA local governments and involved:

- an online webinar to 35 local governments, predominantly from regional and remote areas;
- presentations at 12 WALGA Zone and LG Pro meetings; and
- responses to email and telephone enquiries from individual local governments.

It was apparent from the consultations that the local government sector had, at the time, a very low level of awareness of the Scheme prior to the consultations occurring, and that little to no discussion had occurred within the sector or individual local governments about the Scheme. Local governments were most commonly concerned about the:

- Potential cost of redress payments;
- Availability of historical information;
- Capacity of local governments to provide a Direct Personal Response (apology) if requested by redress recipients;
- Process and obligations relating to maintaining confidentiality if redress applications are received, particularly in small local governments;
- Lack of insurance coverage of redress payments by LGIS, meaning local governments would need to self-fund participation and redress payments.

LGIS Update (April 2019) – National Redress Scheme

LGIS published and distributed an update regarding the considerations and (potential) liability position of the WA local government sector in relation to the National Redress Scheme.

WALGA State Council Resolution

The WALGA State Council meeting of 3 July 2019 recommended that:

1. *WA local government participation in the State's National Redress Scheme declaration with full financial coverage by the State Government, be endorsed in principle, noting that further engagement with the sector will occur in the second half of 2019.*
2. *WALGA continue to promote awareness of the National Redress Scheme and note that local governments may wish to join the Scheme in the future to demonstrate a commitment to the victims of institutional child sexual abuse.*

It is understood that this recommendation was made with knowledge that it is ultimately a State Government decision as to whether:

- Local governments can participate in the Scheme as part of the State's Government's declaration; and
- The State Government will fund local government redress liability.

4. WA GOVERNMENT DECISION - FUTURE PARTICIPATION OF WA LOCAL GOVERNMENTS IN THE NATIONAL REDRESS SCHEME

Following the initial consultation process, a range of options for local government participation in the Scheme were identified by the State Government including:

1. WA Local governments be **excluded** from the State Government's declaration of participating institutions.

This means that: local governments may choose not to join the Scheme; or join the Scheme individually or as group(s), making the necessary arrangements with the Commonwealth and self-managing / self-funding all aspects of participation in the Scheme.

2. WA Local governments be **included** in the State Government's declaration of participating institutions.

There were three sub-options for ways local government participation as a State Government institution could be accommodated:

- a. Local governments cover all requirements and costs associated with their participation;
- b. The State Government covers payments to the survivor arising from local governments' participation, with costs other than payments to the survivor (including counselling, legal and administrative costs) being funded by local governments; or
- c. An arrangement is entered into whereby the State Government and local governments share the requirements and costs associated with redress – for example, on a capacity to pay and deliver basis.

The State Government considered the above options and resolved via the Community Safety and Family Support Cabinet Sub-Committee (December 2019) to:

- Note the consultations undertaken to date with the WA local government sector about the National Redress Scheme;
- Note the options for WA local government participation in the Scheme;
- Agree to local governments participating in the Scheme as State Government institutions, with the State Government covering payments to the survivor; and
- Agree to the DLGSC leading further negotiations with the WA local government sector regarding local government funding costs, other than payments to the survivor including counselling, legal and administrative costs.

KEY ASPECTS OF THE STATE'S DECISION

For clarity, the State's decision that means the following financial responsibilities are to be divided between the State Government and the individual local government that has a Redress application submitted, and then subsequently accepted by the Scheme Operator as a Redress claim.

State Government

The State Government will cover the following:

- Redress monetary payment provided to the survivor;
- Costs in relation to counselling, legal and administration (including the coordination of requests for information and record keeping); and
- Trained staff to coordinate and facilitate a Direct Personal Response or DPR (Apology) to the survivor if requested (on a fee for service basis with costs covered by the individual local government – see below).

Individual Local Government

The individual local government will be responsible for:

- Costs associated with gathering their own (internal) information if requested in a Redress application;
- Providing the State with the necessary information to participate in the Scheme; and
- Costs associated the delivery of a DPR (based on a standard service fee, plus travel and accommodation depending on the survivor's circumstance). *

* note – The State's decision includes that all DPR's will be coordinated and facilitated by the Redress Coordination Unit (Department of Justice) on every occasion, if a DPR is requested by the survivor.

This decision was made on the basis that:

- State Government financial support for local government participation in the Scheme, as set out, will ensure that redress is available to as many WA survivors of institutional child sexual abuse as possible.
- The demonstration of leadership by the State Government, as it will be supporting the local government sector to participate in the Scheme and recognising the WALGA State Council resolution of 3 July 2019, is consistent with the local government sector's preferred approach.
- Contributes to a nationally consistent approach to the participation of local governments in the Scheme, and particularly aligns with the New South Wales, Victorian and Tasmanian Governments' arrangements. This provides opportunity for the State Government to draw on lessons learned through other jurisdictions' processes.
- Ensures a consistent and quality facilitation of a DPR (by the State) if requested by the survivor.
- State Government financial support for any local government redress claims does not imply State Government responsibility for any civil litigation against local governments.

Noting the State's decision, a range of matters need to be considered and arrangements put in place to facilitate local governments participating with the State Government's declaration and meeting the requirements of the Scheme. Those arrangements will:

- provide for a consistent response to the Scheme by WA Government institutions, and for WA survivors accessing the Scheme; and
- mitigate concerns raised by local governments during consultations about complying with the processes and requirements of the Scheme.

5. CONSIDERATIONS FOR WA LOCAL GOVERNMENTS

Following the State's decision, a range of matters need to be considered by each local government and in some cases, actions taken in preparation for participating in the Scheme, these include:

CONFIDENTIALITY

- Information about applicants and alleged abusers included in RFIs (Requests for Information) is sensitive and confidential and is considered protected information under *The National Redress Act*, with severe penalties for disclosing protected information.
- Individual local governments will need to consider and determine appropriate processes to be put in place and staff members designated to ensure information remains confidential.

APPLICATION PROCESSING / STAFFING

- The timeframes for responding to an RFI are set in *The Act* and are 3 weeks for priority application and 7 weeks for non-priority applications. This RFI process will be supported by the State (DLGSC and the Redress Coordination Unit).
- Careful consideration should be given to determining which position will be responsible for receiving applications and responding to RFIs, due to the potentially confronting content of people's statement of abuse.
- Support mechanisms should be in place for these staff members, including access to EAP (Employee Assistance Program) or other appropriate support.
- The need for the appointed position and person(s) to have a level of seniority in order to understand the magnitude of the undertaking and to manage the potential conflicts of interest.
- The responsible position(s) or function(s) would benefit from being kept confidential in addition to the identity of the person appointed to it.

RECORD KEEPING

- The Redress Coordination Unit (Department of Justice) is the state record holder for Redress and will keep copies of all documentation and RFI responses. Local Governments will be required to keep their own records regarding a Redress application in a confidential and secure manner, and in line with all requirements of the *State Records Act 2000*.
- Consider secure storage of information whilst the RFI is being responded to.

REDRESS DECISIONS

- Decisions regarding redress applicant eligibility and responsible institution(s) are made by Independent Decision Makers, based on the information received by the applicant and any RFI responses. The State government does not have any influence on the decision made.
- There is no right of appeal.

MEMORIALS

- Survivors (individuals and / or groups) from within individual communities may ask about the installation of memorials. The State Government's view is to only consider memorialising groups, however locally, this is a decision of an individual local government.

6. NEXT STEPS – PREPARATION FOR WA LOCAL GOVERNMENT PARTICIPATION IN THE SCHEME

In addition to the second-phase information process outlined in section 1, the State will develop:

1. A Memorandum of Understanding (MOU) - to be executed between the State and WALGA following the (WALGA) State Council meeting on 4 March 2020.

The MOU will capture the overall principles of WA local governments participating in the Scheme as State Government institutions and being part of the State's declaration; and

2. Template Service Agreement – that will be executed on an 'as needed' basis between the State and an individual local government, if a redress application is received.

DLGSC and the Department of Justice will work with WALGA / LGPro and all local governments to prepare for participation in the Scheme including:

- Identifying appropriate positions, staff and processes to fulfil requests for information;
- Ensuring local governments have delegated authority to an officer to execute a service agreement with the State if needed;

The State will prepare a template Council report, where all WA local governments will be asked to delegate authority to an appropriate officer in advance, able to execute a service agreement if required. This is necessary as priority requests for information under the Scheme, are in a shorter turnaround time than Council meeting cycles and therefore, cannot be undertaken at the time.

- Ensuring local government have established appropriate processes and can fulfil Scheme obligations (particularly in terms of confidentiality, record keeping etc); and
- Gathering the necessary facility and service information from all individual local governments to commence participation in the Scheme. This information will be provided to the Commonwealth, loaded into the Scheme database and used to facilitate an individual local government's participation in the National Redress Scheme.

ACKNOWLEDGEMENTS

The contents of this Information and Discussion Paper includes extracts from the following identified sources. Information has been extracted and summarised to focus on key aspects applicable to the Department of Local Government, Sport and Cultural Industries' key stakeholders and funded bodies:

- The Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report.

To access a full version of the Royal Commission's Findings and the Final Report, please follow the link at <https://www.childabuseroyalcommission.gov.au/>

- Western Australian State Government response to the Royal Commission (27 June 2018).

To access a full version of the State Government's detailed response and full report, please follow the link at

[https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Royal-Commission/Pages/The-WA-Government-Response-to-Recommendations-\(June-2018\).aspx](https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Royal-Commission/Pages/The-WA-Government-Response-to-Recommendations-(June-2018).aspx)

- More information on the National Redress Scheme can be found at www.nationalredress.gov.au.
- The full National Redress Scheme - Participant and Cost Estimate (July 2015) Report at <https://www.dlgsc.wa.gov.au/resources/publications/Pages/Child-Abuse-Royal-Commission.aspx>

FOR MORE INFORMATION

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APPENDIX A

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE – FURTHER INFORMATION

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established in January 2013, to investigate systemic failures of public and private institutions² to protect children from child sexual abuse, report abuse, and respond to child sexual abuse. The Royal Commission's Terms of Reference required it to identify what institutions should do better to protect children in the future, as well as what should be done to:

- achieve best practice in reporting and responding to reports of child sexual abuse;
- eliminate impediments in responding to sexual abuse; and
- address the impact of past and future institutional child sexual abuse.

The Western Australian Government (State Government) strongly supported the work of the Royal Commission through the five years of inquiry, presenting detailed evidence and submissions and participating in public hearings, case studies and roundtables.

The Royal Commission released three reports throughout the inquiry: *Working with Children Checks (August 2015)*; *Redress and Civil Litigation (September 2015)* and *Criminal Justice (August 2017)*. The Final Report (Final Report) of the Royal Commission into Institutional Responses to Child Sexual Abuse incorporated the findings and recommendations of the previously released reports and was handed down on 15 December 2017. To access a full version of the Royal Commission's Findings and the Final Report, follow the link at <https://www.childabuseroyalcommission.gov.au/>

The Royal Commission made 409 recommendations to prevent and respond to institutional child sexual abuse through reform to policy, legislation, administration, and institutional structures. These recommendations are directed to Australian governments and institutions, and non-government institutions. One specific recommendation was directed at Local Government, while many others will directly or indirectly impact on the organisations that Local Government works with and supports within the community.

Of the 409 recommendations, 310 are applicable to the Western Australian State Government and the broader WA community.

² * For clarity in this Paper, the term 'Institution' means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), however described, and:

- Includes for example, an entity or group of entities (including an entity or group of entities that no longer exist) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families
- Does not include the family.

THE WESTERN AUSTRALIAN GOVERNMENT RESPONSE TO THE ROYAL COMMISSION

The State Government examined the 310 applicable recommendations and provided a comprehensive and considered response, taking into account the systems and protections the State Government has already implemented. The State Government has accepted or accepted in principle over 90 per cent of the 310 applicable recommendations.

The State Government's response was released on 27 June 2018 fulfilling the Royal Commission recommendation 17.1, that all governments should issue a formal response within six months of the Final Report's release, indicating whether recommendations are accepted; accepted in principle; not accepted; or will require further consideration. The WA Government's response to the Royal Commission recommendations can be accessed at:

<http://www.dpc.wa.gov.au/childabuseroyalcommission>

The State Government has committed to working on the recommendations with the Commonwealth Government, other states and territories, local government, non-government institutions (including religious institutions) and community organisations.

The State Government's overall approach to implementation of reforms is focused on:

- Stronger Prevention (including Safer Institutions and Supportive Legislation)
 - Create an environment where children's safety and wellbeing are the centre of thought, values and actions;
 - Places emphasis on genuine engagement with and valuing of children;
 - Creates conditions that reduce the likelihood of harm to children and young people.
- Reliable Responses (including Effective Reporting)
 - Creates conditions that increase the likelihood of identifying any harm;
 - Responds to any concerns, disclosures, allegations or suspicions of harm.
- Supported Survivors (including Redress).

Many of the recommendations of the Royal Commission have already been addressed through past work of the State Government, and others working in the Western Australian community to create safe environments for children. This work is acknowledged and where appropriate, will be built upon when implementing reforms and initiatives that respond to the Royal Commission's recommendations.

APPENDIX B

NATIONAL REDRESS SCHEME - FURTHER INFORMATION

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single national redress scheme to recognise the harm suffered by survivors of institutional child sexual abuse.

The National Redress Scheme (the Scheme):

- Acknowledges that many children were sexually abused in Australian institutions;
- Recognises the suffering they endured because of this abuse;
- Holds institutions accountable for this abuse; and
- Helps people who have experienced institutional child sexual abuse gain access to counselling and psychological services, a direct personal response, and a redress-payment.

The National Redress Scheme involves:

- People who have experienced institutional child sexual abuse who can apply for redress;
- The National Redress Scheme team — Commonwealth Government staff who help promote the Scheme and process applications;
- Redress Support Services — free, confidential emotional support and legal and financial counselling for people thinking about or applying to the Scheme;
- Participating Institutions that have agreed to provide redress to people who experienced institutional child sexual abuse; and
- Independent Decision Makers who will consider applications and make recommendations and conduct reviews.

The National Redress Scheme formally commenced operation on 1 July 2018 and offers eligible applicants three elements of redress:

- A direct personal response from the responsible institution, if requested;
- Funds to access counselling and psychological care; and
- A monetary payment of up to \$150,000.

Importantly, the Scheme also provides survivors with community based supports, including application assistance; financial support services; and independent legal advice. The Scheme is administered by the Commonwealth Government on behalf of all participating governments, and government and non-government institutions, who contribute on a 'responsible entity pays' basis.

Institutions that agree to join the Scheme are required to adhere to the legislative requirements set out in the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

More information on the Scheme can be found at www.nationalredress.gov.au or the [National Redress Guide](#).

SURVIVORS IN THE COMMUNITY

Throughout the five years of its inquiry, the Royal Commission heard detailed evidence and submissions, and held many public and private hearings, case studies and roundtables. Most notably, the Royal Commission heard directly from survivors of historical abuse.

The Royal Commission reported that survivors came from diverse backgrounds and had many different experiences. Factors such as gender, age, education, culture, sexuality or disability had affected their vulnerability and the institutions response to abuse.

The Royal Commission, however, did not report on the specific circumstances of individuals with the details of survivors protected; the circumstances of where and within which institutions their abuse occurred is also protected and therefore unknown. Further, survivors within the WA community may have chosen to not disclose their abuse to the Royal Commission.

Accordingly, it is not known exactly how many survivors were abused within Western Australian institutions, including within Local Government contexts. Within this context of survivors in the community, who may or may not be known, consideration needs to be given to how all institutions, including local governments, can fulfil the Royal Commission's recommendation in relation to redress.

The Royal Commission's *Redress and Civil Litigation (September 2015)* Report recommended the establishment of a single national redress scheme to recognise the harm suffered by survivors of institutional child sexual abuse. This report also recommended that Governments around Australia remove the limitation periods that applied to civil claims based on child sexual abuse, and consequently prevented survivors – in most cases – pursuing compensation through the courts.

As a result of reforms made in response to these recommendations, WA survivors now have the following options to receive recognition of their abuse:

1. Pursuing civil court action(s) against the perpetrator and/or the responsible institution. The *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (WA) took effect on 1 July 2018, removing the limitation periods that previously prevented persons who had experienced historical child sexual abuse from commencing civil action.
2. Applying to the National Redress Scheme, which provides eligible applicants with a monetary payment, funds to access counselling and an apology. Note, to receive redress the responsible institution(s) will need to have joined the Scheme.

TREATMENT OF LOCAL GOVERNMENTS BY OTHER JURISDICTIONS

At the time of the State Government joining the Scheme, only two jurisdictions had made a decision about the treatment of local governments. All jurisdictions have since agreed to include local governments within their respective declarations, with the exception of South Australia (SA). The SA Government is still considering their approach.

It is understood that all jurisdictions, with the exception of SA, are either covering the redress liability associated with local government participation in the Scheme or entering into a cost sharing arrangement. The table below provides a summary of other jurisdictions' positions.

Jurisdiction	Position
Commonwealth	<ul style="list-style-type: none"> No responsibility for local governments. The Commonwealth Government has indicated preference for a jurisdiction to take a consistent approach to the participation of local governments in the Scheme.
Australian Capital Territory (ACT)	<ul style="list-style-type: none"> ACT has no municipalities, and the ACT Government is responsible for local government functions. ACT has therefore not been required to explore the issue of local government participation in the Scheme.
New South Wales (NSW)	<ul style="list-style-type: none"> In December 2018, the NSW Government decided to include local councils as NSW Government institutions and to cover their redress liability. The NSW Office for Local Government is leading communications with local councils about this decision. NSW's declaration of participating institutions will be amended once preparation for local council participation is complete.
Northern Territory (NT)	<ul style="list-style-type: none"> The NT Government has consulted all of the Territory's local governments, including individually visiting each local government. NT is in the process of amending Territory's declaration of participating institutions to include local governments.
Queensland	<ul style="list-style-type: none"> Queensland is finalising a memorandum of understanding (MOU) with the Local Government Association of Queensland to enable councils to participate in the Scheme as State institutions. The MOU includes financial arrangements that give regard to individual councils' financial capacity to pay for redress.
South Australia (SA)	<ul style="list-style-type: none"> Local governments are not currently included in the SA Government's declaration The SA Government is still considering its approach to local governments.
Tasmania	<ul style="list-style-type: none"> Local Governments have agreed to participate in the Scheme and will be included as a state institution in the Tasmanian Government's declaration. A MOU with local governments is being finalised, ahead of amending Tasmania's declaration.
Victoria	<ul style="list-style-type: none"> The Victorian Government's declaration includes local governments. The Victorian Government is covering local governments' redress liability.
Western Australia (WA)	<ul style="list-style-type: none"> The WA Government has excluded local governments from its declaration, pending consultation with the local government sector.

TIMEFRAME TO JOIN THE SCHEME

Institutions can join the Scheme within the first two years of its commencement. This means that institutions can join the Scheme up to and including 30 June 2020 (the second anniversary date of the Scheme). The Commonwealth Minister for Social Services may also provide an extension to this period to allow an institution to join the Scheme after this time. However, it is preferred that as many institutions as possible join the Scheme within the first two years to give certainty to survivors applying to the Scheme about whether the institution/s in which they experienced abuse will be participating.

If an institution has not joined the Scheme, they are not a participating institution. However, this will not prevent a person from applying for redress. In this circumstance, a person's application cannot be assessed until the relevant institution/s has joined the Scheme. The Scheme will contact the person to inform them of their options to either withdraw or hold their application. The Scheme will also contact the responsible institution/s to provide information to aid the institution/s to consider joining the Scheme.

THE SCHEME'S STANDARD OF PROOF

The Royal Commission recommended that 'reasonable likelihood' should be the standard of proof for determining eligibility for redress. For the purposes of the Scheme, 'reasonable likelihood' means the chance of the person being eligible is real and is not fanciful or remote and is more than merely plausible.

When considering a redress application, the Scheme Operator must consider whether it is reasonably likely that a person experienced sexual abuse as a child, and that a participating institution is responsible for an alleged abuser/s having contact with them as a child. In considering whether there was reasonable likelihood, all the information available must be taken into account.

Where a participating institution does not hold a record (i.e. historical information), the Scheme Operator will not be precluded from determining a person's entitlement to redress. The information to be considered by the Scheme Operator includes:

- The information contained in the application form (or any supplementary information provided by a person by way of statutory declaration);
- Any documentation a person provided in support of their application;
- The information provided by the relevant participating institution/s in response to a Request for Information from the Operator, including any supporting documentation provided; and
- Any other information available including from Scheme holdings (for example where the Scheme has built up a picture of relevant information about the same institution during the relevant period, or the same abuser).

It should be noted that the 'reasonable likelihood' standard of proof applied by the Scheme is of a lower threshold (or a lower standard of proof) than the common law standard of proof applied in civil litigation – the 'balance of probabilities'. Please see 11.7 of the Royal Commission's *Redress and Civil Litigation Report (2015)* for additional information on the difference between the two.

MAXIMUM PAYMENT AND SHARED RESPONSIBILITY

The amount of redress payment a person can receive depends on a person's individual circumstances, specifically the type of abuse the person experienced.

A person may only make one application for redress. The maximum redress payment payable under the scheme to an applicant is \$150,000 in total.

The payment of redress is made by the institution(s) found responsible for exposing the individual to the circumstances that led to the abuse.

There may be instances where one or more institutions are found to be jointly responsible for the redress payment to a person, and instances where a person may have experienced abuse in one or more different institutions. In such situations, the redress payable by an institution will be apportioned in accordance with the Scheme's assessment framework - see <https://www.legislation.gov.au/Details/F2018L00969> and method statement - see <http://guides.dss.gov.au/national-redress-guide/4/1/1>

Prior payments made by the responsible institution for the abuse to the applicant (e.g. ex-gratia payments) will be taken into account and deducted from the institutions' redress responsibility.

EFFECT OF AN APPLICANT ACCEPTING AN OFFER OF REDRESS

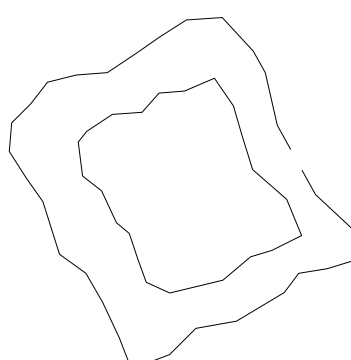
Accepting an offer of redress has the effect of releasing the responsible participating institution/s and their officials (other than the abuser/s) from civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme. This means that the person agrees to not bring or continue any civil claims against the responsible participating institution/s in relation to any abuse within the scope of the Scheme.

If a responsible participating institution/s is a member of a participating group, the person will be releasing the other associated institutions and officials within that group from any civil liability for instances of sexual abuse and related non-sexual abuse of the person that is within the scope of the Scheme.

Accepting an offer of redress also has the effect of preventing a responsible participating institution from being liable to contribute to damages that are payable to the person in civil proceedings (where the contribution is to another institution or person).

In accepting the offer of redress, a person will also be consenting to allow the participating institution/s or official/s to disclose the person's acceptance of redress offer in the event that a civil claim is made. The Scheme must provide a copy of the person's acceptance of offer to each responsible institution for their records once received.

Note – the acceptance of an offer of redress does not exclude the pursuance or continuance of criminal proceedings against the abuser(s).



AVONDALE (SETTLEMENT AREA) - SITE PLAN
SCALE 1:2500

The National Trust of Western Australia
The Old Observatory
4 Havelock Street, West Perth
PO Box 1162,
West Perth WA 6872
Phone: (08) 9321 6088
Fax: (08) 9324 1571
Email: trust@ntwa.com.au
Web: www.nationaltrust.org.au

HERITAGE PLACE
This property is an important heritage place included on the WA State Register of Heritage Places. A cautious approach to all works is essential. If at any time there is doubt or confusion in regards to an instruction on the drawings or specification, or if investigations on site reveal some unexpected issue, the Contractor must immediately contact the Principal's Representative and await further instruction before proceeding. All dimensions to be checked on site prior to works being carried out. Notify the Principal's Representative of any discrepancies or errors. Wall thickness vary along the wall length and height. The measurements shown are an estimation of average thickness and height. Likewise, walls are not straight, vertical or parallel, and drawings are an estimate of the average. Site information is also only representative, with the location of ALL services being only approximations.

PROJECT TITLE
MEASURED DRAWINGS
PROPERTY ADDRESS
LOT 3 & 16 WATERHATCH RD, BEVERLEY

PROPERTY TITLE
AVONDALE
PROJECT No --- **NTWA PLACE ID** AVON
FILE LOCATION S:\Properties & Collections\Avondale\Drawings\Measured Drawings

REVISION	DATE	COMMENT

DRAWING TITLE
CORE SITE PLAN
SCALE @A1 1:2500 @A3
DATE 2019 **DRAWN BY** KL

DRAWING	REV
A01.02	A

Lease

B-19 Agricultural Machinery Museum, Avondale

The National Trust of Australia (WA)

(ABN 83 697 381 616)

Lessor

and

Shire of Beverley

(ABN 33 895 807 275)

Lessee

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Lease

Date 2020

Parties

Lessor The person described in Item 1 of Schedule 2

Lessee The person described in Item 2 of Schedule 2

This Lease provides

1. Definitions and interpretation

1.1 Definitions

Access Card means a security access key or card or other security access device.

Accountant means a member of either the Institute of Chartered Accountants of Australia or the Australian Society of Certified Practising Accountants.

ADI has the meaning given to that term in the *Banking Act 1959* (Cth).

Approved Insurer means an insurance company authorised to carry on business under the *Insurance Act 1973* (Cth) and, with respect to insurances to be taken out by the Lessee, as approved by the Lessor without being unreasonable.

Assessment means an assessment, charge or levy issued by an Authority in respect of Rates and Taxes.

Authority means any government, statutory, public or other authority or body having jurisdiction over the Building or any matter or thing relating to it including those assessing or imposing local authority or municipal rates, water rates and land tax and metropolitan region improvement tax and those providing or supplying services and utilities to the Building or the Premises.

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian bank which is an authorised deposit-taking institution to pay on demand the amount (if any) specified in Item 15.1 of Schedule 2, which must:

- (a) be in favour of the Lessor;
- (b) guarantee the performance of the Lessee's Obligations;
- (c) not contain an expiry date; and
- (d) be on terms acceptable to the Lessor.

Base Building Standard and Configuration means a condition acceptable to the Lessor, acting reasonably:

-
- (a) being as-new condition, with:
- (i) all painted surfaces having been repainted with at least 2 coats of high quality paint;
 - (ii) all the Lessee's fixtures and fittings (including any partitioning) having been removed and any damage thereby caused having been made good to the Lessor's satisfaction; and
 - (iii) all surfaces being clean and free of damage;
- (b) in which the Premises may be immediately re-let; and
- (c) in which all Building Services have been placed in (or returned to) a standard of an "empty floor" layout.

BEEC means a Building Energy Efficiency Certificate, as defined in the *Building Energy Efficiency Disclosure Act 2010* (Cth).

Building means all the buildings and improvements on the Land from time to time and includes all the Lessor's Fixtures in the Building and the Building Services.

Building Procedures and Regulations means the procedures and regulations contained in Schedule 1 as from time to time varied or amended by the Lessor under clause 10.7.

Building Services means all services supplied to or in the Premises including gas, water, drainage, fresh air, exhaust systems, electricity, sprinkler systems, heating, lighting, lift services, electrical services, electrical power supply, hydraulic services, mechanical services, the air conditioning system and includes the Lessor's Fixtures.

Business Day means a day, not being a Saturday, Sunday or public holiday in the State.

Car Park means all those parts of the Building or the Land which at any time are set aside for the parking of motor vehicles.

Claim means any claim, demand, legal proceedings or cause of action including any:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or in equity; or
- (d) under any Law arising from a breach of warranty, representation, covenant under, or term of, this Lease.

Commencement Date means the date specified in Item 5 of Schedule 2.

Common Areas means an area within or adjacent to the Building that is intended for use by the general public or for use in common by the Lessor, its Permitted Persons and the Lessor's tenants, customers, visitors, licensees, invitees and any other person authorised by the Lessor in connection with the conduct of business at

premises in the Building and includes all stairways, escalators, elevators, malls, walkways, trafficways, the Car Park, toilets, restrooms, gardens and fountains intended for common use.

Consumer Price Index means the Consumer Price Index (All Groups Index - Perth) as published by the Australian Bureau of Statistics.

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

CPI Rent Review Date means each date specified as a CPI rent review date in Item 9 and Item 14 of Schedule 2, as applicable.

Current CPI means the Consumer Price Index most recently published before the relevant CPI Rent Review Date.

Default Rate means a rate of interest per annum which is four (4) percentage points higher than the benchmark rate of the 90 day bank bill rate as published in the Monday edition of *The West Australian* newspaper each week, or if *The West Australian* is not published on that day or the 90 day bank bill rate does not appear in it, then as published on the next day on which the 90 day bank bill rate appears in *The West Australian*. If that doesn't happen within seven (7) days, or if that rate ceases to exist, it means the 90 day bank bill rate as published by the Lessor's bank.

Event of Default means each event described in clause 12.1.

Expert Determination Process means the process and procedure for expert determination of disputes arising under this Lease as set out in Annexure A.

Final Period means the period from and including the 1st day of July immediately preceding Termination up to the date of Termination.

Fire Fighting Equipment means all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers or other fire prevention equipment in or serving the Building and, where used in relation to the Premises, refers to so much of the Fire Fighting Equipment as is contained in the Premises.

Fixed Increase Percentage means the percentage specified as the fixed increase percentage in Item 9 and Item 14 of Schedule 2, as applicable.

Fixed Increase Rent Review Date means each date specified as a fixed increase rent review date in Item 9 and Item 14 of Schedule 2, as applicable.

Further Term means the further term or terms (if any) specified in Item 13 of Schedule 2.

Further Term Rent Review Date means each date specified in Item 14 of Schedule 2.

Hazard means any thing occurring on or emanating from the Premises that may result in injury to a person or harm to the health of a person.

Insolvency Event means:

(a) in the case of a body corporate:

-
- (i) an application is made to a court for an order or an order is made that the body corporate be wound up;
 - (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator of the body corporate or one is appointed, whether or not under an order;
 - (iii) a meeting is convened or a resolution is passed to appoint an administrator of the body corporate;
 - (iv) the body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them, except if done to reconstruct or amalgamate while solvent, on terms approved by the Lessor;
 - (v) the body corporate proposes to or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors without the consent of the Lessor;
 - (vi) a resolution is passed to wind up or dissolve the body corporate;
 - (vii) the body corporate is dissolved;
 - (viii) the body corporate is insolvent within the meaning of that expression in section 95A(2) of the Corporations Act or any event mentioned in paragraphs (a) to (f) inclusive of section 459C(2) of the Corporations Act occurs in respect of the body corporate;
 - (ix) the appointment of an administrator or a controller, as defined by the Corporations Act, in respect of the body corporate, or a receiver, or manager, or receiver and manager of the whole or part of the assets and undertaking of the body corporate; or
 - (x) anything analogous or having a substantially similar effect to any event specified above happens under the Law of any applicable jurisdiction; and
- (b) in the case of an individual:
- (i) the individual proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of the individual's creditors or any class of creditors;
 - (ii) the individual commits an "act of bankruptcy" as that term is defined in the *Bankruptcy Act 1966* (Cth); or
 - (iii) anything analogous or having a substantially similar effect to any event specified above happens under the Law of any applicable jurisdiction.

Insurable Risks means:

-
- (a) the risk of:
 - (i) loss or damage to the Building from all insurable causes;
 - (ii) breakdown of plant and machinery;
 - (iii) sprinkler leakage and water damage; and
 - (iv) loss of Rent or Variable Outgoings Contribution;
 - (b) the risk of an event which would be covered by the Lessor's public liability insurance;
 - (c) the risk of liability under workers compensation Claims and statutory liability in respect of employees of the Lessor employed at the Building; and
 - (d) any other risk related to the Lessor's interest in the Building or the Land.

Insurance Premiums means the premiums for all insurance effected by the Lessor for the Insurable Risks.

Insured Amount means the amount specified in Item 10 of Schedule 2.

Land means the land specified in Item 3 of Schedule 2 and any other parcels of land either abutting or in the vicinity of the Land which the Lessor may from time to time by notice in writing to the Lessee nominate as part of the Land.

Laws means all statutes, rules, regulations, proclamations, ordinances or by-laws present or future of the State and, where applicable, the Commonwealth, and any amendment or re-enactment of them for the time being in force.

Lease means this deed as amended, varied or supplemented from time to time including any schedule or annexure, however it is not limited to the legal estate created on registration but also includes any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises, including a tenancy for a fixed term, a periodic tenancy or a tenancy at will.

Lease Year means:

- (a) the Preliminary Period;
- (b) each consecutive period of 12 months from and including the 1st day of July in each year during the Term; and
- (c) the Final Period.

Lessee means the person specified in Item 2 of Schedule 2 and that person's successors, executors, administrators and permitted assigns and, where not contrary to the context, includes any sub-lessee.

Lessee's Obligations means the several obligations contained or implied in this Lease on the part of the Lessee to be observed or performed.

Lessor means the person specified in Item 1 of Schedule 2 and that person's successors, executors, administrators, assigns and transferees and includes the person entitled to possession of the Premises at Termination.

Lessor's Fixtures means the fixtures, fittings, plant and equipment belonging to the Lessor from time to time located or contained in the Premises, including floor coverings and window treatments.

Maintenance Schedule means Schedule 4.

Managing Agent means the person (if any) appointed under clause 13.13.

Market Rent Review Date means each date specified as a market rent review date in Item 9 and Item 14 of Schedule 2, as applicable.

month means a calendar month.

NABERS means the National Australian Built Environment Rating System, being the national initiative managed by the New South Wales Office of Environment and Heritage.

Net Lettable Area of the Building means the aggregate of all areas in the Building designated from time to time for leasing by the Lessor and measured under the applicable PCAL method of measurement for lettable area, 1997 edition.

Net Lettable Area of the Premises means the floor area of the Premises whether contained on one or more levels measured under the applicable PCAL method of measurement for lettable area, 1997 edition.

OSH Incident means:

- (a) an actual or suspected breach of any requirement under OSH Legislation by the Lessor, the Lessee or either's Permitted Persons;
- (b) an incidence of personal injury or harm caused to a person at the Premises;
- (c) an event that gives rise to a risk to the safety and health of a person, whether or not that event is required to be reported under OSH Legislation;
- (d) the issue of any notice or direction by an authorised person under the OSH Legislation to the Lessor, the Lessee or either's Permitted Persons which directly or indirectly relates to the use of the Premises; and
- (e) the commencement of any inquiry or investigation undertaken by an authorised person under the OSH Legislation which directly or indirectly relates to the use of the Premises.

OSH Legislation means all Laws regarding work health and safety that apply to the Premises from time to time, including:

- (a) all Australian Standards or Codes of Practice referred to or made under those work health and safety Laws; and

- (b) all licenses, terms or conditions issued to or imposed on the Lessor, the Lessee or either's Permitted Persons by an Authority pursuant to those work health and safety Laws.

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

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

Permitted Person means:

- (a) in relation to the Lessee, any employee, agent, contractor, customer, invitee, licensee or visitor of the Lessee, including the employees and sub-contractors of the Lessee's agents and contractors; and
- (b) in relation to the Lessor, any employee, agent or contractor of the Lessor.

Permitted Use means the use specified in Item 11 of Schedule 2.

Perth CBD means the area in or adjoining the City of Perth bounded by Riverside Drive, the Mitchell Freeway, Roe Street, Fitzgerald Street, Newcastle Street, Lord Street, Wellington Street and Plain Street, including both sides of each street or road.

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

Preliminary Period means the period commencing at midnight on the day preceding the Commencement Date and expiring at midnight on the next 30th June.

Premises means the premises described in Item 4 of Schedule 2 and shown on the Premises Plan and situated in the Building, extending vertically from the upper surface of the floor slab to the under surface of the ceiling above the floor slab on each floor level of those premises and extending horizontally on each floor level to and including the internal surfaces of external walls, the mid or centre line of adjoining or inter tenancy walls or partitions and to the internal surfaces of external windows, and including all Building Services in those premises and the Lessor's Fixtures.

Premises Plan means the plan of the Premises in Schedule 3.

Previous CPI means the Consumer Price Index most recently published before the Rent Review Date, if there was one, immediately preceding the relevant CPI Rent Review Date, or the Commencement Date, if there was no previous Rent Review Date.

Rates and Taxes means the aggregate in each Lease Year of all:

- (a) council rates and charges payable to the relevant Authority including charges for rubbish removal;
- (b) water drainage and sewerage rates payable to the relevant Authority for the supply of water including meter fees and charges for the disposal of storm water and sewerage and charges for water consumption where not separately metered and paid for by any other tenant of the Building;

(c) land tax and charges (State or Commonwealth) and Metropolitan Region Improvement Tax calculated on the basis of the Land being the only property owned by the Lessor in the State; and

(d) any other rate, tax or imposition,

levied, charged or assessed in respect of the Premises, the Building or the Land, or the ownership or occupation of them.

Related Body Corporate has the meaning given in section 9 of the Corporations Act as at the date of this Lease.

Rent means the rent which as at the Rent Commencement Date is the amount specified in Item 7 of Schedule 2.

Rent Commencement Date means the date specified in Item 8 of Schedule 2.

Rent Review Date means each date specified in Item 9 of Schedule 2.

Requirements means every condition of approval or consent, requirement, notice, order or direction of any Authority.

Security Deposit means the amount (if any) specified in Item 12 of Schedule 2.

Security Interest has the meaning given to that term in the PPSA.

Special Conditions means the terms and conditions (if any) specified in Item 15 of Schedule 2.

State means the State of Western Australia.

Strata Titles Act means the *Strata Titles Act 1985 (WA)*.

Term means the term of this Lease specified in Item 6 of Schedule 2 and where the context permits includes any Further Term, any other renewal of this Lease and any period of holding over.

Termination means the expiry by passage of time or the sooner determination of the Term or any Further Term.

Valuer means a person who:

(a) is licensed under the *Land Valuers Licensing Act 1978 (WA)*; and

(b) has not less than 5 years experience in the valuation of rental for commercial premises (including not less than 2 years experience in the State); and

(c) is a member of the Australian Property Institute (Inc) (Western Australia Division).

Variable Outgoings means every amount expended or provided by the Lessor for the Building or the Land, including:

(a) cleaning the Premises;

-
- (b) Insurance Premiums, any excess for any insurance Claim, brokers' and consultants' fees, together with the cost of risk management assessment and removal of debris;
 - (c) cleaning and keeping pest-free all Common Areas including all windows, the Car Park and all signs under the control of the Lessor;
 - (d) lighting all Common Areas including the Car Park and all signs under the control of the Lessor;
 - (e) internal and external gardening landscaping and reticulation expenses including street verges abutting the Land;
 - (f) caretaking, general maintenance and preservation of security of the Building, employing security personnel and agents, hire and maintenance of all security equipment and security call out for after hours access to the Building;
 - (g) removal of garbage and trade waste including wet waste and food garbage from the Land;
 - (h) repair and maintenance of the Building;
 - (i) fire service, fire alarm and Fire Fighting Equipment inspection, maintenance and replacement of fire alarms and Fire Fighting Equipment installed by the Lessor serving the Building and fire and emergency evacuation training;
 - (j) administration, operation and management of the Building including Managing Agent's fees and expenses, administrative and other costs and expenses, audit fees, bank fees, stationery and postage;
 - (k) electricity and any other source of power used, associated with the running maintenance and repair of air-conditioning, ventilation, heating or cooling plant and equipment, lifts or escalators, or goods hoists installed by the Lessor in the Building, and fees or premiums payable to consultants and specialist contractors and direct wages paid by and cost of materials and parts purchased by the Lessor for the maintenance and servicing of that plant and equipment;
 - (l) installing, running, maintaining and repairing background music, public address and other entertainment systems and equipment throughout the Building;
 - (m) salaries, wages and direct overheads applicable to the day-to-day operation and maintenance of the Building as a whole;
 - (n) hire, replacement and maintenance of planters;
 - (o) sanitation, including toilet requisites;
 - (p) electricity, gas or other services incurred for the Building;
 - (q) replacement Access Cards (less any user - pays reimbursements);
 - (r) if designated or included by the Lessor, the Rates and Taxes;

-
- (s) obtaining an annual NABERS rating for the Building and an annual BEEC and complying with the Lessor's obligations under the *Building Energy Efficiency Disclosure Act 2010* (Cth);
 - (t) any audit of the Variable Outgoings by the Lessor's auditor as is required under this Lease; and
 - (u) any other expenditure reasonably and properly incurred in all or any of the preservation, operation, maintenance, upkeep, repair, servicing, inspection, administration and management generally of the Building or the Land.

Variable Outgoings Contribution has the meaning specified in clause 4.1.

Works Conditions means that:

- (a) the works must be performed:
 - (i) at the Lessee's cost (including the Lessor's reasonable costs incurred in connection with the works, which include the Lessor's reasonable administrative and other reasonable costs of giving consent and the reasonable fees of any architect or other consultant used by the Lessor in connection with the works);
 - (ii) in a proper and workmanlike manner, in accordance with all relevant Australian Standards and to the satisfaction of the Lessor, acting reasonably;
 - (iii) by a contractor:
 - A. nominated by the Lessee and approved by the Lessor, acting reasonably; and
 - B. who has provided evidence to the Lessor that it carries a policy covering public liability with a level of cover acceptable to the Lessor and appropriate contract construction risk, workers compensation and other usual insurances, which note the interest of the Lessor;
 - (iv) under the supervision of a person nominated by the Lessee and approved by the Lessor, acting reasonably;
 - (v) in accordance with all Laws and Requirements;
 - (vi) in accordance with plans and specifications approved by the Lessor (which approval must not be unreasonably withheld) and subject to any conditions that the Lessor imposes on its consent (which conditions (if any) must be reasonable);
 - (vii) in accordance with and only after obtaining the approvals of all relevant Authorities;
 - (viii) only after providing copies to the Lessor of all approvals from relevant Authorities in relation to the works before carrying out the works; and

-
- (ix) in accordance with the then current fitout manual (if any) for the Building; and
 - (b) once the works are complete the Lessee must:
 - (i) provide as-built drawings for the Premises layout and services to the Lessor; and
 - (ii) provide copies of all certificates of compliance from relevant Authorities in relation to the works within a reasonable period as nominated by the Lessor (but in any event within 40 Business Days after completion) to the Lessor.

1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (a) the singular includes the plural, a gender includes every other gender and words importing persons include bodies corporate;
- (b) “including” means “including, but not limited to”;
- (c) “person” means:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an, unincorporated body, a government or statutory body or an Authority or other entity, whether or not it is a separate legal entity;
 - (ii) if a person is an individual, that person’s personal representatives and permitted assigns; and
 - (iii) if a person is not an individual, that person’s successors and permitted assigns and a person, who novates the Lease;
- (d) a covenant entered into by more than one person is deemed to be entered into by them jointly and each of them severally;
- (e) if the date on or by which any amount is payable or any act or thing must be done under this Lease is not a Business Day, the payment must be made or the act or thing must be done on or by the next Business Day;
- (f) the Lessee’s Obligations are binding on, and enforceable against, the Lessee as defined in this Lease and any occupier of the Premises from time to time;
- (g) the headings and an index have been inserted for convenience only and are not to be taken into account in interpreting this Lease;
- (h) reference to a clause is a reference to a clause or sub-clause of this Lease;
- (i) a reference to a schedule or annexure means a schedule or annexure to this Lease;

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- (j) where a word or expression is defined in this Lease, another part of speech or grammatical form of that word or expression has a corresponding meaning; and
 - (k) reference to a body, organisation or rating tool includes, if it has ceased to exist or to be relevant, that body, organisation or rating tool's successor or replacement, or, if none, the body, organisation or rating tool that is most appropriate, as determined by the Lessor acting reasonably.

1.3 Limitation of liability as Trustee

The Lessee acknowledges and agrees that if the Lessor has entered into this Lease as trustee of a trust and in no other capacity:

- (a) the Lessor will not be personally liable to the Lessee its Permitted Persons for any breach of the covenants, conditions and stipulations contained or implied in this Lease;
- (b) in respect of any breach of this Lease the Lessee will be able to claim damages from the Lessor only to the extent that the Lessor is able to be reimbursed from the net assets of that trust; and
- (c) no officers of the Lessor will be personally liable to the Lessee or its Permitted Persons.

1.4 Lessor's limitation of liability

The Lessee acknowledges and agrees that, subject to the provisions of this Lease, the covenants on the part of the Lessor will bind the person entitled to be the registered proprietor of the Land for the time being but will not render the Lessor personally liable in damages for any breach except in the case of the Lessor's own acts or defaults or those of its Permitted Persons while the Lessor is registered proprietor of the Land.

2. Grant and term

2.1 Grant

The Lessor leases the Premises to the Lessee and the Lessee takes a lease of the Premises:

- (a) for the Term;
- (b) at the Rent; and
- (c) subject to the terms of this Lease.

together with the right for the Lessee and its employees, customers and invitees to use and enjoy the Common Areas.

2.2 Commencement date

This Lease commences on the Commencement Date.

3. Rent and rent review

3.1 Rent

The Lessee must pay the Rent which will be subject to review as is provided in this Lease.

3.2 Payment of rent

- (a) The Rent accrues from day to day and is payable by equal monthly instalments in advance with the first instalment to be apportioned on a daily basis in respect of periods less than a month and paid on or before the Rent Commencement Date and subsequent payments to be made on the first or other agreed day of each month after that.
- (b) The Rent must be paid:
 - (i) without any deduction or set-off, whether arising at Law or in equity;
 - (ii) subject to clause 3.2(b)(iii), to the Lessor at its address stated in this Lease or at any other address as may be notified in writing to the Lessee; and
 - (iii) if requested by the Lessor, by direct debit from the Lessee's bank account into a bank account nominated by the Lessor.

3.3 Rent review (fixed increase)

The Rent will be reviewed on each Fixed Increase Rent Review Date to determine the rent (**New Fixed Rent**) to be paid from that Fixed Increase Rent Review Date until the next following Rent Review Date, if there is one, or Termination and the New Fixed Rent will be the Rent payable immediately before the relevant Fixed Increase Rent Review Date increased by the Fixed Increase Percentage.

3.4 Rent review (CPI)

- (a) The Rent will be reviewed on each CPI Rent Review Date to determine the rent (**New CPI Rent**) to be paid from that CPI Rent Review Date until the next following Rent Review Date, if there is one, or Termination and the New CPI Rent will be the Rent payable immediately before the relevant CPI Rent Review Date, multiplied by the Current CPI and divided by the Previous CPI.
- (b) The Rent payable after a CPI Rent Review Date will not be less than the Rent payable before that CPI Rent Review Date.
- (c) If, during the Term, the Consumer Price Index is discontinued or ceases, in the Lessor's opinion, to reflect the increase in the cost of living for the City of Perth, the index to be used in place of the Consumer Price Index for the purpose of this Lease will be that stipulated by the President (or its nominee) of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.

3.5 Rent review (market)

- (a) The Rent will be reviewed on each Market Rent Review Date to determine the Market Rent (**New Market Rent**) to be paid from the relevant Market Rent Review Date until the next Rent Review Date, if there is one, or Termination, in the following manner:
- (i) the Lessor may before the relevant Market Rent Review Date (but without time being of the essence) give to the Lessee a notice specifying what the Lessor believes to be the Market Rent (**Lessor Notice**);
 - (ii) if the Lessee agrees with the Market Rent specified in the Lessor Notice or does not object to it within 10 Business Days after service of the Lessor Notice (time being of the essence), then the Lessee will be deemed to have accepted the amount specified in the Lessor Notice as the New Market Rent;
 - (iii) if the Lessee disputes the Market Rent specified in the Lessor Notice by giving to the Lessor notice in writing within 10 Business Days after receiving the Lessor Notice (time being of the essence), then the dispute will be referred to a Valuer to determine the Market Rent for the Premises. If the Lessor and the Lessee cannot agree on the appointment of a Valuer within 5 Business Days after a request by either of them to the other to do so, then either may request the President (or its nominee) of the Australian Property Institute (Inc) (Western Australia Division) to nominate a Valuer (and the Parties agree to jointly appoint that Valuer); and
 - (iv) the Valuer agreed on or so appointed must use its best endeavours to determine the Market Rent of the Premises as at the relevant Market Rent Review Date within 20 Business Days after being appointed and will give the Valuer's determination (which will be a valuation in writing outlining the reasons for it) to the Lessor and the Lessee.
- (b) In this clause 3.5 **Market Rent** means the annual rental that can reasonably be obtained for the Premises whether occupied or unoccupied:
- (i) on the basis that the Lessee's Obligations have been fully observed and performed;
 - (ii) on the basis that the Premises are available for leasing for a term equal to the Term;
 - (iii) without taking into account the Lessee's fixtures and fittings and any improvements installed by the Lessee or at the Lessee's expense and which the Lessee may remove at Termination but not being improvements made under an obligation of the Lessee to the Lessor;
 - (iv) to the extent permitted by Law having regard to current market rental (whether for new leases, or lease renewals or rent reviews) of, firstly, comparable premises of a similar size in the Building and, secondly,

premises in other buildings comparable to the Building in the Perth CBD;

- (v) having regard to the fact that the Premises may be used for any use to which the Premises may lawfully be put;
- (vi) making no reduction on account of any rent free or any rent abatement period or any financial contribution or any other reduction incentive or concession otherwise required or likely to be necessary or required to secure a tenant either in the Building or comparable premises or any actual period of rent abatement, reduction or concession granted to the Lessee to secure the tenancy the subject of this Lease; and
- (vii) to the extent permitted by Law, having regard to all relevant matters which may affect or influence a best annual rent and all other factors which a valuer would normally take into account having regard to current valuation practices of valuers prevailing at the Market Rent Review Date,

but disregarding:

- (viii) any decrease in the value of the Premises by reason of the occupancy or use of them by the Lessee or any person deriving any interest in the Premises under the Lessee;
 - (ix) the value of any goodwill attributable to the Lessee's business or any other interest in the Premises created by this Lease;
 - (x) any deleterious condition of the Premises resulting from work carried out on the Premises by the Lessee or from any breach of any term of this Lease by the Lessee;
 - (xi) any rental received by the Lessee under any sub-lease or other tenancy or licence, agreement or other occupancy arrangement which is at a lesser rate than the Rent; and
 - (xii) any rental, fee or money received pursuant to any sub-lease or other sub-tenancy agreement or occupancy arrangement which has not been approved by the Lessor under this Lease.
- (c) The New Rent, if not agreed or deemed to be agreed, will be the Market Rent determined under this clause.
 - (d) The Lessor and the Lessee must pay equally the costs of the determination of the Market Rent by the Valuer.
 - (e) If the Rent payable by the Lessee after the relevant Market Rent Review Date has not been determined by that date, then the Lessee must from the relevant Market Rent Review Date pay Rent in the amount specified in the Lessor Notice. Within 5 Business Days after the determination of the Rent payable from the relevant Rent Review Date, adjustment will be made between the Lessor and the Lessee in respect of any under or over payment of Rent.

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- (f) The Rent payable after a Market Rent Review Date will not be less than the Rent payable immediately before the Market Rent Review Date.
 - (g) The Lessor will not be prevented from reviewing the Rent if the Lessor gives a notice under clause 3.5(a) after the relevant Rent Review Date.

4. Variable outgoing

4.1 Variable Outgoings Contribution

- (a) The Lessee must pay to the Lessor the whole of the Variable Outgoings separately expended or provided in respect of the Premises or if not so separately expended or provided a proportion (this proportion and those of the Variable Outgoings as are separately expended or provided are referred to as **Variable Outgoings Contribution**) of the Variable Outgoings being equal to the proportion which the Net Lettable Area of the Premises bears to the Net Lettable Area of the Building from time to time.
- (b) Where only a particular part of the Building enjoys or shares the benefit resulting from a Variable Outgoing, the Lessor must apportion that Variable Outgoing to that part of the Building and if the Premises are within the part of the Building to which the Variable Outgoing is apportioned, the Variable Outgoings Contribution will be the proportion which the Net Lettable Area of the Premises bears to the Net Lettable Area of that part of the Building to which the Variable Outgoing is apportioned.
- (c) The Variable Outgoings Contribution for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods less than 12 months.
- (d) If a particular amount included in the definition of Variable Outgoings is not contributed to by all the tenants of the Building or the part of the Building to which the Variable Outgoings relates, the Lessor may make a separate calculation as to the Lessee's contribution to it, and the Lessee's contribution will be calculated as the proportion of that particular amount that the Net Lettable Area of the Premises bears to the Net Lettable Area of the part of the Building leased to the tenants of the Building who contribute to that particular amount of the Variable Outgoings.

4.2 Payment by instalments

Subject to clauses 4.3 and 4.4, the Variable Outgoings Contribution must be paid in the following manner:

- (a) before the Commencement Date and before 30 June in each Lease Year or as soon as practicable after that date the Lessor must notify the Lessee in writing of:
 - (i) the estimate of the amount of the Variable Outgoings for the next Lease Year; and
 - (ii) the estimate of the Variable Outgoings Contribution payable by the Lessee for the next Lease Year;

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- (b) the Lessee must make payments to the Lessor on account of the estimated Variable Outgoings Contribution for the next Lease Year by equal monthly instalments in advance the first of which is to be paid on or before the Commencement Date and then on the first day of each month after that;
 - (c) as soon as practicable after 30 June in each Lease Year the Lessor's Accountant will certify the actual amount of the Variable Outgoings and the Variable Outgoings Contribution for the Lease Year before that 30 June and a copy of the Lessor's Accountant's certificate will be given to the Lessee. If the actual amount of the Variable Outgoings Contribution (as evidenced by the Lessor's Accountant's certificate) is:
 - (i) greater than the amount paid on account of Variable Outgoings Contribution, the Lessee must pay the difference to the Lessor within 10 Business Days after receipt of the certificate; or
 - (ii) less than the amount paid on account of Variable Outgoings Contribution, the Lessor will credit the Lessee with the difference and the Lessee may deduct that difference from the next due payment or payments on account of the Variable Outgoings Contribution. If the Lease has then expired, or otherwise determined, the Lessor must make any credit to the Lessee within 30 days after the issue of the Accountant's certificate; and
 - (d) in calculating the estimate of the Variable Outgoings Contribution for the Final Period, the Lessor may add 15% to the amount otherwise calculated under this clause.

4.3 Rates and taxes

Despite clause 4.2, the Lessee must pay all Rates and Taxes payable in respect of the Premises or the Land or the occupation and ownership of the Premises or the Land in each Lease Year as follows:

- (a) if a separate Assessment issues for the Premises, then the Lessee must pay to the relevant Authority on or before the date specified by it for payment, the amount of the Assessment;
- (b) if no separate Assessment issues for the Premises, and if the Lessor elects to include the Assessment in the Variable Outgoings, then the Lessee must discharge its liability in respect of the Assessment, by paying the Lessee's Variable Outgoings Contribution;
- (c) if no separate Assessment issues for the Premises, then for the period for which the Lessor does not elect to include the Assessment in the Variable Outgoings, the Lessee must pay to the Lessor on demand the same proportion of the Assessment as the Net Lettable Area of the Premises bears to the Net Lettable Area of the Building, or part of the Building the subject of the Assessment, as certified and determined by the Lessor, whose certificate and determination in the absence of manifest error will be final and binding on the Lessee; and

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- (d) the Lessee's portion of Rates and Taxes for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods less than 12 months.

4.4 Outgoings separately assessed

If a Variable Outgoing is expended or provided by the Lessor in respect of the Premises only, and the amount is not otherwise included in the calculation of the Variable Outgoings Contribution, or estimate of it, the amount must be paid by the Lessee to the Lessor on demand.

5. Other payments

5.1 Services

- (a) The Lessee must pay to the relevant Authority on or before the date specified by it for payment, all charges and meter rentals for all utilities and services including electric power, gas, water and excess water consumed on or for the Premises and electricity consumed by any air conditioning plant used for the Premises.
- (b) If required by the Lessor, the Lessee will purchase from the Lessor all the Lessee's requirements for electric energy or gas to be used by the Lessee in or for the Premises and will pay to the Lessor the amount which the relevant Authority would require the Lessee to pay for that energy, if supplied by the relevant Authority direct to the Lessee, and the Lessee and its Permitted Persons must comply with the general terms and conditions of supply which may be prescribed by the Lessor from time to time, including the installation of separate meters to monitor the supply of electric energy or gas to the Premises.
- (c) Despite any other term of this Lease, the Lessor will not be liable to the Lessee or its Permitted Persons for any failure (either total or partial) in the supply of electric energy or gas resulting from:
- (i) failure of the relevant Authority to supply electric energy or gas to the Lessor or the Lessee except to the extent that failure is due to the Lessor's default;
 - (ii) war, riot, Act of God, force majeure or accident or interference with or breakdown from a cause arising in any part of the relevant Authority's or the Lessor's electrical or gas installations or equipment;
 - (iii) wrongful or improper use of electrical or gas equipment by the Lessee or its Permitted Persons; or
 - (iv) any other cause beyond the Lessor's reasonable control.

5.2 Insurance

The Lessee must pay to the insurer on or before the date specified by it for payment, all premiums as and when owing for the insurance policies taken out and maintained by the Lessee under the Lessee's Obligations.

5.3 Legal costs

The Lessee must pay to the Lessor on demand 50% of the Lessor's solicitor's reasonable costs and disbursements of and incidental to the instructions for and the preparation, negotiation amendment, variation, execution and registration of this Lease, together with the costs associated with obtaining the consent of any mortgagee to this Lease.

5.4 Charges and expenses arising through default etc

The Lessee must pay to the Lessor on demand by it, all legal and Managing Agents' and other costs, charges and expenses for which the Lessor is liable in connection with:

- (a) any Event of Default by the Lessee including all costs, charges and expenses, solicitors costs and surveyors fees incurred by the Lessor for the purpose of the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA) or otherwise and requiring the Lessee to remedy an Event of Default and even if forfeiture for the Event of Default is avoided otherwise than by relief granted by a Court;
- (b) the exercise or attempted exercise of any power right or remedy of the Lessor under this Lease arising from any Event of Default by the Lessee;
- (c) obtaining or attempting to obtain payment of the Rent or any other money to be paid under this Lease; and
- (d) any Claim concerned with any matter referred to above or any other matter in connection with this Lease, including legal costs and disbursements calculated on the greater of a solicitor and own client basis or an indemnity basis, which the Lessor has paid or pays to any other person provided they are of a reasonable amount and have been reasonably incurred, however this clause will not apply if the Lessee is awarded costs as against the Lessor in any Claim, or if the Lessor discontinues its Claim for any reason.

5.5 Interest on arrears

If any money is owing by the Lessee to the Lessor but is unpaid in breach of the provisions of this Lease, the Lessee must pay interest to the Lessor on the outstanding money at the Default Rate calculated daily on the money from the due date for payment until actual payment of the money and interest on it.

5.6 GST liability

- (a) Any reference in this clause to terms defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.
- (b) Any amount referred to in this Lease which is relevant in determining a payment to be made by a Party to another is exclusive of any GST unless indicated otherwise.
- (c) The Parties agree that:

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- (i) GST is payable in respect of any taxable supply made under this Lease;
 - (ii) in respect of any taxable supply made under this Lease, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Lease. The GST liability for any taxable supply is:
 - (A) where the consideration is exclusive of GST, the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - (B) where the consideration is inclusive of GST, the amount determined in accordance with the GST Act;
 - (iii) if a Party is entitled to be reimbursed for an expense or outgoing incurred in connection with this Lease, the amount of the reimbursement will be net of any input tax credits which may be claimed by the Party being reimbursed or the representative member of the GST Group in which that Party is a member in relation to that expense or outgoing;
 - (iv) the supplier must issue:
 - (A) a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - (B) any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply; and
 - (v) any review or adjustment of any consideration payable for a taxable supply must take into account that this clause requires an adjustment of that consideration and must take account of any adjustment to that consideration which has already been or is required to be determined, under the provisions of this clause.

6. Indemnity and insurance provisions

6.1 Lessee's indemnity

- (a) Except to the extent caused by any act, neglect, default or omission of the Lessor or its Permitted Persons, the Lessee indemnifies the Lessor and the Minister for Lands against all Claims which the Lessor may incur in connection with the loss of life, or personal injury, or damage to any property (wheresoever occurring) arising out of any occurrence at the Premises or the use by the Lessee of the Premises to the extent occasioned by any act, neglect, default or omission by the Lessee or by its Permitted Persons or by any other person on the Premises or within the Building with the Lessee's express or implied consent.

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- (b) The Lessee indemnifies the Lessor and the Minister for Lands against all loss and damage to the Premises and to any other part of the Building caused by the negligent use or misuse, waste or abuse of water, gas or electricity supplied to the Premises or to the Lessee in connection with the Premises or the use of the Premises or by faulty sanitary, water, gas or electric pipes, or wire, or fittings, or fixtures fixed or installed in the Premises by the Lessee or its Permitted Persons.
- (c) To the extent permitted by Law, the Lessee indemnifies the Lessor and the Minister for Lands from and against all Claims, including legal and investigative costs and expenses, relating to any:
- (i) loss (including loss of use), injury or damage of or to any property;
 - (ii) death or illness of or injury to any person; or
 - (iii) any inquiry, investigation, notice, direction, order, proceeding or prosecution instituted under or in relation to the OSH Legislation or the *Coroners Act 1996* (WA),
- directly or indirectly caused by, arising out of, or in connection the Lessee's or its Permitted Person's use of or access to the Premises.

6.2 Indemnity policy

The Lessee must, before the Commencement Date, take out and at all times keep in force to the satisfaction of the Lessor with an Approved Insurer, on behalf of the Lessee and noting the interests of the Lessor, a public liability policy on a "losses occurring basis" with a cover for any one occurrence of not less than the Insured Amount or a greater amount as the Lessor may reasonably require.

6.3 Insurance against fire and other risks

- (a) The Lessee must, before the Commencement Date, take out and at all times keep in force on a "losses occurring basis" to the satisfaction of the Lessor with an Approved Insurer, on behalf of the Lessee and noting the interests of the Lessor:
- (i) a policy of insurance to cover all additions to the Premises carried out by the Lessee and all the Lessee's fixtures, fittings, equipment and furnishings and stock against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, impact by vehicles, sprinkler leakage, water damage, aircraft and articles dropped from aircraft and other risks against which, in the opinion of the Lessor, a tenant may and does ordinarily insure, in the full replacement value;
 - (ii) a policy of employer's indemnity insurance; and
 - (iii) insurances which are required by Law, or which are from time to time specified in writing to the Lessee as being, in the Lessor's reasonable opinion, policies of insurance which a prudent lessee should take out.

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- (b) In case of destruction of or damage to any property referred to in clause 6.3(a) from any cause covered by the insurance effected by the Lessee under clause 6.3(a) the Lessee must expend all money received from the insurance in re-instating or replacing it and make up any deficiency out of the Lessee's own money.
 - (c) To secure the Lessee's obligations under clause 6.3(b), the Lessee must deposit all money received from the insurance in an ADI account separate to any other account operated by the Lessee and hold that money on trust for the Lessor and the Lessee grants to the Lessor a Security Interest in the ADI account and the debt owed to the Lessee by the ADI to secure the Lessee's obligations under this clause.
 - (d) The Lessee acknowledges and agrees that in relation to any claim the Lessee makes on any policy of insurance the Lessee is required to maintain under this Lease, regardless of:
 - (i) whether the Lessee's insurance policies respond or not; and
 - (ii) the reason why the insurance policies respond or fail to respond,the Lessee is not released (in whole or in part), from any of its obligations under any of the indemnities set out in this Lease, or generally.

6.4 Lessor's rights

If the Lessee does not take out and keep in force any policy of insurance in accordance with clauses 6.2 and 6.3, the Lessee:

- (a) irrevocably appoints the Lessor its attorney to do all things and sign all documents necessary to give effect to this clause, at the Lessee's cost; and
- (b) assigns to the Lessor all its rights and benefits under the policy of insurance, including the right to any money received by the Lessee, to secure the Lessee's obligations under clauses 6.2 and 6.3.

6.5 Lessor's insurances

The Lessor will effect and at all times keep in force in respect of the Building and all Common Areas with an Approved Insurer policies of insurance relating to those Insurable Risks determined necessary by the Lessor, and will provide the Lessee with reasonable evidence of compliance with this obligation within 30 days after demand.

6.6 Produce certificates of currency

The Lessee must, before the Commencement Date, produce to the Lessor certificates of currency issued by an Approved Insurer, and at any time on demand during the Term produce updated certificates of currency for them.

6.7 Increase in Lessor's fire insurance premium

- (a) The Lessee must not bring onto or keep, or permit any of its Permitted Persons to bring onto or keep, in the Premises any thing of a flammable,

dangerous or hazardous nature and not without the written consent of the Lessor bring onto or keep any thing or do any act in the Premises which may increase the rate of the Insurance Premiums.

- (b) If the Lessee, or a Permitted Person of the Lessee, brings onto or keeps in the Premises any thing of the nature described in clause 6.7(a) or does any such act in the Premises, then without limiting any other rights of the Lessor, the Lessee must, on demand, pay to the Lessor the amount of any increased premium.
- (c) If the Lessee, or a Permitted Person of the Lessee, does or permits to be done any act which has the effect of invalidating or avoiding any policy of insurance taken out by the Lessor, then without limiting any other right of the Lessor, the Lessee will be responsible for, and must pay and discharge on demand, any damage or loss which the Lessor suffers as a result.

6.8 Insurance

Each Party must pay to the insurer, before the date specified by it for payment, all premiums as and when owing for the insurance policies to be taken out and maintained by that Party under this Lease.

7. Repair and maintenance by Lessee

7.1 Repair and maintain

- (a) Subject to clause 7.1(b), the Lessee must at the Lessee's own expense repair and maintain the Premises and the Lessee's fixtures, fittings, equipment and furnishings so that they remain in at least the same condition as at the Commencement Date.
- (b) The obligations of the Lessee under clause 7.1(a)::
 - (i) extend to repairs due to fair wear and tear consistent with normal use; and
 - (ii) extend to repair of structural damage
- (c) The obligations of the Lessee under clause 7.1(a) do not require the Lessee to repair and make good any damage or disrepair caused by an Insurable Risk except to the extent that the damage arises out of the neglect or default of or misuse of the Premises by the Lessee or its Permitted Persons, or the Lessor's insurance against that damage is invalidated by an act, neglect or omission of the Lessee.

7.2 Make good damage

The Lessee must make good, or at the discretion of the Lessor, reimburse the Lessor for the repair of any breakage, defect or damage to the Premises, or to the Common Areas, or to any adjoining premises, or to any facility or appurtenance of them, caused by want of care, misuse or abuse on the part of the Lessee or its Permitted Persons, or otherwise caused by any Event of Default on the part of the Lessee or its Permitted Persons.

7.3 Repaint

The Lessee must as often as is reasonably necessary and at least once during the last 3 months of the Term paint, colour, varnish and paper all parts of the inside of the Premises that have been previously or at that time are painted, coloured, varnished or papered, and all work must be carried out in a good and workmanlike manner and with good quality and suitable materials in colours first approved by the Lessor.

7.4 Lessee's further obligations

The Lessee must at the Lessee's expense:

- (a) replace all damaged or non-operative light globes and tubes within the Premises;
- (b) take any steps necessary to control any pest infestation occurring within the Premises and if reasonably required by the Lessor engage a pest exterminator reasonably approved by the Lessor;
- (c) repair or where appropriate replace heating, lighting, electrical or plumbing fittings installed in the Premises broken or damaged by the Lessee or its Permitted Persons;
- (d) except to the extent that it is the responsibility of the Lessor under this Lease, and subject to the other provisions of this Lease, comply with all Laws affecting the Premises or any fixtures or fittings installed by the Lessee in the Premises; and
- (e) except to the extent that it is the responsibility of the Lessor under this Lease, and subject to the other provisions of this Lease, comply with any notice or order which may be given by any Authority in respect of the Premises or their use by the Lessee or its Permitted Persons (whether addressed or given to the Lessor or the Lessee and without regard to the person liable by Law to comply with the notice or order) and keep the Lessor indemnified in respect of all such matters.

7.5 Clean

The Lessee must:

- (a) keep the Premises and immediate surroundings in a thorough state of cleanliness and in a condition that does not pose any risk to the health or safety of any person; and
- (b) not allow any rubbish, trade waste, cartons, boxes, containers, produce or accumulation of useless property within the Premises or in their vicinity and not leave rubbish bins or other containers outside the Premises except in areas from time to time designated for the purpose by the Lessor.

7.6 Keep drains in repair

The Lessee must:

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- (a) keep and maintain the waste pipes, drains and conduits originating in the Premises or connected to them and the grease traps serving the Premises in a clean, clear and free flowing condition and employ licensed trades people approved by the Lessor (such approval not to be unreasonably withheld) to clear any blockages which may occur in them within the external boundaries of the Premises;
 - (b) not without the prior consent of the Lessor interfere with any drainage or water supply facilities to or in the Premises or with any appurtenance to them; and
 - (c) pay to the Lessor on demand by it the cost of clearing any blockages caused or contributed to by any neglect or default on the part of the Lessee or its Permitted Persons which occurs in any waste pipe, drain or conduit referred to in this clause between the external boundary of the Premises and their point of entry into any trunk main.

7.7 Lessor's right to view

The Lessee must allow the Lessor and its Permitted Persons to enter the Premises at all reasonable times and on reasonable notice to view the state of repair of the Premises.

7.8 Lessor's right to repair

If the Lessee fails to remedy any Event of Default as to repairs within 10 Business Days after the date of service of a notice on the Lessee requiring the Lessee to remedy the Event of Default, the Lessee must allow the Lessor and its Permitted Persons (but the Lessor is not under any obligation to do so) to enter the Premises at any time with all necessary materials and appliances and to execute all or any required repairs as the Lessor thinks fit and pay to the Lessor on demand the cost of the repairs.

7.9 Lessor's right to carry out emergency repair

- (a) In addition to the rights of the Lessor to enter after notice to the Lessee, the Lessee must allow the Lessor and its Permitted Persons to enter the Premises at all times with all necessary materials and appliances and without previous notice to carry out any repairs which in the Lessor's opinion are of an emergency nature.
- (b) If the Lessor carries out any repairs under this power which should under the Lessee's Obligations be carried out by the Lessee, then the Lessee must pay to the Lessor on demand the cost of the repairs.

7.10 Notice of damage

The Lessee must give to the Lessor prompt written notice of any accident to or defect in or damage to the Premises or the Building of which the Lessee is aware.

8. Use of Premises by Lessee

8.1 No alterations or additions

- (a) The Lessee must not, without the Lessor's prior written consent, make or permit to be made any alterations or additions in the construction or arrangement of the Premises or cut, hole or damage any wall, partition, timber, door, floor or ceiling of them.
- (b) All alterations and additions must be done only in accordance with the Works Conditions.

8.2 Alterations to the Building

The Lessee must not:

- (a) make any alterations or additions to the Building; or
- (b) interfere with, alter or make any connection to the Building Services and the Lessor's Fixtures;

unless the Lessee:

- (c) obtains the Lessor's prior written consent, which:
 - (i) may be granted or withheld at the Lessor's discretion; and
 - (ii) may be given conditionally or unconditionally in all cases; and
- (d) in undertaking any works, complies with the Works Conditions.

8.3 Comply with Laws and requirements

- (a) The Lessee must use the Premises only for lawful purposes.
- (b) The Lessee must, and must procure its Permitted Persons to, punctually comply with and observe at the Lessee's expense all present and future Laws and Requirements which relate to the Premises or their use or the number or sex of the people working in or from or at any time occupying or visiting the Premises, including any notice requiring the carrying out of any repairs or alterations to or the provision of Fire Fighting Equipment for the Premises or for the Building.
- (c) To the extent that it may require structural alteration to the Premises or to the Building, the covenant in clause 8.3(b) applies only to Laws and Requirements that relate to the particular use to which the Premises are put by the Lessee or the number or sex of people working in or from or at any time occupying or visiting the Premises.
- (d) All works which the Lessee is required to carry out under this clause 8.3 must be carried out in accordance with the Works Conditions.
- (e) If the Lessee or its Permitted Persons do not comply with the requirements of clauses 8.3(a) to 8.3(d), the Lessee must allow the Lessor and its Permitted

Persons to enter the Premises at any time with all necessary materials and appliances for the purpose of complying with the Lessee's Obligations under this clause and pay to the Lessor on demand any expense incurred by the Lessor in doing so and indemnify the Lessor against any loss or liability incurred by the Lessor arising from the non-compliance.

8.4 Comply with Managing Agent

The Lessee, and must procure its Permitted Persons to, comply with any reasonable direction, order or request of the Lessor or the Managing Agent.

8.5 Lessee's operational obligations

The Lessee must during its occupation of the Premises:

- (a) advise the Lessor (or where applicable its Managing Agent) of the private address and telephone number of the Lessee or if the Lessee is a body corporate of the manager or other responsible person employed by the Lessee and must keep the Lessor or its Managing Agent informed of any change of this address or telephone number;
- (b) provide the Lessor (or where applicable its Managing Agent) with any information that the Lessor requires in order to obtain an annual NABERS rating for the Building and an annual BEEC and to comply with the Lessor's obligations under the *Building Energy Efficiency Disclosure Act 2010* (Cth);
- (c) secure the Premises against unauthorised entry at all times when the Premises are left unoccupied;
- (d) take all necessary steps to prevent infiltration of air into the Premises and not do anything by which the work or efficiency of the air conditioning plant servicing the Building or the Premises may be detrimentally affected; and
- (e) comply with the Building Procedures and Regulations.

8.6 Restrictions on use of Premises by Lessee

The Lessee must not, and must procure its Permitted Persons not to:

- (a) use or permit to be used for other than their designed purposes any of the Lessor's Fixtures or Building Services;
- (b) sell any of the Lessor's Fixtures;
- (c) grant, or allow to arise, any Security Interest in the Lessor's Fixtures;
- (d) do or permit to be done on the Premises or in the Building anything which in the reasonable opinion of the Lessor may become a nuisance or disturbance, obstruction or cause of damage whether to the Lessor or to other tenants or users of the Building or use the Premises in any noisy noxious or offensive manner;
- (e) obstruct or interfere with any entrance or Common Areas of the Building;

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- (f) install any thing in the Premises that overloads the electrical Building Services or other cables, switchboards, circuits or sub-boards through which electricity is conveyed to or through the Premises;
 - (g) install or place in the Premises any item, fixture or fitting which breaks, strains or damages by overloading of floors or by any cause the floors, walls, pillars and other parts of the construction of the Building; or
 - (h) do or omit to do anything that has, or may have, a detrimental effect on the NABERS rating or the energy efficiency of the Premises or the Building.

8.7 Use of Common Areas

- (a) The Lessee must not, or permit its Permitted Persons to, enter on or use any part of the Building outside of the Premises except the Common Areas.
- (b) The Lessee must not, or permit its Permitted Persons not to, do or omit to do anything which may cause or allow the Common Areas:
 - (i) to require maintenance except for fair wear and tear;
 - (ii) to be other than in a good clean sanitary and attractive state and condition; or
 - (iii) to be obstructed.

8.8 Use of premises

The Lessee must use the Premises for the Permitted Use and for no other use or purpose.

8.9 Security threats

The Lessee must:

- (a) notify the Lessor, or the Managing Agent, of any threat or demand, including bomb threats, received by the Lessee or its Permitted Persons which relate to the Premises, or the Building, or to the safety of any person or property within the Premises or the Building, immediately on the threat or demand being received;
- (b) be familiar with and comply with, and ensure each of its Permitted Persons are familiar with and comply with the Lessor's emergency evacuation procedures, including any requirement for people at the Premises to participate in emergency evacuation procedures and drills;
- (c) obey and cause each of its Permitted Persons to obey any reasonable direction given by the Lessor or the Managing Agent, relating to the control of people within the Building and the evacuation or closure of any part of the Building, including the Premises, following the giving to any person of a threat or demand of the kind referred to in this clause, or in the event of any fire earthquake or other emergency and for practice exercises of any emergency; and

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- (d) if any civil defence, fire or evacuation drill is conducted in the Building at any time, co-operate fully in the planning and control of and participation in them and to supply the Lessor with the names of the people responsible for carrying out all duties of civil defence planner and fire officer or warden in relation to the Premises and the person responsible on each floor level as applicable.

8.10 Security

The Lessee must:

- (a) use its best endeavours to protect and keep safe the Premises and any property in the Premises from theft or robbery and keep all doors windows and other openings closed and securely fastened when the Premises are not open for business; and
- (b) return to the Lessor on Termination all Access Cards and not permit the Access Cards to come into the possession of any person other than the Lessee and its employees or agents.

8.11 Occupational safety and health

- (a) From the earlier of the Commencement Date and the date on which the Lessee takes possession of the Premises, the Lessee has the day to day control of the Premises and must take all reasonable precautions to ensure the safety and health of each person who may be affected by the Premises and the Lessee's use of them.
- (b) The Lessee must, at all times during the Term:
- (i) comply with its obligations under OSH Legislation;
 - (ii) identify all Hazards and take all reasonable steps to maintain a safe working environment and to ensure the safety and health of each person who may be affected by the Lessee's use of the Premises, including any of its Permitted Persons; and
 - (iii) assist the Lessor to comply with its obligations under OSH Legislation (if any).
- (c) The Lessee must immediately notify the Lessor of any Hazard which requires remediation by the Lessor.
- (d) Subject to the Lessor's express obligations under this Lease, the Lessee is responsible for the costs associated with rectifying any Hazard.
- (e) The Lessor may direct the Lessee to take any action or refrain from taking any action, on the grounds of workplace health and safety.
- (f) If an OSH Incident occurs, the Lessee must:
- (i) immediately notify the Lessor of the OSH Incident;

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- (ii) ensure that no action is taken which may risk the safety and health of any person or damage the Premises;
 - (iii) do all things reasonably necessary to remedy and minimise the impact of the OSH Incident and to prevent a similar incident from recurring;
 - (iv) if requested by the Lessor:
 - (A) conduct an investigation into the OSH Incident for the purpose of answering the Lessor's questions regarding the OSH Incident; and
 - (B) provide to the Lessor the Lessee's written report expressly answering the Lessor's questions and recording all methods employed by the Lessee to obtain those answers;
 - (v) if requested by the Lessor, provide all information, materials and samples relating to the OSH Incident to the Lessor;
 - (vi) allow the Lessor access to the Premises to conduct its own investigation into the OSH Incident, including access to the Lessee's plant, equipment, goods and records;
 - (vii) cooperate with the Lessor in relation to the OSH Incident and any resulting investigations or inspections conducted by any Authority;
 - (viii) not disclose to any third party, so far as the Law permits, any information, documentation, reports or material that is owned or was created by the Lessor, unless expressly authorised by the Lessor in writing to do so; and
 - (ix) comply with any lawful and reasonable directions given by the Lessor as a result of the OSH Incident.

8.12 Lessor's Fixtures

The Lessee must, at the Lessee's expense, ensure that:

- (a) the Lessor's Fixtures are safe for their intended use and are adequately serviced, inspected and maintained throughout the Term;
- (b) the Lessor's Fixtures are used only by people who are competent to use them and who hold all necessary licences and qualifications required; and
- (c) it provides records of all repairs and maintenance and modification carried out on the Lessor's Fixtures, promptly after completion of those repairs, maintenance or modification.

9. Additional covenants by Lessee

9.1 No encumbrances

The Lessee must not mortgage, charge, encumber or grant any Security Interest in the Lessee's interest in this Lease or any of its fixtures, fittings or improvements in the Premises or agree so to do without the prior written consent of the Lessor and the Minister for Lands.

9.2 No absolute caveat

- (a) The Lessee must not lodge an absolute caveat over the Land to protect the interest of the Lessee under this Lease, but if any absolute caveat is lodged, in consideration of the Lessor granting this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and each and every one of the directors and other officers of the Lessor (**Officer**) jointly and severally, the agents and attorney of the Lessee to sign and lodge a withdrawal of the absolute caveat, the cost of which is to be paid by the Lessee on demand.
- (b) A person, including the Registrar of Titles of Western Australia, who deals with the attorney or a person purporting to be the attorney under clause 9.2(a) is:
 - (i) entitled to rely on that person's execution of a document as conclusive evidence that:
 - (A) the person is the Lessor or an Officer;
 - (B) the power of attorney has come into effect;
 - (C) the power of attorney has not been revoked;
 - (D) the right or power being exercised or purportedly exercised is being properly exercised; and
 - (E) the circumstances have arisen to authorise the exercise of that right and power; and
 - (ii) not required to make these enquiries about the attorney or the power.
- (c) The provisions of this clause do not prevent the Lessee lodging a caveat expressed to be subject to claim but, the Lessee must at its cost withdraw any caveat on Termination.
- (d) The Lessee must withdraw any caveat lodged by it over the Land within 14 days after any request in writing from the Lessor, for the purposes of permitting any dealing with the Land or any part of it by the Lessor not adversely affecting the estate or interest of the Lessee in the Land subject to:
 - (i) if the Lessor's dealing includes the lodgement of a new mortgage over the Land, or any part of it including the Premises, the new mortgagee must first consent in writing to this Lease (which consent may be given subject to reasonable conditions);

- (ii) the Lessor meeting the reasonable costs of preparation of the withdrawal, the preparation of a fresh caveat in protection of the Lessee's interests under this Lease and the registration fees payable to Landgate with respect to the lodgement of the withdrawal and the fresh caveat.

9.3 Registration of Lease and mortgagee consent

- (a) If the Lessor requires this Lease to be registered at Landgate:
 - (i) the Lessor must seek consent to this Lease from each mortgagee of the Land (which consent may be given subject to reasonable conditions);
 - (ii) the Lessee must, if requested, promptly execute each mortgagee's standard form of mortgagee consent documentation or any other documentation reasonably required by any mortgagee as a condition of providing its consent; and
 - (iii) the Parties must do all other things reasonably necessary to facilitate the registration of this Lease.
- (b) On or before Termination, the Lessee must provide the Lessor with a surrender of this Lease, in registrable form and properly executed by the Lessee but, if the Lessee fails to provide the surrender to the Lessor, in consideration of the Lessor granting this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and each and every one of the directors and other officers of the Lessor (Officer) jointly and severally, the agents and attorney of the Lessee to sign and register a surrender of this Lease after Termination, the cost of which is to be paid by the Lessee on demand.
- (c) A person, including the Registrar of Titles of Western Australia, who deals with the attorney or a person purporting to be the attorney under clause 9.3(b) is:
 - (i) entitled to rely on that person's execution of a document as conclusive evidence that:
 - (A) the person is the Lessor or an Officer;
 - (B) the power of attorney has come into effect;
 - (C) the power of attorney has not been revoked;
 - (D) the right or power being exercised or purportedly exercised is being properly exercised; and
 - (E) the circumstances have arisen to authorise the exercise of that right and power; and
 - (ii) not required to make these enquiries about the attorney or the power.

9.4 Pass on notices

The Lessee must immediately give notice in writing to the Lessor of any notice received by the Lessee from any Authority relating to the Premises.

9.5 Permit intending tenants etc. to inspect

The Lessee must permit the Lessor and each of its Permitted Persons at all reasonable times to enter the Premises with, and exhibit the Premises to prospective tenants or purchasers and allow the Lessor to affix and exhibit where the Lessor thinks fit any usual "for sale" notice or sign (with the name and address of the Lessor or its agent on it), and within the period of 6 months immediately preceding Termination, allow the Lessor to affix and exhibit where the Lessor thinks fit any usual "to let" notice or sign (with the name and address of the Lessor or its agent on it).

9.6 Yielding up

The Lessee must at Termination yield and deliver up possession of the Premises to the Lessor, in good and substantial repair and condition and state of cleanliness and decoration as is consistent with the due performance by the Lessee of the Lessee's Obligations and surrender all Access Cards to the Lessor at its address for notice under this Lease, and inform the Lessor of all combinations of any locks, safes and vaults in the Premises.

9.7 Lessee's make good obligations

- (a) The Lessee must before Termination:
- (i) remove from the Premises, the Building and the Land all:
 - (A) fixtures and fittings, equipment, partitioning, signs and furnishings erected or installed by the Lessee or purchased by the Lessee from any previous occupier of the Premises (other than any fixtures and fittings, equipment and furnishings which in the opinion of the Lessor form an integral part of the Premises or of the Building); and
 - (B) Lessee's chattels;
 - (ii) make good to the satisfaction of the Lessor any damage caused to the Premises or the Building by that erection, installation or removal;
 - (iii) re-instate any alterations made by the Lessee to the Premises so that the Premises are restored to their condition as at the earlier of the Commencement Date and the date on which the Lessee commenced its occupancy of the Premises, unless the Lessor requests that those alterations remain; and
 - (iv) return the Premises to Base Building Standard and Configuration,
(together the **Lessee's Make Good Obligations**).

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- (b) The property in all fixtures and fittings, equipment and furnishings which under clause 9.7(a) the Lessee is not to remove from the Premises and Lessee's chattels which the Lessee has not removed from the Premises (together **Lessee's Abandoned Property**), will immediately on Termination, pass to the Lessor and the Lessor will not be obliged to pay any consideration or compensation for that property.
 - (c) The Lessee grants to the Lessor a Security Interest in the Lessee's Abandoned Property to secure the Lessee's Obligations.
 - (d) Without limiting the effect of clause 9.1, the Lessee must not mortgage, charge, encumber or grant any Security Interest in the Lessee's Abandoned Property, or agree to do so, without the Lessor's prior written consent.

9.8 Payment in lieu of make good

At the election of the Lessor, the Lessee must pay to the Lessor an amount agreed between the Parties, acting reasonably, as the cost of the Lessee carrying out the Lessee's Make Good Obligations (or any component of them) and on payment by the Lessee to the Lessor of the agreed amount, the Lessee will be released from its obligation to perform the Lessee's Make Good Obligations (or the relevant component of them). If the Parties are unable to agree on the amount payable by the Lessee under this clause the matter may be referred by the Lessor to the Expert Determination Process.

9.9 Building Services

The Lessee must utilise all the Building Services in accordance with the Building Procedures and Regulations.

9.10 Out of hours use

- (a) The Lessee must not use the Premises outside normal hours for which the Building is open except under the conditions relating to after hours use as prescribed by the Lessor.
- (b) If the Lessee uses the Premises outside normal hours for which the Building is open:
 - (i) the Lessor may make an assessment of the Variable Outgoings incurred as a direct result of that use (and which would not otherwise have been incurred) including costs for additional staff and overtime; and
 - (ii) the Lessee must on demand pay the amount so assessed.

10. Lessor's covenants and reservations

10.1 Quiet enjoyment

The Lessee duly paying the Rent and performing and observing the Lessee's Obligations, may peaceably and quietly hold and enjoy the Premises during the

Term, without any interruption by the Lessor or any person claiming through, under or in trust for the Lessor.

10.2 Right to grant other leases

The Lessor reserves the right to grant leases of other parts of the Building for the Permitted Use, and the grant of any lease may be made without compensation to the Lessee, and without affecting the liability of the Lessee to perform, observe and comply with the Lessee's Obligations.

10.3 No warranty

The Lessor does not expressly or impliedly warrant that the Premises are now, or will remain suitable or adequate for all or any purpose of the Lessee, or for the business which the Lessee is permitted to conduct in them, or that any fixture or fitting in them is or will remain in working order and condition, and any warranty as to suitability and adequacy of the Premises implied by Law is denied.

10.4 Lessor's right to install services

- (a) The Lessor reserves to itself, and to its Permitted Persons, the right:
 - (i) to enter the Premises at all reasonable times with all necessary materials and appliances to erect, make, excavate, lay or install in, on, over, through or under the Premises any posts, drains, pipes, conduits, ducts, cables, wires or other things required for any existing or future service to the Building including to pass running water, heat, oil, electricity and other power, telecommunications cables and conditioned air; and
 - (ii) to enter the Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relating to an existing or future service to the Building.
- (b) In each case mentioned in clause 10.4(a) the Lessor must cause as little inconvenience and damage to the Lessee as is reasonably practicable in the circumstances and must make good any damage so caused.
- (c) The Lessor is not liable to the Lessee for any loss or damage caused to the Premises, the Lessee or its Permitted Persons, by reason of any interruption to the Lessee's business, or any interference in the use or enjoyment of the Premises by the Lessee, during the course of or as a result of the doing of any act or thing the Lessor or its Permitted Persons are permitted to do under this Lease.

10.5 Lessor's right to add to the Building

- (a) The Lessor reserves the right to add to the Building and build additional storeys on the Building, none of which will form part of the Premises.
- (b) The Lessor will ensure any works under clause 10.5(a) are carried out in a manner to cause as little inconvenience to the Lessee and damage to the Premises as is reasonably practicable in the circumstances and must make good any damage so caused.

10.6 Control of the Building

The Lessor reserves to itself the right to use the outer face of all external walls and roofs within the Building for any purpose it may think fit, not inconsistent with the terms of this Lease, and the right to control and regulate the use of the Building and any person coming into it without limitation, the Lessor may:

- (a) construct, maintain and operate lighting facilities;
- (b) police the Building and provide for the:
 - (i) proper use, safety, care and cleanliness of the Building;
 - (ii) preservation of good order in the Building;
 - (iii) comfort of any person lawfully using the Building;
 - (iv) location and storage of garbage in the Building pending its removal; and
 - (v) policing and regulating of traffic and the parking of motor vehicles in the Building and the Car Park, including restricting the use of the Building and the Car Park by tenants and their employees and agents;
- (c) change the area, level, location and arrangements of the Car Park and other facilities or construct multideck parking facilities;
- (d) regularly close, lock off or otherwise control the Building, or any part of it, on reasonable notice to the Lessee, for the purpose of conducting maintenance or repairs to the Building that are deemed necessary or desirable by the Lessor, provided that in doing so the Lessor uses reasonable endeavours to minimise any interruption to the Lessee;
- (e) close all or any portion of the Building to the extent that, in the Lessor's opinion, is legally sufficient to prevent a dedication of the Building or the accrual of any rights to any person or the public in the Building;
- (f) close temporarily all or any portion of the Car Park or facilities for the purpose of repairs or like purposes;
- (g) close, lock off or otherwise control the Building from time to time and take all actions the Lessor deems necessary for any purpose mentioned in this clause, including preventing unauthorised person, and any person not intending to conduct business with or become customers of any occupant of the Building from using the Car Park;
- (h) permit any person or organisation to hold any function or exhibition, or display any merchandise or organise any parade in the Building at those times and on those terms and conditions as the Lessor may in its absolute discretion think fit;
- (i) provide and install a public address system throughout the Building and play, relay or broadcast or permit any other person to play, relay or broadcast

recorded music, or public announcements, or advertisements on that system;
and

- (j) control the manner in which and the place where deliveries to and from the Premises may be made.

10.7 Lessor's rights to vary Building Procedures and Regulations

- (a) The Lessor may vary or amend from time to time the Building Procedures and Regulations by written notice given to the Lessee.
- (b) No variation or amendment may derogate from the rights of the Lessee under this Lease.
- (c) If there is any inconsistency between the provisions of this Lease and the Building Procedures and Regulations, the provisions of this Lease will prevail.
- (d) A certificate signed by any officer or agent of the Lessor or by the Managing Agent for the time being is conclusive evidence that the Building Procedures and Regulations have been duly made and are in force or have been repealed, amended or modified and that notice in writing of the Building Procedures and Regulations has been given to the Lessee on the date specified in the certificate.

10.8 Exclusion by Lessor

- (a) Despite any other provision of this Lease, the Lessor may exclude and restrain from being on any part of the Building any person other than a person who is acting in a bona fide manner.
- (b) Without in any way limiting the meaning of the term "bona fide" any person who has entered on the Building or made use of the Building in breach of the Building Procedures and Regulations and who, having been notified of that breach, commits a further breach of the Building Procedures and Regulations (whether of a like nature, or not) is, for the purpose of this clause, deemed not to be bona fide.

10.9 Variable outgoings and rates and taxes

The Lessor must pay the Variable Outgoings and Rates and Taxes not payable by any other person and must apply any amounts to be recovered from the Lessee by way of Variable Outgoings Contribution and Rates and Taxes contribution for their intended purpose.

11. Assignment and underletting

11.1 Lessee not to assign etc.

The Lessee must not, without the prior written consent of the Lessor and the Minister for Lands assign, sub-let, or part with possession or occupation of the Premises, or any part of them, or this Lease, or any estate or interest in it. The Lessor will not unreasonably withhold its consent to an assignment or subletting of the whole of the Premises if:

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- (a) the proposed assignee or sub-lessee is a person who the Lessee has demonstrated to the satisfaction of the Lessor has the ability to meet the financial obligations of the Lessee under this Lease;
 - (b) prior to the Lessor giving its consent or the assignee or the sub-lessee being given possession of the Premises, the Lessee executes and procures the execution of an assignment or sub-lease of this Lease by the assignee or sub-lessee, in a form approved by the Lessor and delivers the assignment or sub-lease to the Lessor;
 - (c) where the proposed assignee or sub-lessee is a corporation, the performance of the covenants by the assignee or sub-lessee in the assignment or sub-lease is guaranteed by such of the directors and or principal shareholders of the corporation as the Lessor may require;
 - (d) the Rent, Variable Outgoings Contribution, Rates and Taxes, service charges, and other money payable under this Lease are paid and there is not any existing unremedied Event of Default (provided that Events of Default which have been waived by the Lessor are deemed to be remedied, for the purpose of this clause 11.1(d)) and the Lessee has lodged a deposit or given security to the satisfaction of the Lessor in respect of any estimated payment of its Variable Outgoings Contribution;
 - (e) the Lessee pays to the Lessor all reasonable costs, charges and expenses incurred by the Lessor for any enquiries which may be made by or on behalf of the Lessor to satisfy the Lessor that the proposed assignee or sub-lessee meets the criteria set out in clause 11.1(a) and for the preparation and approval of the form of assignment or sub-lease, whether or not in either case the assignment or subletting proceeds;
 - (f) the Lessee pays to the Lessor, or as the Lessor directs, a reasonable fee (including any agent fee) applicable to assignment of leases or sub-leases (as the case may be);
 - (g) the assignor Lessee has withdrawn any caveat lodged by the Lessee over the Land or any part of it;
 - (h) in the case of a sub-lease, the Rent payable under the sub-lease must be not less than the Rent payable under this Lease from time to time; and
 - (i) If required by Law, the Lessee has provided the proposed assignee or sub-lessee with a copy of a BEEC in relation to the Building.

11.2 Change in shareholding of Lessee corporation

Where the Lessee is a corporation (other than a company listed on the Australian Stock Exchange) any change in the beneficial ownership of any substantial holding (within the meaning of Part 6C.1 of the Corporations Act) or of the majority of the officeholders of the Lessee is deemed to be an assignment of this Lease and the Lessee must not permit any change without the Lessor's consent which must not be unreasonably withheld if the provisions of clause 11.1 (or those of them as required by the Lessor) are complied with, as if the company after the change were the assignee.

11.3 Lessee to remain liable

The covenants and agreements on the part of any assignee in favour of the Lessor in any assignment are supplementary to those contained in this Lease and do not in any way relieve or are not deemed to relieve the Lessee from the Lessee's liabilities under this Lease.

12. Default provisions

12.1 Default provisions

If:

- (a) the Rent, Variable Outgoings Contribution, Rates and Taxes or any other payment, payable under this Lease, is at any time unpaid for 7 days after becoming due, whether formally demanded or not;
- (b) there is a breach or non-observance of any other Lessee's Obligations and the breach or non-performance continues after the expiration of 14 days' written notice to the Lessee to remedy the breach;
- (c) any execution is issued against the Lessee and is not satisfied or withdrawn within 30 days after issuance;
- (d) any order is made or if there is any application made for an order or warrant under the *Civil Judgments Enforcement Act 2004* (WA) in relation to any property of the Lessee;
- (e) any mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any property of the Lessee;
- (f) an order is made under section 79 or 114 of the *Family Law Act 1975* (Cth) (or similar provision under the *Family Court Act 1997* (WA)) or if an injunction is granted under section 114 of the *Family Law Act 1975* (Cth) (or similar provision under the *Family Court Act 1997* (WA)) in relation to the property of the Lessee or if an application is made for any such order or injunction;
- (g) the Premises are abandoned, deserted or vacated (other than for the purposes of normal vacation periods) or the Lessee is dispossessed of the Premises by process of Law; or
- (h) any Insolvency Event occurs in respect of the Lessee,

then in any such case, subject to the provisions of the *Bankruptcy Act 1966* (Cth), the Lessor may at its option re-enter on, occupy and resume possession of the Premises or any part of them in the name of the whole and this Lease and the Term will then cease and determine but without releasing the Lessee from the Rent and all other money accrued up to the time of the re-entry and without prejudice to the right of action of the Lessor in respect of any breach of the Lessee's Obligations.

12.2 Lessor's right to remedy

The Lessor may remedy any Event of Default including the payment of any money payable by the Lessee under the provisions of this Lease and whenever the Lessor so elects all debts, costs and expenses incurred by the Lessor, including legal costs and expenses in remedying an Event of Default, must be paid by the Lessee to the Lessor on demand.

12.3 Damage for breach of essential term

- (a) The covenants by the Lessee:
- (i) to pay the Rent (clause 3.1), Variable Outgoings Contribution (clause 4.1) and Rates and Taxes (clause 4.3) at the times and in the manner provided respectively in this Lease;
 - (ii) to maintain the Premises in good condition (clause 7.1);
 - (iii) not to make any alterations or additions in the construction or arrangement of the Premises without consent (clause 8.1);
 - (iv) not to use the Premises other than for the Permitted Use (clause 8.8); and
 - (v) not without the prior consent in writing of the Lessor to assign, sub-let or part with possession or occupation of the Premises or any part of them (clause 11.1),
- are (subject to clause 12.3(b)) essential terms of this Lease and the breach, non-observance or non-performance of any one or more of those terms and conditions is deemed to be an Event of Default.
- (b) The presence of clause 12.3(a) in this Lease does not mean that there are no other essential terms of this Lease.
- (c) Should the Lessor terminate this Lease following a breach of an essential term of this Lease, then without prejudice to any other right or remedy of the Lessor contained or implied in this Lease, the Lessor is entitled to recover from the Lessee as and by way of liquidated damages for the breach:
- (i) the aggregate of the Rent and other money which would have been payable by the Lessee for the unexpired residue of the Term but for the termination;

less
 - (ii) the aggregate of the Rent and other money which the Lessor by taking proper steps to re-let the Premises obtains or could reasonably be expected to obtain by re-letting the Premises for the unexpired residue of the Term after the termination.
- (d) To the extent that the damages determined under clause 12.3(c) represent an acceleration of payments which would otherwise have been received over a period of time, the damages will be discounted accordingly at a rate of

6 percent per annum and the discount will be calculated with effect from the date on which those damages in full (less any discount) are received by the Lessor.

12.4 Conversion to Monthly Tenancy

- (a) In addition to any other right or remedy of the Lessor following an Event of Default, the Lessor may by notice in writing to the Lessee given at the time that the Lessor's right to terminate this Lease has arisen, elect to convert the Term into a tenancy from month to month.
- (b) With effect from the date of service of the notice, this Lease will be determined and the Lessee will hold the Premises as a tenant from month to month at a monthly rental equal to one twelfth of the Rent payable under this Lease at the date of giving the notice (such rental being payable monthly in advance) plus 10% together with the monthly payment on account of Variable Outgoings Contribution and otherwise on the terms and conditions of this Lease so far as they can be applied to a monthly tenancy.

13. General provisions

13.1 Damage to Premises

- (a) If:
 - (i) the Premises or any part of them are destroyed or damaged so as to be unfit for occupation or use;
 - (ii) the destruction or damage does not occur in consequence (directly or indirectly) of some act or default of the Lessee or a Permitted Person of the Lessee; and
 - (iii) the policy of insurance effected by the Lessor for the Insurable Risks and covering the destruction or damage has not been vitiated or payment of the policy money refused in consequence of some act or default of the Lessee or a Permitted Person of the Lessee,

then a proportionate part of the Rent and Variable Outgoings Contribution according to the nature and extent of the damage sustained will be abated by the Lessor until the Premises are again rendered fit for occupation and use.

- (b) If a dispute arises as to an abatement under clause 13.1(a):
 - (i) the dispute will be determined under the Expert Determination Process;
 - (ii) the full Rent and Variable Outgoings Contribution must be paid without any deduction or abatement until the date of any agreement or determination, following which the Lessor must refund any part of them which, according to the agreement or determination, has been overpaid.
- (c) If:

- (i) the destruction or damage mentioned in clause 13.1(a) occurs in direct or indirect consequence of some act or default of the Lessee or a Permitted Person of the Lessee; or
- (ii) the policy of insurance effected by the Lessor is vitiated or payment of the policy money refused in consequence of some act or default of the Lessee or a Permitted Person of the Lessee,

the Rent and Variable Outgoings Contribution will not be abated as provided in clause 13.1(a), nor will the Lessee be entitled to refer any abatement of them to the Expert Determination Process as provided in clause 13.1(b).

13.2 Destruction of Building

- (a) If a substantial part of the Building is destroyed or damaged:
 - (i) to an extent so as to be unfit for occupation or use during the Term; and
 - (ii) is not re-instated by the Lessor within 6 months after the destruction or damage occurring,

then, unless within that 6 month period, the Lessor:

- (iii) elects by notice in writing to the Lessee to reinstate the Building to its original design as nearly as practicable; and
- (iv) commences that re-instatement,

the Lessor or the Lessee may (in the case of the Lessee, only if that damage or destruction is not caused by the Lessee or a Permitted Person of the Lessee) by notice in writing to the other Party determine this Lease as from the date of the giving of that notice without prejudice to the rights of the Lessor in relation to any previous Event of Default.

- (b) For the purposes of this clause the expression “a substantial part of the Building” means one third or more of the Net Lettable Area of the Building.

13.3 Liability for loss

- (a) The Lessor will not, in any circumstances, be liable to the Lessee for any loss, damage or injury suffered by the Lessee as a result of:
 - (i) the Lessee’s occupation and use of the Premises;
 - (ii) the enjoyment of the Lessee’s other rights with respect to the Building;
 - (iii) any malfunction or breakdown in, or interruption of or to:
 - (A) the water gas or electricity services;
 - (B) the air conditioning equipment;
 - (C) the Fire Fighting Equipment; or

(D) the lifts, elevators or any appurtenance,
contained in the Premises or in the Building; or

(iv) the breakage, blockage, or overflow of any sewer, waste drains, conduits, cables, wires, gutters, down pipes or storm water drains from any cause,

except to the extent caused by any act, neglect, default or omission of the Lessor, or its agents or employees, and to the extent that its liability may be excluded at Law.

(b) The Lessor will not be liable to the Lessee or its Permitted Persons in respect of any loss or damage suffered by the Lessee or its Permitted Persons by reason of or arising out of any act neglect or default of any other tenant or occupier of the Building.

13.4 Liability for Lessor and others

(a) Despite anything in this Lease or any Law to the contrary, before the Lessor will be liable for any loss or damage the Lessee suffers by reason of the Lessor doing or failing to do any thing in respect of the Premises or the Building, the Lessee must give the Lessor a notice specifying the act or omission and the reasonable time for its performance or rectification and the Lessor must have failed to do so within the time specified in the notice.

(b) The Lessee will be liable for any act, neglect, default or omission of a Permitted Person of the Lessee in any way arising with respect to the rights and obligations created by this Lease.

13.5 Holding over provisions

If the Lessee continues to occupy the Premises with the agreement of the Lessor after Termination, then the Lessee will be a monthly tenant at a rent equal to one twelfth of the Rent payable immediately before Termination together with the monthly payment on account of Variable Outgoings Contribution and otherwise on the same terms and conditions (with appropriate changes made) as are contained or implied in this Lease excluding any option for a Further Term.

13.6 Moratorium

The application to this Lease of any present or future moratorium or Law having the effect of extending the Term or Further Term, reducing or postponing the payment of the Rent or any part of it or otherwise affecting the operation of the Lessee's Obligations or providing for compensation rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is excluded and denied so far as an exclusion and denial is lawful.

13.7 Jurisdiction

(a) This Lease is governed by, and to be interpreted in accordance with, the Laws of the State and, where applicable, the Laws of the Commonwealth of Australia.

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- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State and the Courts of Appeal from them. Each Party waives any right it has to object to a Claim being brought in those Courts including by alleging that the Claim has been brought in an inconvenient forum if those Courts do not have jurisdiction.

13.8 Severance

If any term or condition of this Lease or the application of them to any person or circumstances is invalid or unenforceable, the remaining terms and conditions are not affected and each other term and condition of this Lease is valid and enforceable to the fullest extent permitted by Law.

13.9 Consents and approvals

- (a) Except as otherwise specifically provided in this Lease any consent or approval which may be granted by the Lessor under this Lease may be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.
- (b) A consent or approval given by the Lessor to an ongoing course of conduct, may be withdrawn at any time.

13.10 Effect of waiver

No consent or waiver express or implied by the Lessor or the Managing Agent to or of any Event of Default will be construed as a consent or waiver to or of any other Event of Default.

13.11 No Partnership

This Lease does not in any way or for any purpose constitute the Lessor a partner of the Lessee in the conduct of the Lessee's business or otherwise, or a joint venturer or a member of a joint enterprise with the Lessee.

13.12 Notices

- (a) Any notice, consent, approval, demand or other communication to be given or made under this Lease (unless otherwise provided):
- (i) must be in writing;
 - (ii) must be signed by or on behalf of the Party giving or making it;
 - (iii) may be given in any of the following modes:
 - (A) by facsimile transmission;
 - (B) by pre-paid mail; or
 - (C) by hand delivery; and

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- (iv) may be addressed, delivered or transmitted to the Party to receive it at its registered office or principal office for the time being, or at the address or facsimile number:
 - (A) shown in this Lease; or
 - (B) later notified to the other Party from time to time.
 - (b) A notice sent by pre-paid post, facsimile or hand delivery is taken to be received:
 - (i) in the case of post:
 - (A) five Business Days after posting to or from a place within Australia; and
 - (B) seven Business Days after posting if posted to or from a place outside Australia;
 - (ii) in the case of facsimile:
 - (A) if transmitted before 5.00pm (Perth time) on a Business Day: on that Business Day;
 - (B) if transmitted after 5.00pm (Perth time) on a Business Day: on the next following Business Day;
 - (C) if transmitted on a day not being a Business Day: on the next day being a Business Day; and
 - (D) if, in any instance, the sender can produce a transmission report by the facsimile machine from which the facsimile was sent which indicates the time and date of transmission and that the facsimile was sent in its entirety to the facsimile number of the recipient;
 - (iii) in the case of hand delivery:
 - (A) if delivered before 5.00pm (Perth time) on a Business Day: on that Business Day;
 - (B) if delivered after 5.00pm (Perth time) on a Business Day: on the next following Business Day; and
 - (C) if delivered on a day not being a Business Day: on the next day being a Business Day.
 - (c) The Lessor's solicitor or the Managing Agent may give or serve notice on the Lessee with the same effect as if it had been given or served by the Lessor.

13.13 Managing Agent

The Lessor may appoint a Managing Agent to manage the Building and any Managing Agent so appointed may represent the Lessor in all matters relating to this Lease.

13.14 Entire Agreement

The Parties acknowledge and agree that:

- (a) the terms and conditions set out in this Lease:
 - (i) contain the entire agreement as concluded between the Parties with respect to the Premises;
 - (ii) supersede any negotiations or discussions before the execution of this Lease; and
 - (iii) supersede anything contained in any brochure, market analysis, report or other document prepared by the Lessor or any of the Lessor's agents or consultants for submission to potential tenants of the Building; and
- (b) the Lessee has not been induced to enter into this Lease by any or any alleged statement, representation, warranty or condition verbal or written made by or on behalf of the Lessor and or the Lessor's agents or consultants which is not contained in this Lease.

13.15 Trust Warranties

- (a) Where the Lessee is or are now acting or in the future may act as trustee, the Lessee covenants with and warrants to the Lessor that the Lessee has or will have full powers pursuant to its memorandum and articles and its deed of trust (in this Lease generally and together (if more than one) called the Trust) under which it purports to act when entering into this Lease, to enter into and give effect to this Lease.
- (b) The Lessee further covenants that:
 - (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of it have been properly executed;
 - (ii) the Trust is and throughout this Lease will remain unrevoked and not varied other than with the written consent of the Lessor, which must not be unreasonably withheld;
 - (iii) the assets of the Trust and the assets of the Lessee will at all times be available to satisfy the obligations of the Lessee under this Lease;
 - (iv) the consents or approvals of all Parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;

- (v) no one has taken or threatened nor is the Lessee aware of any one who is likely to take action to have the Trust wound-up or otherwise administered or to charge the Lessee or any person at any time connected with the Lessee or acting on behalf or purportedly on behalf of the Lessee with any breach of trust or misappropriation of trust money in connection with the Trust; and
- (vi) no facts are known to the Lessee under which the Trust might be wound-up voluntarily or otherwise or the trustee of the Trust changed or the assets of the Trust vested in any other person or pursuant to which the Trust may cease to operate or be deprived of funds before the expiration of the Term.

13.16 Certificate to be Prima Facie Evidence

A certificate signed by or on behalf of the Lessor:

- (a) as to the amount of the Rent payable under this Lease; or
- (b) as to any other matter or thing arising under this Lease,

will be prima facie evidence of the facts stated in that certificate.

13.17 Special Conditions

Any Special Conditions are to be incorporated in and read as a part of this Lease and, to the extent that there is any inconsistency between the terms of this Lease and the Special Conditions, the Special Conditions will prevail.

13.18 Right to Lessor to create easements etc

The Lessor reserves the right for the purpose of:

- (a) providing public or private access to or egress from the Building, the Land, other buildings on the Land or other land adjacent to the Land (Adjacent Land);
- (b) support of any viaduct constructed or to be constructed between the Land and Adjacent Land;
- (c) support of structures erected or to be erected on Adjacent Land; and
- (d) provision of services (including water, drainage, gas, electricity, telephonic and electronic communications) to the Building, the Land or to Adjacent Land or to any viaduct,

to enter into any arrangements or agreements with any owner, lessee, tenant or occupier of Adjacent Land or any viaduct or with any Authority and for those purposes may dedicate, transfer, grant or create easements in favour of that person or Authority and on those terms and conditions as the Lessor thinks fit and the estate or interest of the Lessee under this Lease is held subject to any such arrangement or agreement.

13.19 Western Australian Planning Commission Consent

This Lease is subject to and is conditional on the granting of any consent of the Western Australian Planning Commission required to be obtained under the provisions of the *Planning and Development Act 2005* (WA).

13.20 Commercial Building Disclosure

- (a) If the Lessor provided the Lessee with a copy of a BEEC in relation to the Building before the Lessee entered into this Lease, the Lessee acknowledges and agrees that:
 - (i) the Lessee has relied entirely on its own enquiries as to whether the BEEC is Current and Valid and whether the information contained in the BEEC is accurate;
 - (ii) the Lessee must not make any claim under or in connection with the *Building Energy Efficiency Disclosure Act 2010* (Cth) or the BEEC; and
 - (iii) the Lessor registered the BEEC before making any offer to, or inviting any offer from, the Lessee in respect of this Lease.
- (b) In clause 13.20(a), the terms "Current" and "Valid" have the meaning given to them under the *Building Energy Efficiency Disclosure Act 2010* (Cth).

13.21 Subordination

- (a) The Lessee agrees, to subordinate this Lease to any mortgage of the Lessor's interest in the Land, so as to give such mortgage priority over this Lease whether under the *Transfer of Land Act 1893* (WA) or otherwise if requested to do so by the Lessor at any time during the Term.
- (b) The Lessee must execute and deliver to the Lessor (without cost to the Lessee) on request by the Lessor, any document (including withdrawals of caveat) as are required to effect any subordination under clause 13.21(a), within 10 Business Days after receipt from the Lessor.
- (c) If the Lessee fails to comply with clause 13.21(b), the Lessee, in consideration of the Lessor granting this Lease to the Lessee, irrevocably appoints the Lessor and each of its directors and officers jointly and severally the agents and attorney of the Lessee to execute any document on behalf of the Lessee that is required to effect any subordination under clause 13.21(a).
- (d) The Lessee will not be required to effect any subordination of this Lease under this clause, unless the mortgagee first agrees in writing that, so long as the Lessee is not in default under this Lease:
 - (i) the Lease will not be terminated or modified (except as provided in this Lease);
 - (ii) the rights of the Lessee under this Lease will not be terminated or modified (except as provided in this Lease); and

- (iii) the Lessee's possession of the Premises will not be disturbed or interfered with by any sale or Claim under that mortgage.

13.22 Exclusion of Statutory Provisions

- (a) The covenants powers and provisions implied by virtue of sections 80 and 82 of the *Property Law Act 1969* (WA) and sections 92, 94 and 95 of the *Transfer of Land Act 1893* (WA) are excluded from, and do not apply to this Lease.
- (b) The use in this Lease of words in any form of words contained in the first column of Part II of the Twelfth Schedule of the *Transfer of Land Act 1893* (WA) do not imply any covenant under section 94 of that Act.

13.23 Expert Determination

If any difference arises between the Lessor and the Lessee as to the interpretation of the provisions of this Lease or concerning any act matter or thing to be performed or observed under this Lease and if there is no express provision contained in this Lease for resolving the difference, then the difference may be submitted by either Party to the Expert Determination Process.

14. Strata Titles

The Lessee acknowledges and agrees that if the Lessor elects to register a Strata Plan in respect of the whole or part of the Land including the Premises the following provisions will apply:

- (a) the Lessee consents to the registration of the Strata Plan and will execute any consents required under the Strata Titles Act in order to register the Strata Plan;
- (b) subject to the Lessor preparing at the Lessor's cost a supplementary deed in respect of this Lease to identify the Premises in accordance with the Strata Plan, the Lessee will execute that deed on request by the Lessor;
- (c) as soon as possible on receiving a request to do so from the Lessor the Lessee must withdraw any caveat lodged by the Lessee and the Lessee irrevocably appoints the Lessor and each of its directors and officers jointly and severally to be the agent and attorney of the Lessee to sign and register a withdrawal of any such caveat;
- (d) if the Premises comprise the whole or part of a Strata Lot:
 - (i) unless the context otherwise requires the words and expressions defined in the Strata Titles Act have the same meaning in this Lease and each of the following expressions mean:
 - "By-laws of the Company"** means Schedule 1 and Schedule 2 of the by-laws of the Company as adopted by the Company and includes any amendments to them;
 - "Common Property"** means the common property comprised in the Strata Plan;

“Company” means the body corporate created on the registration of the Strata Plan;

“Strata Plan” means the Strata Plan or Survey-Strata Plan to be registered pursuant to the provisions of the Strata Titles Act and all matters contained or endorsed on or annexed to the Strata Plan and includes any amendments to it;

- (ii) this Lease will, after registration of the Strata Plan, be subject in all respects to all easements rights reservations and powers mentioned in the Strata Titles Act except insofar as they are modified or denied by this clause 14;
- (iii) despite any other provisions of this Lease, any power right remedy or authority reserved or granted to the Lessor by the Lessee any consent or approval of the Lessor required by the Lessee to perform or do or permit the performance or doing of any act or thing by the Lessee any notice document or other writing required to be given by the Lessee to the Lessor and any indemnity to be given by the Lessee to the Lessor which relates to the Common Property or the Building or other buildings comprised in the Strata Plan will be deemed to be reserved, granted, required or given by the Lessee to or from either or both the Company and the Lessor as the circumstances require;
- (iv) this Lease will be subject to the covenants and powers implied in the Strata Titles Act so far as not expressly or by necessary implication denied or modified in this Lease;
- (v) subject to the By-laws of the Company the Lessee will have the non-exclusive licence for the Lessee and any of its Permitted Persons to pass and repass over and across those parts of the Common Property giving access to and egress from the Premises and to use the communal toilets and washrooms (if any) in the Common Property in common with the Lessor and all others authorised (whether expressly or impliedly) by the Lessor and the registered proprietors (if any) of other lots comprised in the Strata Plan;
- (vi) to the extent that any item of expenditure comprised in the Variable Outgoings or Rates and Taxes is included in any contribution levied by the Company pursuant to clause 14(d)(vii) the Lessee’s liability to pay the Lessee’s Variable Outgoings Contribution and Rates and Taxes in any Lease Year will be proportionately adjusted;
- (vii) the Lessee must pay on demand to the Company, or as the Company directs, that part of all contributions levied by the Company under section 36 of the Strata Titles Act;
- (viii) if no separate assessment issues for any of the contributions levied under clause 14(d)(vii), the amount payable by the Lessee will be calculated by multiplying the ratio that the unit entitlement of the Premises bears to the aggregate of the unit entitlement of the lots comprised in the Strata Plan which are the subject of the assessment, by the total of the contribution;

(ix) the Lessee must duly and punctually observe and comply with the provisions of the Strata Titles Act, the By-laws of the Company and all other by-laws for the time being in force in respect of the Premises the Common Property and the Building or buildings comprised in the Strata Plan. On registration of the Strata Plan the Lessor must furnish the Lessee with a complete copy of the By-laws of the Company and of any subsequent amendments to them; and

(x) clause 12.1 of this Lease will be amended by the addition of the following, as an Event of Default:

“notification is lodged by the Company with the Registrar of Titles Perth under the Strata Titles Act or the Company institutes proceedings against the Lessee under section 38 of the Strata Titles Act”; and

(e) subject to the preceding provisions of this clause, any reference in this Lease to a cost or expense to be met by the Lessee as being attributable to “the Building”, if the context permits and if that cost or expense would otherwise be irrecoverable against the Lessee, is to be read as a reference to the “Premises”.

15. Security Deposit

15.1 Pay Security Deposit

(a) The Lessee must pay to the Lessor the Security Deposit to be held by the Lessor as and by way of bond and security for the performance by the Lessee of the Lessee’s Obligations.

(b) The Lessor does not hold on trust for the Lessee the Security Deposit or any interest earned on it.

15.2 Interest on Security Deposit

(a) The Security Deposit must be held in an interest bearing bank account in the name of the Lessor.

(b) All interest earned on it will accrue to the Lessee but be retained in the account and, if not applied by the Lessor in accordance with the provisions of this clause, will be paid to the Lessee in accordance with clause 15.4.

15.3 Application of Security Deposit

(a) The Security Deposit and any interest on it may at any time during the currency of this Lease or after Termination be applied by the Lessor, at the Lessor’s discretion, towards arrears of Rent, Variable Outgoings Contribution, Rates and Taxes, service charges, damages, losses or costs arising out of or relating to any Event of Default on the part of the Lessee and any and all costs related to this Lease.

(b) The Lessee is not entitled to require the Lessor to apply the Security Deposit or any interest on it against any of the Lessee’s Obligations.

- (c) Any application of the Security Deposit by the Lessor in accordance with the provisions of this clause will not prejudice the exercise by the Lessor of any and all rights which may accrue to the Lessor in respect of the matters calling for such application apart from the Lessor's rights to recover the amounts received out of the Security Deposit.
- (d) The failure of the Lessor to apply the Security Deposit in respect of any matters which may call for its application will not in any way represent a waiver or estoppel or otherwise prejudice the right of the Lessor to take any action permitted by the provisions of this Lease including the application of the Security Deposit under the provisions of this clause 15.3.

15.4 Balance of Security Deposit

If the Lessee is not then in default under the terms of the Lease, the Lessor will within 20 Business Days after Termination pay to the Lessee the balance of the Security Deposit and any interest remaining after Termination.

15.5 Maintaining Security Deposit

- (a) If:
 - (i) the Lessor applies the Security Deposit pursuant to this clause before the determination of this Lease; or
 - (ii) as a result of a review of the Rent or an increase in the Variable Outgoings Contribution the Security Deposit is for a sum less than the amount specified in (or calculated under) Item 12 of Schedule 2,the Lessor may call on the Lessee by notice in writing to deposit further money into the Security Deposit to make the same equal to the full amount payable under this clause 15.5.
- (b) Any failure by the Lessee to comply with a notice given under clause 15.5(a) will be an Event of Default.

16. Extension of Term

16.1 Option of Renewal

If the Lessee:

- (a) has duly and punctually paid the Rent and all other money payable by the Lessee to the Lessor under this Lease during the Term; and
- (b) has duly and punctually observed and performed the Lessee's Obligations at all times up to the expiration of the Term;

then the Lessee has the option exercisable by written notice to the Lessor given not more than 9 months nor less than 6 months before the expiration of the Term of taking a new lease for the Further Term on and subject to the same terms and conditions as are contained in or implied by this Lease except for:

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- (c) this provision for renewal, unless there is more than one Further Term in which event the number of Further Terms will be reduced by the Further Term then exercised; or
 - (d) any incentive or inducement to enter into this Lease or any waiver or abatement of Rent or Variable 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.

16.2 Further Term Rent and Review

- (a) The commencing Rent for the Further Term is the Rent payable immediately before the commencement of the Further Term reviewed in the manner provided in this Lease.
- (b) On each Further Term Rent Review Date the Rent will be reviewed to determine the Rent to be paid from that Further Term Rent Review Date until the next following Further Term Rent Review Date, if there is one, or Termination, in accordance with the terms of this Lease.

17. Bank Guarantee

- (a) The Lessee must contemporaneously with the execution of this Lease or at such later date agreed between the Lessor and the Lessee, deliver to the Lessor the Bank Guarantee.
- (b) If the Lessee commits an Event of Default, then the Lessor may, pursuant to the Bank Guarantee, demand that the bank pay to the Lessor such amount of the sum guaranteed under the Bank Guarantee that in the reasonable opinion of the Lessor may be due to the Lessor as a result of the Event of Default on the part of the Lessee.
- (c) The liability of the Lessee to the Lessor under this Lease will not be and is not limited to the amount of the sum guaranteed under the Bank Guarantee.
- (d) Any demand made under clause 17(b) will not in any way be deemed to constitute a waiver by the Lessor of any Event of Default and will not prejudice any other right of the Lessor arising from that Event of Default.
- (e) If:
 - (i) any amount of the Bank Guarantee is appropriated or demanded from time to time by the Lessor as provided in this clause; or
 - (ii) as a result of a review of the Rent or an increase in the Variable Outgoings Contribution the Bank Guarantee is for a sum less than the amount specified in Item 15.1 of Schedule 2,

then the Lessee must within 14 days after demand by the Lessor deliver to the Lessor a further bank guarantee for the shortfall (in a form acceptable to the Lessor) in order to reinstate or top up the amount of the Bank Guarantee to an amount at least equal in value to the amount specified in Item 15.1 of

Schedule 2 and if the further bank guarantee is not provided, the failure to do so will be an Event of Default.

- (f) If the Lessor ceases to be the registered proprietor of the Land during the Term, the Lessee must on demand replace the Bank Guarantee with a fresh Bank Guarantee in favour of the new lessor (and the Lessor will, in exchange, return the original Bank Guarantee to the Lessee), unless the terms and conditions of the Bank Guarantee extend to, are for the benefit of, and may be called upon by any successor in title of the Lessor, and if the fresh Bank Guarantee is not provided within a reasonable time of the demand, the failure to provide the fresh Bank Guarantee will be an Event of Default.
- (g) The Lessor will return the Bank Guarantee to the Lessee within 3 months after Termination, subject to the Lessee vacating the Premises and otherwise complying with the Lessee's Obligations.

EXECUTED by the Parties to this Lease as a Deed on the date specified on page 1.

Schedule 1

Building procedures and regulations

1. Any person using the Building may not:
 - (a) obstruct or permit the obstruction of the pavements, entrances, arcades, vestibules, corridors, passages, halls, elevators, stairways, fire doors, or escape doors, in or about the Building nor use any of them for any purpose other than that for which they were constructed or provided;
 - (b) cover or obstruct the floors, skylights, glazed panels, ventilators, or windows, which reflect or admit light or air into passageways or any other part of the Building nor cover nor obstruct any light or other means of illumination in the Building;
 - (c) inscribe, paint, display, or affix, any sign advertisement, name, or notice, on or to any part of the Premises visible from the exterior of the Building or from the Common Areas within the Building except with the prior written consent of the Lessor and then only of the colour, size, and style, and in the place or places first approved by the Lessor, provided that the Lessor's consent and approval may not be unreasonably withheld. The cost of affixing the name and description of a person, firm, or company, on directory boards in the main foyer of the Building in standard design is to be paid by that person, firm or company;
 - (d) erect nor install any window blind, window screen, awning or floor covering, without the prior written approval of the Lessor;
 - (e) play any musical instrument in or about the Building except with the prior written consent of the Lessor and except background recorded music the volume of which is kept at a level which does not cause a nuisance or annoyance to users of the Building;
 - (f) keep any animal or bird in the Building except with the prior written consent of the Lessor;
 - (g) throw or drop anything down any elevator shaft, passage, or stairway, nor deposit waste paper or rubbish anywhere except in proper receptacles nor place on any sill, ledge or other like part of the Building or the Common Areas any article or substance;
 - (h) use nor permit nor suffer to be used any method of lighting, cooling, or heating, other than as supplied by the Lessor or under special agreement made with the Lessor for the purpose;
 - (i) burn any rubbish or waste in the Building at any time except in a place approved by the Lessor in writing;
 - (j) conduct nor permit to be conducted any auction, bankrupt, or fire sale;

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- (k) use nor permit to be used the Common Areas for any business or commercial purpose or the display or advertisement of any goods or services nor generally for any purpose other than a purpose for which the same was intended or provided;
 - (l) drive nails, screws, bolts, hooks or fastenings, into any part of the Building without the Lessor's prior written consent nor use any explosive power driven method of fixing articles to ceilings, walls or floors;
 - (m) except as authorised by the Lessor, enter nor go on the roof, any plant room, or any other part, of the Building other than the Common Areas except in the case of an emergency;
 - (n) except as permitted by the Lessor in writing, store within the Premises or any other part of the Building any chemical or flammable gas, fluid or substance;
 - (o) sleep in the Building;
 - (p) cook in the Building except in areas approved by the Lessor which have appropriate exhaust systems approved by the Lessor;
 - (q) use the lifts except for personal conveyance; or
 - (r) restrict or impede the Lessor from carrying out any works required to be conducted to maintain the NABERS rating or general energy efficiency of the Building.
2. Delivery or movement of any goods, wares, merchandise or other articles of bulk or quantity in the Common Areas may only be at times permitted by the Lessor (which permission may not be unreasonably withheld) and generally in compliance with all reasonable requirements of the Lessor.
 3. The Lessor may close the doors of the Building opening into any street and keep them closed on Saturdays, Sundays and declared public holidays, and between the hours of 6.00 pm and 8.00 am.
 4. The hours of operation or use of the air-conditioning plant and lifts are 8.00 am to 6.00 pm on every weekday excluding public holidays, Saturdays and Sundays, until further notice.
 5. The Lessor may direct all courier services or any other person making deliveries to the Building, to deliver and pick up packages for, to and from the Lessee from such areas and utilising such of the lifts as the Lessor in its absolute discretion designates from time to time for those purposes. In the absence of any other designation by the Lessor, all deliveries of packages must be made using the goods lift.
 6. The Lessor, from time to time, may designate the whole or parts of the Building (including the Premises) as areas where the smoking of tobacco products and other substances is not permitted. The Lessee must not smoke or allow any of its Permitted Persons to smoke tobacco products or other substances in any areas so designated. If so required by the Lessor, the Lessee must direct the Lessee's visitors not to smoke in or about the Premises.

7. Any person using the Building must:
- (a) comply with all signs and directions posted in the Building by the Lessor or the Managing Agent;
 - (b) comply with all reasonable requests made by the Managing Agent in relation to the energy efficiency of the Building and maintaining the NABERS rating of the Building; and
 - (c) ensure that window blinds are at all times utilised to assist the energy efficiency of the Building.

Schedule 2

Particulars

1. Lessor

(the Parties)

THE NATIONAL TRUST OF AUSTRALIA (WA) (ABN 83 697 381 616) of Post Office Box 1162, West Perth, Western Australia.

2. Lessee:

(the Parties)

SHIRE OF BEVERLEY (ABN 33 895 807 275) of Post Office Box 20, Beverley, Western Australia.

3. Land:

(clause 1.1)

Lot 3 on Deposited Plan 225569 being the whole of the land comprised in Certificate of Title Volume LR3140 Folio 499.

4. Premises:

(clause 1.1)

That part of the Land comprising approximately [insert] m² as is shown on the Premises Plan.

5. Commencement Date:

(clause 2.2)

The date that this Lease is approved by the Minister for Lands being the _____ day of _____ 2020.

6. Term:

(clause 2.2)

TEN (10) years.

7. Rent:

(clause 3.1)

One peppercorn per annum.

8. Rent Commencement Date:

(clause 3.2)

The Commencement Date.

9. Rent Review Date:

(clauses 3.3, 3.4 & 3.5)

Not Applicable.

10. Insured Amount (Public Liability Insurance):

(clause 6.2)

\$20,000,000.

11. Permitted Use:

(clause 8.8)

Museum.

12. Security Deposit:

(clause 15.1)

Not Applicable.

13. Further Term:

(clause 16)

FIVE (5) years.

14. Further Term Rent Review Date:

(clause 16.2)

Not Applicable

15. Special Conditions:

(clause 13.17)

15.1 Condition Precedent

This Lease is subject to and conditional upon the approval of the Minister for Lands pursuant to s18 of the *Land Administration Act 1997 (WA)* on or before the Commencement Date.

15.2 Heritage Significances

- (a) The Lessee acknowledges that the Premises or certain parts of the Premises are, or may be, listed as places with cultural heritage significance under the *Heritage of Western Australia Act 1990 (WA)*.
- (b) The Lessee is at all times solely responsible for the day to day safety, maintenance and conservation of the Premises and this includes, but is not limited to, doing all things reasonably necessary in order to comply with the provisions of the *Heritage of Western Australia Act 1990 (WA)*, but excludes performing any restoration work, structural work or incurring any capital expenditure with respect to the Premises other than to ensure that the Premises are maintained and conserved in the same condition as at the Commencement Date.
- (c) Despite anything to the contrary in this Lease, the Lessee must not do, cause or permit any works of any kind to be carried out on the Land or the Premises contrary to the provisions of the *Heritage of Western Australia Act 1990 (WA)*. The Lessee is responsible at all times for ensuring compliance with the *Heritage of Western Australia Act 1990 (WA)*.
- (d) The Lessee indemnifies and will keep the Lessor indemnified from any costs, expenses, damages, penalties or losses incurred as a result of, arising from or in connection with any non compliance by the Lessee with the *Heritage of Western Australia Act 1990 (WA)* resulting from the act or default of the Lessee or any employee, agent, contractor, visitor, licensee, invitee, customer or sublessee of the Lessee.

15.3 Promote objectives of the Lessor

- (a) The Lessee acknowledges and accepts that the Lessor and the Lessee have entered into this Lease on the clear understanding that the Lessee will only use the Premises in accordance with the *Heritage of Western Australia Act 1990 (WA)* and the objectives of the Lessor as advised to the Lessee from time to time and agrees that its use of the Premises will promote those objectives.
- (b) If the Lessor considers, acting reasonably, that the Lessee is not complying with its obligations under this Item, or Item 15.2, the Lessor may give the Lessee not less than 14 days notice of its intention to terminate this Lease and this Lease will end on the date advised by the Lessor in the notice. From the termination date, excepting any antecedent breach of this Lease by either Party prior to the termination date, neither Party will have any right, claim or action against the other Party arising from or in connection with this Lease and its termination.

15.4 Maintenance Schedule

Without limiting the Lessee's obligations in this Lease, the Lessee acknowledges and agrees that the Lessee is responsible for all items of maintenance identified in the Maintenance Schedule as being the responsibility of the Lessee and the Lessee must undertake those items of maintenance at the Lessee's own cost.

15.5 Museum Admission

- (a) The Lessee must administer and manage access to the Agricultural Machinery Museum throughout the Term at the Lessee's own cost.
- (b) The Lessee may charge such admission or entry fees as the Lessee deems fit and shall not be required to remit any part of the admission, entry fees or any donations received with respect to the Premises to the Lessor.

15.6 Signage

- (a) The Lessee must not install any signage in the Premises without the prior written approval of the Lessor.
- (b) The Lessee shall comply with all Works Conditions when installing any signage.
- (c) The Lessee shall be responsible for the cost of installing, running and maintaining the signage during the Term and any Further Term.
- (d) The Lessee is responsible for the removal of the signage at the end of this Lease and must make good any damage caused by such removal.

15.7 Property Condition Report

- (a) The Lessor must arrange for a Property Condition Report to be prepared with respect to the Premises which evidences the condition of the Premises as at the Commencement Date.
- (b) Prior to the preparation of the Property Condition Report the Lessor must:
 - (i) repair any broken sliding doors in the Premises; and
 - (ii) replace any broken gutters in the Premises.
- (c) The Lessor must provide the Lessee with a copy of the Property Condition Report within FOURTEEN (14) days of completion.

16. Bank Guarantee:

(clause 17)

Not Applicable.

Schedule 3
Premises Plan

Schedule 4

Maintenance Schedule

Maintenance Item	Lessee's Responsibility	Lessor's Responsibility	Cost recovered through Outgoings Variable
Bores and Pumps	No	Yes	No
Electricity associated with Bores and Pumps	No	Yes	Yes
Fire Pumps	No	Yes	Yes
Fire Panels	No	Yes	No
Fire Extinguishers	Yes	No	
Air Conditioning	Yes - provided the costs are not capital in nature (ie: the Lessee is responsible for general maintenance and servicing of the air-conditioning)	Yes - capital costs only	Yes - provided the Lessor shall not recover any capital costs through outgoings
Lifts	Yes - provided the costs are not capital in nature (ie: the Lessee is responsible for general maintenance and servicing of the lifts if the lifts are in the Premises)	Not Applicable	Not Applicable
Cleaning - Gutters	Yes - the Lessee must engage a suitably qualified contractor to clean the gutters on at least an annual basis and provide evidence to the Lessor that this has been done.	No	
Cleaning - Premises	Yes	No	
Cleaning - Windows	Yes	No - except in relation to Common Areas	Yes - in relation to Common Areas
Cleaning - Window Treatments	Yes	No - except in relation to Common Areas	Yes - in relation to Common Areas
Cleaning - Floor Coverings	Yes	No - except in relation to Common Areas	Yes - in relation to Common Areas

Gardening - Tree Pruning	No	Yes	Yes
Gardening - Lawn Mowing	Yes - if Premises include gardens	Yes - if gardens are within Common Areas	Yes
Gardening - Cleaning Hard Surfaces	Yes - if Premises include gardens	Yes - if gardens are within Common Areas	Yes
Gardening - Water Usage	Yes - if Premises include gardens	Yes - if gardens are within Common Areas	Yes
Common Area - Lighting	No	Yes	Yes
Common Area - Cleaning	No	Yes	Yes
Pest Control	Yes - the Lessee must engage a suitably qualified contractor to undertake pest control at the Premises at least every 5 years during occupation and must provide evidence to the Lessor that this has been done	No	
Painting - Interior of Premises	Yes	No	
Painting - Exterior of Premises	No	Yes	Yes
Building Insurance	No	Yes	Yes
Replacement Locks & Keys	Yes	No	
Rubbish Removal	Yes	No	Yes - if rubbish removal is provided by the Lessor or charged by the local government through Rates & Taxes
Security Services & Monitoring of Buildings	Yes - if Premises include the whole of a Building	Yes - if Premises do not include the whole of a Building	Yes
Communications Data	Yes	No	
Office Telephones	Yes	No	

Water Filters	Yes	No	
Consumables	Yes	No	
Water Usage - Premises	No	No	Water usage is connected in the name of the Managing Agent and will be on-charged to the Tenant
Electricity Premises -	Yes - the Lessee must connect electricity in its own name	No	
Gas - Premises	Yes - the Lessee must connect gas in its own name	No	
Water Usage - Building / Common Area	No (unless Premises are whole of Building)	Yes	Yes
Electricity - Building / Common Area	No (unless Premises are whole of Building)	Yes	Yes
Gas - Building / Common Area	No (unless Premises are whole of Building)	Yes	Yes

Signed as an agreement

Signed for and on behalf of

THE NATIONAL TRUST OF AUSTRALIA (WA)

(ABN 83 697 381 616)

by its duly authorised Attorneys under

Power of Attorney No. N744153

in the presence of:

.....
Signature of Attorney

.....
Signature of Attorney

.....
Full Name (Please Print)

.....
Full Name (Please Print)

.....
Signature of Witness

.....
Signature of Witness

.....
Witness Name (Please Print)

.....
Witness Name (Please Print)

.....
Witness Address

.....
Witness Address

.....
Witness Occupation

.....
Witness Occupation

The Common Seal of the

SHIRE OF BEVERLEY

was affixed by the authority of

a resolution of Council in the presence of:

.....
Chief Executive Office Signature

.....
Mayor Signature

.....
Chief Executive Officer Name (Please Print) Mayor Name (Please Print)



Annexure A

Expert Determination Process

1. EXPERT

1.1 Definitions

The following definitions apply for the purposes of these provisions:

Accountant means a person who is:

- (a) qualified as an accountant in Western Australia;
- (b) is independent from any of the Parties to the Dispute;
- (c) at the time of nomination is a member of the Institute of Chartered Accountants of Australia (Western Australia Branch); and
- (d) has not less than 10 years experience as an accountant, with at least 5 years being in Australia.

Architect means a person who is:

- (a) qualified as an architect in Western Australia;
- (b) is independent from any of the Parties to the Dispute;
- (c) at the time of nomination is a member of Australian Institute of Architects (Western Australia Branch); and
- (d) has not less than 5 years' experience in designing buildings like the Building.

Dispute means any dispute arising out of this Lease.

Dispute Notice a notice identifying the particulars of the Dispute.

Expert means, at the Lessor's discretion (acting reasonably), the most appropriate of:

- (a) an Accountant;
- (b) an Architect;
- (c) a Legal Practitioner;
- (d) a Quantity Surveyor;
- (e) a Valuer; or
- (f) any other person with suitable qualifications and experience appropriate to determine the Dispute;

appointed under clause 1 of this Annexure A to determine the Dispute.

Legal Practitioner means a person who:

- (a) has current and valid Practising Certificate (as defined in the *Legal Profession Act 2008* (WA));
- (b) is independent from any of the Parties to the Dispute;
- (c) at the time of nomination is a member of Law Society of Western Australia; and
- (d) not less than 10 years experience in property law, involved in the regular drafting of commercial leases for properties similar to the Premises, within the Perth metropolitan area.

Quantity Surveyor means a person who:

- (a) has been actively engaged in the commercial property market for the year prior to being nominated;
- (b) is independent from any of the Parties to the Dispute;
- (c) at the time of nomination is a member of the Australian Institute of Quantity Surveyors (Western Australia Branch); and
- (d) has at least 5 years' experience in quantity surveying properties similar to the Building.

Valuer has the same definition as that in the Lease.

1.2 Dispute

- (a) If a Dispute arises between the Parties then a Party may give to any other relevant Party or Parties a Dispute Notice.
- (b) After receipt of the Dispute Notice, the relevant Parties are to promptly meet, discuss the Dispute, in good faith and attempt to agree a resolution to the Dispute.
- (c) If for any reason the Parties have not agreed to resolve the Dispute within 10 Business Days after the Dispute Notice was served, then the Dispute will be determined under clauses 1.3 and 1.4 of this Annexure A.

1.3 Expert Determination

- (a) If the Parties fail to agree a resolution in accordance with clause 1.2 of this Annexure A, the Parties are to agree the person to act as the Expert and appoint that person to determine the Dispute in accordance with clause 1 of this Annexure A.
- (b) If the Parties cannot agree:

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- (i) the type of "Expert" is to be appointed to determine the Dispute, then any Party to the Dispute may request that the President (or its nominee) of the Law Society of Western Australia will determine the type of "Expert" is to be appointed;
 - (ii) the person to be the Expert, then any Party to the Dispute may request that the President (or its nominee) of the:
 - A. Institute of Chartered Accountants of Australia (Western Australia Branch) nominate an Accountant;
 - B. Australian Institute of Architects (Western Australia Branch) nominate an Architect;
 - C. Law Society of Western Australia nominate a Legal Practitioner;
 - D. Australian Institute of Quantity Surveyors (Western Australia Branch) nominate a Quantity Surveyor;
 - E. Australian Property Institute (Inc) (Western Australia Division) nominate a Valuer; or
 - F. relevant industry body to nominate any other person with suitable qualifications and experience appropriate to determine the Dispute.
 - (c) The Parties must jointly appoint the person nominated under clause 1.3(b) of this Annexure A to determine the Dispute.
 - (d) If the person nominated or appointed is unavailable or unwilling to act and the Parties are unable to agree to appoint another Expert within 5 Business Days, then clauses 1.3(b) and 1.3(c) of this Annexure A apply as to the appointment of an another Expert.
 - (e) Unless the Parties agree otherwise, the Expert:
 - (i) will act as an expert and not as an arbitrator;
 - (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;
 - (iii) must not be a former or current employee or representative of the Lessor or the Lessee;
 - (iv) must disclose fully to the Parties, before entering into an agreement to act as the Expert, any interest or duty which may conflict with his or her position; and
 - (v) will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and will endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined in clause 1 of this Annexure A.

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- (f) Each Party:
- (i) may be legally represented at any hearing before the Expert;
 - (ii) will be entitled to produce to the Expert any materials or evidence which that Party believes is relevant to the Dispute; and
 - (iii) will make available to the Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (g) The Expert will not be bound by the rules of evidence and, subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (h) Subject to the Expert abiding by the rules of natural justice the Expert is to determine the procedures to be followed in resolving the Dispute and the Parties must co-operate promptly with those procedures, but the Expert shall in any event:
- (i) provide the Parties with an equal and fair opportunity to make written submissions and if requested by either Party, conduct a hearing to allow the Parties to make oral submissions in support of their position;
 - (ii) provide written reasons for the Expert's determination; and
 - (iii) before handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity (taking into account any urgency in resolving the Dispute) to lodge written submissions concerning the proposed determination which the Expert must consider before settling and handing down the Expert's determination.
- (i) Subject to any privileges under Law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a Party would be permitted under any provisions of the Lease.
- (j) The Expert's determination:
- (i) is final and binding on the Parties, unless it involves a determination which exceeds \$5,000 (including GST but excluding the costs incurred by a Party in the course of the determination) to any Party. If the Expert's determination does not involve a cost to any Party in excess \$5,000 (including GST but excluding the costs incurred by a Party in the course of the determination), then that determination will be final and binding on the Parties unless the Lessor, acting reasonably, elects (by notice to the other Parties), within 10 Business Days of the determination, to reject the Expert's determination;

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- (ii) will be made without delay and in any event within 20 Business Days after being appointed as an Expert, unless the Parties otherwise agree in writing; and
 - (iii) will determine what, if any, adjustments may be necessary between the Parties.
- (k) The costs in relation to a determination by the Expert will be dealt with as follows:
- (i) the remuneration of the Expert will be advanced by the Parties to the Dispute in equal shares, unless agreement or a determination is made under clause 1.3(k)(ii) of this Annexure A as to who should pay for such remuneration; and
 - (ii) unless the Parties specifically otherwise agree, the Expert will determine which Party or Parties will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers a Party or Parties was at fault or unreasonable in failing to agree to a resolution to, or offer to settle the, Dispute, and each Party will bear those costs accordingly.
- (l) While there is a Dispute, nothing will relieve the Parties from any of their obligations under the Lease.

1.4 Costs

Unless otherwise ordered by the Expert under clause 1.3 of this Annexure A, the Expert's costs shall be paid by the Parties in equal shares and each Party must pay its own legal and other costs of the Dispute.

1.5 Urgent interlocutory relief

Nothing in this Annexure A prevents a Party from seeking urgent injunctive, declaratory or other interlocutory relief from a court, if urgently required.