

- 2022 -



THE MINISTER FOR TRANSPORT

Lessor

and

PTY LTD

Lessee



**COASTAL FACILITIES MANAGEMENT
GROUND LEASE**



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THIS DEED is made the _____ day of _____ 20____

BETWEEN:

THE MINISTER FOR TRANSPORT being a body corporate pursuant to the provisions of the Marine and Harbours Act 1981 of 5 Newman Court, Fremantle, Western Australia ("Lessor")

AND

 ("Lessee") (ACN _____) of _____, Western Australia

RECITALS:

- A. The Land is by proclamation under Section 9 of the Marine and Harbours Act 1981 vested in the Lessor for harbour purposes.
- B. Under Section 12(2) of the Marine and Harbours Act 1981 the Lessor has the power to grant a lease of the Premises.
- C. The Lessee has requested and the Lessor has agreed to grant the Lessee a lease of the Premises on the terms and conditions of this Document.

The Parties COVENANT and AGREE:

PART 1

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

Unless otherwise required by the context or subject matter:

"Authority" means any government or governmental, semi-governmental, judicial, statutory, public or other authority, entity or body and includes without limitation the Lessor;

"Boat Harbour" means the boat harbour in which the Land is situated;

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

"Consumer Price Index" means the consumer price index compiled by the Australian Bureau of Statistics for Perth All Groups Index Numbers or if that

index is suspended or discontinued, the index substituted for it by the Australian Statistician;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Costs and Expenses" means the costs and expenses mentioned in clause 10;

"Date of Commencement" means the date specified in Item 4 of Schedule A;

"Document" means this deed, whether registered or not, as supplemented, amended or varied from time to time;

"Encumbrance" has the meaning given in clause 7 of the Property Law Act 1969 (WA) and encumbrances and encumber have a corresponding meaning;

"Event of Default" means an event specified in clause 27.1;

"Facility" means a lavatory, sink, drain or other sewerage or plumbing facility, and a gas or electrical fitting or appliance in or on the Premises;

"Further Term" means each further term specified in Item 13 of Schedule A;

"GST" has the same meaning given in section 195-1 of the GST Act;

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999;

"Harbour Area Contribution" means the harbour area contribution specified in Item 12 of Schedule A as varied from time to time under this Document;

"Holding Over" means holding over by the Lessee under clause 29;

"Input Tax Credit" has the meaning given in section 195-1 of the GST Act;

"Insolvency Event" occurs, in respect of a person, when that person:

- (a) informs its creditors generally that it is insolvent;
- (b) has a meeting of its creditors called with a view to entering a scheme of arrangement or executing a deed of company arrangement;
- (c) enters a scheme of arrangement except for a reconstruction whilst solvent;
- (d) executes a deed of company arrangement with creditors;
- (e) has a controller or liquidator (as those terms are defined in the Corporations Act) of its property or part of its property appointed;
- (f) is the subject of an application to a court for its winding up, which application is not stayed within TEN (10) Business Days;
- (g) has a winding up order made in respect of it;
- (h) has an administrator appointed under section 436A, 436B or 436C of the Corporations Act;

- (i) enters into voluntary liquidation; or
- (j) fails to comply with, or apply to have set aside, a statutory demand made under the Corporations Act within FOURTEEN (14) days of the time for compliance and:
 - A. if the corporation applies to have the statutory demand set aside within FOURTEEN (14) days of the time for compliance, the application to set aside the statutory demand is unsuccessful; and
 - B. the corporation fails to comply with the statutory demand within SEVEN (7) days of the order of the court dismissing the application.

"Insured Risk" means an event which the Lessor requires the Lessee to insure against including, but not limited to, fire, explosion, earthquake, impact by aircraft, riot, civil commotion, flood, lightning, storm, tempest, fusion, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown, vandalism and malicious acts;

"Interest" means interest at the rate specified in Item 9 of Schedule A;

"Land" means the land described in Item 2 of Schedule A;

"Law" means any law in force in Australia, whether common law or any law under any statute, ordinance or code and includes subordinate legislation;

"Lessee's Covenants" means the covenants, agreements and obligations contained or implied in this Document or imposed by law or equity to be observed and performed by any person other than the Lessor;

"Lessee's Rights" means all rights in favour of the Lessee contained or implied in this Document;

"Lessor's Covenants" means the covenants, agreements and obligations contained or implied in this Document or imposed by law or equity to be observed and performed by the Lessor;

"Lessor's Rights" means all rights in favour of the Lessor contained or implied in this Document or granted by law or equity;

"Losses" includes claims, demands, losses, damages, Costs and Expenses;

"Management Fee" means the management fee specified in Item 11 of Schedule A;

"Managing Agent" means the person, firm or corporation as the Lessor by notice to the Lessee nominates from time to time;

"Money Payable" means the Rent and any other money payable by the Lessee under this Document;

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

"Permitted Person" means:

- (a) an agent, employee, licensee, or invitee of the Lessee; and

- (b) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (a);

"Plant and Equipment" means any plant and equipment in or on the Premises for or in connection with any:

- (a) Service; or
 (b) heating, cooling, lighting, power or plumbing;

"Premises" means that part of the Land as specified in Item 1 of Schedule A and all structures and improvements on that part of the Land;

"Primary Payment" means any payment by the Lessee to the Lessor under this Document;

"Public Liability Insurance Amount" means the amount specified in Item 10 of Schedule A;

"Rent" means the rent specified in Item 6 of Schedule A as varied from time to time under this Document;

"Schedule" means the schedule to this Document;

"Service" means electricity, gas, oil, fuel, water, telecommunications or other like commodity, facility or service and includes such services as are provided by the Lessor under the Jetties Regulations 1940;

"Taxable Supply" has the meaning given in section 195-1 of the GST Act;

"Tax Invoice" has the meaning given in section 195-1 of the GST Act;

"Term" means the term specified in Item 3 of Schedule A and any Further Term;

"Termination" means the expiry by effluxion of time or sooner determination of the Term or any period of Holding Over; and

"Unfit for Occupation" means that the Premises or any part of the Premises are so destroyed or damaged as to:

- (a) render the Premises substantially unfit for occupation and use; or
 (b) interfere substantially with the Lessee's Rights.

2. INTERPRETATION

2.1 *Headings*

Except in Schedule A, headings in this Document do not affect its interpretation.

2.2 *Last day not a Business Day*

When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.

2.3 *Joint and several covenants*

If a Party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.

2.4 *Reference to a Party*

Unless repugnant to the sense or context, a reference to a Party includes that Party's executors, administrators, personal representatives, successors and assigns, and if a Party comprises two or more persons, the executors, administrators, personal representatives, successors and assigns of each of those persons.

2.5 *Reference to other document*

Subject to any contrary provision in this Document, a reference to any other deed, agreement, instrument or contract includes a reference to that other deed, agreement, instrument or contract as amended, supplemented or varied from time to time.

2.6 *Reference to a statute*

A reference to a statute includes a regulation, by-law, requisition or order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order from time to time in force.

2.7 *Singular, plural and gender*

Where applicable:

- (a) words denoting the singular include the plural;
- (b) words denoting the plural include the singular; and
- (c) words denoting a gender include each gender.

2.8 *Reference to a person and a body corporate*

Where applicable:

- (a) a reference to a body corporate includes a natural person; and
- (b) a reference to a person includes a body corporate.

2.9 *Professional body*

A reference to a professional body includes a successor to or substitute for that body.

2.10 *Month*

Unless repugnant to the sense or context, "month" means calendar month.

2.11 Lessee's Covenants

Unless repugnant to the sense or context, a covenant by the Lessee not to do or omit to do any act or thing includes:

- (a) a covenant not to suffer that act or thing to be done or omitted to be done by a Permitted Person; and
- (b) a covenant to do everything necessary to ensure that that act or thing is not done or omitted to be done.

PART II GRANT OF LEASE

3. GRANT OF LEASE

The Lessor:

- (a) LEASES the Premises subject to all Encumbrances; and
- (b) GRANTS the Lessee's Rights;

to the Lessee for the term specified in Item 3 of Schedule A subject to:

- (c) the payment of the Money Payable; and
- (d) the observance and performance of the Lessee's Covenants;

but RESERVING to the Lessor the Lessor's Rights.

4. QUIET ENJOYMENT

Except as provided in this Document and subject to the observance and performance of the Lessee's Covenants, the Lessee may quietly hold the Premises and enjoy the Lessee's Rights during the Term without any interruption or disturbance from the Lessor or any person lawfully claiming through or under the Lessor.

5. EASEMENTS

5.1 Purposes for which Lessor may act

The Lessor may for the purpose of providing:

- (a) a public or private entrance to or exit from;
- (b) a support for a structure erected on;
- (c) the supply of a Service, a Facility, or telephone or electronic communication to; or

(d) any other right, privilege or facility for;

the Premises, the Land or any other land, do any of the things specified in clause 5.2.

5.2 *Rights of Lessor in respect of easements*

The Lessor may for the purposes detailed in clause 5.1 and subject to clause 5.3:

- (a) grant rights of support to or enter into any arrangement or agreement with:
 - (i) any owner, lessee, tenant, occupier, or other person, interested in land adjacent to or near to the Premises; or
 - (ii) any public Authority;
- (b) install or run any Service, Facility or telephone or electronic communication through or under the Premises;
- (c) dedicate or transfer any part of the Land; or
- (d) grant or create any easement or privilege in favour of any person or public Authority over or affecting the Premises, the Land or any other land.

5.3 *Easements may not substantially derogate from Lessee's Rights*

The Lessor may not without the Lessee's consent, dedicate, transfer, grant or create any easement, right or privilege which substantially or permanently derogates from the enjoyment of Lessee's Rights by the Lessee.

PART III

RENT AND OTHER MONEY PROVISIONS

6. RENT

6.1 *Rent*

The Lessee must pay to the Lessor the Rent without deduction in the manner specified in Item 6 of Schedule A except that:

- (a) the first and last payments will be apportioned on a daily basis if they are in respect of the periods of less than THREE (3) months; and
- (b) the first payment is due on or before the Date of Commencement.

6.2 *Management Fee*

The Lessee must pay to the Managing Agent the Management Fee without deduction in the manner provided for in Item 11 of Schedule A.

6.3 *Harbour Area Contribution*

- (a) The Lessee must pay to the Lessor the Harbour Area Contribution without deduction in the manner provided for in Item 12 of Schedule A.
- (b) On every third anniversary of the Date of Commencement during the Term and any period of Holding Over ("Review Date"), the Harbour Area Contribution with effect from that date may be reviewed by the Lessor in its absolute discretion so that it is the greater of:
 - (i) the Harbour Area Contribution payable for the TWELVE (12) months immediately preceding that Review Date multiplied by the Consumer Price Index number most recently published prior to that Review Date and divided by the Consumer Price Index number most recently published prior to the Date of Commencement or the immediately preceding Review Date as the case may be; or
 - (ii) the Harbour Area Contribution payable for the TWELVE (12) months immediately preceding that Review Date.

6.4 *GST Liability*

(a) **Payments exclusive of GST**

The amount of all Primary Payments specified in this Document is exclusive of GST.

(b) **Primary Payment Increased**

If GST is payable by the Lessor in respect of a Primary Payment or any part in connection with a Taxable Supply provided under this Document:

- (i) the Primary Payment is increased by an amount equal to the applicable GST; and
- (ii) the Lessee must pay the amount of the increase in the same manner and on the same date as the Lessee is required to pay the Primary Payment.

(c) **Adjustment**

If the Primary Payment consists (wholly or partly) of the recovery by the Lessor of all or a portion of the Lessor's costs, the Primary Payment is to be reduced by the amount (or corresponding proportion) of the Input Tax Credits available to the Lessor in

respect of these costs and then increased by any applicable GST payable under clause 6.4(b).

(d) **Tax Invoice**

If a Primary Payment is to be increased to account for GST under clause 6.4(b) the Lessor must issue a Tax Invoice to the Lessee.

7. RENT REVIEW

7.1 *Definitions*

In this clause:

"Current CPI" means in respect of a Rent Review Date:

- (a) the Consumer Price Index number last published prior to that Rent Review Date; or
- (b) if the Lessor appoints an actuary to determine an index under clause 7.2, the number certified by that actuary;

"Current Market Rent" means the current market rent on an annual basis of the Premises on the assumption that:

- (a) the Lessee and the Lessor have observed all the terms of this Document;
- (b) the Lessee will occupy the Premises on the terms of this Document; and
- (c) if any part of the Premises has been damaged or destroyed, that part of the Premises has been reinstated;

taking into consideration:

- (d) current rent values in respect of new tenancies of vacant premises similar to the Premises;
- (e) current rent values in respect of rent reviews during current tenancies of premises similar to the Premises;
- (f) current rent values in respect of renewals of existing tenancies of comparable premises;
- (g) the permitted use of the Premises;
- (h) any Services provided by the Lessor of benefit to the Premises or for use from the Premises; and

but ignoring:

- (i) the value of any structure or other improvement erected on the Premises by the Lessee;

- (j) any value attaching to goodwill created by the Lessee's occupation of the Premises;
- (k) any value attaching to the Lessee's trade fixtures and fittings on the Premises;
- (l) any value attaching to any licence or permit in respect of the business carried on by the Lessee at the Premises;
- (m) the fact that part of the Term has elapsed at the Rent Review Date;
- (n) any rent free period, financial contribution, allowance or inducement whether in cash or kind, or other concession customarily or likely to be offered to tenants or prospective tenants; and
- (o) any temporary disturbance resulting from maintenance of any part of the Land or the Premises at any time carried out by the Lessor;

"Licensed Valuer" means a valuer who:

- (a) is a full member of the Australian Property Institute (Inc), Western Australian Division of not less than FIVE (5) years standing; and
- (b) has had not less than FIVE (5) years practical experience in Western Australia in the valuation of commercial property similar to the Premises;

"President" means the President or the person acting or deputising for the President for the time being of the Australian Property Institute (Inc), Western Australian Division;

"Previous CPI" means in respect of a Rent Review Date:

- (a) the Consumer Price Index number last published before:
 - (i) the immediately preceding Rent Review Date; or
 - (ii) if there is no preceding Rent Review date, the Date of Commencement ; or
- (b) if an actuary is appointed by the Lessor under clause 7.2, the number certified by that actuary;

"Rent Dispute Notice" means a notice given by the Lessee to the Lessor under clause 7.6 disputing the Rent stated in a Rent Review Notice;

"Rent Review Date" means each date specified in Item 7 of Schedule A; and

"Rent Review Notice" means a notice given by the Lessor to the Lessee under clause 7.4.

7.2 *Determination of Current or Previous CPI*

If:

- (a) in determining the Current CPI:
 - (i) the Consumer Price Index number is not published; or
 - (ii) in the opinion of the Lessor there is a material change in the basis of assessment of the Consumer Price Index; or
- (b) in determining the Previous CPI, no Consumer Price Index number was published within a period of FOUR (4) months prior to:
 - (i) the immediately preceding Rent Review Date; or
 - (ii) if there is no preceding Rent Review Date, the Date of Commencement;

the Lessor may appoint an actuary from the Fellows of the Institute of Actuaries of Australia to determine:

- (c) in respect of the Current CPI, an index number which reflects the prevailing levels of prices for the Perth Metropolitan area at that Rent Review Date; or
- (d) in the case of the Previous CPI, an index number which reflects the prevailing levels of prices for the Perth Metropolitan area at:
 - (i) the date of the immediately preceding Rent Review Date; or
 - (ii) if there is no preceding Rent Review Date, the Date of Commencement;

and

- (e) the actuary's certificate will be:
 - (i) final and binding on the Lessor and the Lessee; and
 - (ii) used to determine the Current CPI or the Previous CPI as appropriate; and
- (f) the Lessor and the Lessee must pay the actuary's costs and expenses in equal shares.

7.3 *Rent Review*

On each Rent Review Date the Rent, payable on a calendar year basis, with effect from that Rent Review Date will be reviewed so that it is the greater of:

- (a) the Current Market Rent;

- (b) the Rent for the month immediately preceding that Rent Review Date multiplied by TWELVE (12) and multiplied by Current CPI and divided by Previous CPI; and
- (c) the Rent payable for the month immediately preceding that Rent Review Date multiplied by TWELVE (12).

7.4 *Rent Review Notice*

The Lessor may at any time not earlier than THREE (3) months prior to each Rent Review Date by notice in writing to the Lessee review and fix the Rent calculated on an annual basis at:

- (a) the Rent payable for the month immediately preceding that Rent Review Date multiplied by TWELVE (12) and multiplied by the Current CPI divided by the Previous CPI; or
- (b) an amount which in the opinion of the Lessor is the Current Market Rent;

but failure to give a Rent Review Notice in respect of a Rent Review Date will not affect the right of the Lessor to give a Rent Review Notice at any time in respect of that Rent Review Date.

7.5 *Reviewed Rent payable from Rent Review Date*

The amount of the Rent stated in the Rent Review Notice is payable from the applicable Rent Review Date even if:

- (a) the Rent Review Notice was given after the applicable Rent Review Date; or
- (b) a Rent Dispute Notice is given;

but if the Rent Review Notice is given later than NINE (9) months after a Rent Review Date, the reviewed Rent will be payable from the date of service of that Rent Review Notice.

7.6 *Rent Dispute Notice*

If the Lessee on receiving a Rent Review Notice is of the opinion that the Rent stated in the Rent Review Notice as the Current Market Rent is not the Current Market Rent, the Lessee may by Rent Dispute Notice within TEN (10) Business Days of receiving a Rent Review Notice require the Current Market Rent to be determined by a Licensed Valuer.

7.7 *Determination by valuer*

- (a) If the parties cannot agree on a Licensed Valuer to determine the Current Market Rent, either the Lessor or the Lessee may request the President to appoint a Licensed Valuer for this purpose on terms that:

- (i) the Licensed Valuer will determine the Current Market Rent within TWENTY EIGHT (28) Business Days of the appointment; and
 - (ii) the Licensed Valuer determines the Current Market Rent of the Premises as at the relevant Rent Review Date and gives the Licensed Valuer's determination and the reason for it in writing to the Lessor and the Lessee.
- (b) The Licensed Valuer's determination is binding on the Lessor and the Lessee.

7.8 *Valuer appointed is expert not arbitrator*

A Licensed Valuer appointed by the President under clause 7.7 will act as an expert and not as an arbitrator.

7.9 *Rent determined different from that stated in Rent Review Notice*

On the amount of the Rent being agreed or determined:

- (a) the Lessor must refund to the Lessee any money which by reason of the agreement or determination constitutes an over payment of Rent together with Interest for that period; or
- (b) if the Rent as agreed or determined is higher than the Rent stated in the Rent Review Notice, the Lessee must immediately pay to the Lessor for the period from the applicable Rent Review Date to the date on which the reviewed Rent is paid the difference between the reviewed Rent and the amount stated in the Rent Review Notice together with Interest for that period.

7.10 *Payment of costs*

The Lessor and the Lessee must each pay one half of the Licensed Valuer's costs of determining the Current Market Rent.

8. NOT TO CAUSE RENT REDUCTION

The Lessee must not by any act or omission:

- (a) cause, directly or indirectly the Rent to be reduced; or
- (b) impose on the Lessor any liability of the Lessee under this Document except:
 - (i) if obliged to do so by any statute from time to time in force; or
 - (ii) with the consent of the Lessor.

9. OUTGOINGS

9.1 *Outgoings*

The Lessee must pay promptly all outgoings assessed, charged or incurred in respect of the Premises or in respect of any Service provided anywhere on the Premises or the Land, including but not limited to:

- (a) council rates and charges together with all rubbish removal rates and charges;
- (b) land tax (on a single ownership basis) and metropolitan regional improvement tax;
- (c) water consumption, drainage and sewerage rates including, but not limited to, meter rents, installation and service charges and charges for the disposal of stormwater;
- (d) telephone, electricity, gas and other power and light charges and expenses including, but not limited to:
 - (i) charges and assessments for use under assessments or meter readings;
 - (ii) meter rents; and
 - (iii) the cost of installation or replacement of any meter, wiring or other apparatus necessitated by the use of electricity, gas and other power;
- (e) any levy imposed on the Land or the Lessor or relating in any way to the supply or use of the Premises by any statutory, governmental or semi-governmental Authority;
- (f) levies and other charges of the Department of Fire and Emergency Services;
- (g) costs incurred by the Lessor in providing security for the Premises;
- (h) costs of cleaning, removing rubbish or removing graffiti;
- (i) costs of maintaining any garden, lawn or cultivated area;
- (j) any fees and costs charged by a consultant or managing agent for managing the Premises or providing management services in relation to the Premises on behalf of the Lessor including but without limitation postage and petties; and
- (k) any fees, costs, dues or other charges associated with the use or occupation by the Lessee of a boat pen, service wharf or any other service provided by the Lessor to the Lessee under the Jetties Regulations 1940.

9.2 *Bulk Supplies*

If the Lessor obtains from a supply authority and supplies the Lessee with the Lessee's requirements in respect of a Service:

- (a) the Lessee must pay to the Lessor in respect of the supply to the Lessee of the Service to the Premises the amount, calculated in the absence of the Lessee complying with the requirements of clauses 9.2(b) at the tariff or rate as determined from time to time by the Lessor, which the appropriate supply authority would require the Lessee to pay for that supply of Service if that supply authority had supplied that Service directly to the Lessee;
- (b) notwithstanding clause 9.2(a), the Lessee acknowledges that:
 - (i) unless the Lessee has specifically nominated by notice in writing to the Lessor a particular tariff or rate for the supply of electricity which would be available to the Lessee directly from the appropriate supply authority; and
 - (ii) there is a suitable meter installed in the Premises which will permit such a tariff or rate to be calculated and charged;

the Lessee will be charged, and must pay the Lessor, for the supply of electricity at the tariff or rate as determined from time to time by the Lessor, which the Lessee further acknowledges may not be the cheapest tariff or rate available for the direct supply of electricity to the Premises;

- (c) whilst the Lessor supplies a Service it may impose upon the Lessee the same conditions as the relevant supply authority from time to time imposes when or before supplying that Service to consumers at premises similar to the Premises and the Lessee shall at all times comply with those conditions;
- (d) the Lessor may render accounts for the supply of any Service from time to time and the Lessee must pay the amount of those accounts within FOURTEEN (14) days of each account being so rendered;
- (e) upon Termination, the Lessor may render an account up to the date of that termination and the amount shown to be owing by the Lessee shall be paid to the Lessor immediately;
- (f) if the Lessee fails to pay any account rendered by the Lessor within the time mentioned, the Lessor may without limiting any right or power of the Lessor in relation to the failure, terminate the supply of that Service to the Premises until that account is paid in full; and
- (g) the Lessor will not be responsible for any failure to provide the supply of a Service due to default of the relevant Authority or due to any other cause beyond the reasonable control of the Lessor

known or unknown except due to the Lessor's default or want of due care.

9.3 *Lessee's acknowledgements regarding electrical supply and embedded electricity generation*

The Lessee acknowledges and agrees that:

- (a) there is a supply point at the Boat Harbour for the electrical network operated by the responsible Authority ("Supply Point");
- (b) typically there is a single connection point at the Supply Point for connecting to the responsible Authority's electrical network ("Connection Point");
- (c) the Connection Point has a fixed capacity and the responsible Authority determines the total electrical supply and generation capacity available for use at the Boat Harbour;
- (d) the Department of Transport is responsible for managing the:
 - (i) distribution of the electricity and generation capacity from the Connection Point to the multiple premises at the Boat Harbour; and
 - (ii) allocation of the electricity and generation capacity between the multiple premises at the Boat Harbour,
("Common Electrical System");
- (e) the Lessee must strictly adhere to the Department of Transport's requirements regarding the use of the Common Electrical System and the electricity and generation capacity allocated by the Department of Transport for use by the Lessee at the Premises;
- (f) in particular the installation of any embedded electricity generator which requires an allocation of the generation capacity from the Common Electrical System including but without limitation solar photovoltaic (PV) rooftop panels, electric vehicle charging stations and battery storage systems ("Embedded Electricity Generator") at the Premises is restricted;
- (g) without limiting the Lessee's obligations under clause 14.1 relating to restrictions on alterations to the Premises, the Lessee must prior to installing any Embedded Electricity Generator at the Premises at the Lessee's cost supply to the Department of Transport for the Lessor's approval a completed Tenant Embedded Generation application form and or detailed plans and specifications of the proposed Embedded Electricity Generator as directed by the Department of Transport; and
- (h) if the Department of Transport determines the Lessee's proposed installation of an Embedded Electricity Generator at the Premises requires the upgrade of the bi-directional meter located at the

Supply Point the Lessee must pay the costs and expenses associated with the upgrade of that meter.

10. COSTS AND EXPENSES

10.1 *Definition*

In this clause:

"Legal Fees" means all amounts which are payable or have been paid by the Lessor to the Lessor's lawyer calculated on whichever of the following bases costs are determined as between the Lessor and the Lessor's lawyer:

- (a) as stated in a written agreement between the Lessor and the Lessor's lawyer; or
- (b) the maximum permitted scale for the work involved.

10.2 *Payment of costs*

- (a) The Lessee must pay to the Lessor all the costs, outgoings, fees, stamp and duties, Legal Fees and disbursements, and payments, which the Lessor pays or is liable to pay in connection with or incidental to:
 - (i) the instructions for and the preparation, execution, stamping, and any necessary registration, of this Document;
 - (ii) any inspection or report concerning the Premises;
 - (iii) the Money Payable;
 - (iv) any breach of the Lessee's Covenants;
 - (v) the exercise or purported or attempted exercise of the Lessor's Rights;
 - (vi) any work done at the request of the Lessee;
 - (vii) obtaining or attempting to obtain payment of the Money Payable; and
 - (viii) any action, suit or proceeding arising out of, concerned with, or incidental to:
 - (1) any of the matters referred to in subparagraphs (i) to (vii); or
 - (2) any other matter connected with, incidental to or arising out of this Document;

unless costs are awarded to the Lessee against the Lessor in that action, suit or proceeding;

if they are of a reasonable amount and have been reasonably incurred, which costs will be presumed to be:

- (ix) reasonably incurred if incurred with the express or implied approval of the Lessor;
 - (x) reasonable in amount if the amount is expressly or impliedly approved by the Lessor; and
 - (xi) reasonable in amount if calculated in terms of an agreed hourly rate as stated in a written agreement between the Lessor and its lawyers; and
- (b) the Lessee must pay, or if demand is made by the Lessor, must pay to the Lessor:
- (i) all filing and registration fees in connection with this Document;
 - (ii) all duty, fines and penalties payable under the Duties Act 2008, debits tax, and other statutory duties or taxes on or in respect of:
 - (1) this Document;
 - (2) the Money Payable;
 - (3) payment to, or receipt by, the Lessor of the Money Payable; and
 - (4) the debiting or crediting of the Lessor's bank account with the Money Payable; and
 - (iii) the Managing Agent's fee relating to the grant of this lease of the Premises to the Lessee and the processing of this Document.

11. INTEREST ON OVERDUE MONEY

Without affecting the rights, powers and remedies of the Lessor under this Document, the Lessee must pay to the Lessor on demand Interest on any Money Payable which is unpaid for SEVEN (7) days computed from the due date for payment until payment.

PART IV

MAINTENANCE AND ALTERATION TO PREMISES

12. LESSEE TO MAINTAIN PREMISES

12.1 General

- (a) The Lessee must maintain the Premises including but without limitation all structural parts of the Premises in safe, good order, repair and condition.
- (b) Without limiting the Lessee's obligations under clause 12.1(a), the Lessee must:
 - (i) prior to the first anniversary of the Date of Commencement develop a rust and corrosion prevention programme to minimise rust and corrosion occurring in all buildings and improvements constructed from time to time on the Premises;
 - (ii) during the Term implement and carry out the arrangements, practices and procedures contained in the Lessee's rust and corrosion prevention programme; and
 - (iii) on demand by the Lessor, provide to the Lessor a copy of the Lessee's rust and corrosion prevention programme and suitable evidence of the Lessee's implementation and carrying out of this programme.
- (c) The Lessee must replace all broken or damaged glass in the external doors, walls or windows of or to the Premises irrespective of the cause of breakage or damage.
- (d) The Lessee must maintain the internal and external appearance of the Premises including but not limited to external windows and garden areas in a proper and tidy manner, in keeping with the general presentation, design and decoration of the Land, using suitable, good quality materials of a colour and quality first approved by the Lessor in writing, which approval may not be unreasonably withheld.
- (e) The Lessee must replace any notice or sign on the Premises which the Lessor in its absolute discretion requires to be replaced.

12.2 Repair promptly

The Lessee must promptly at its own expense repair to the satisfaction of the Lessor any damage to the Premises.

12.3 Free from rubbish and remove graffiti

- (a) The Lessee must at all times keep the Premises clean and free from rubbish.
- (b) If any graffiti appears on the Premises, the Lessee must at the Lessee's cost:
 - (i) in the case of graffiti which is racist or obscene, remove that graffiti immediately the Lessee discovers or is notified of the appearance of that graffiti; and
 - (ii) in the case of any other graffiti, remove that graffiti within FORTY EIGHT (48) hours of that graffiti appearing.

12.4 Pest control

The Lessee must take reasonable precautions to keep the Premises free of animals, birds, insects and other pests and if required by the Lessor, at the cost of the Lessee employ from time to time pest exterminators approved by the Lessor.

12.5 Lessee must periodically test Smoke Alarms and RCDs

Without limiting the Lessee's obligations under clause 12.1(a), the Lessee must:

- (a) every SIX (6) months during the Term test all smoke alarms and RCDs in the Premises in accordance with AS/NZS 3760;
- (b) after each testing, promptly replace any smoke alarms or RCDs which are identified as not working or being defective;
- (c) keep and maintain a maintenance log book which records the testing of the smoke alarms and RCDs in the Premises; and
- (d) on demand by the Lessor, permit the Lessor to inspect the Lessee's maintenance log book which records the Lessee's testing of the smoke alarms and RCDs in the Premises.

13. FIXTURES FACILITIES AND PLANT AND EQUIPMENT IN THE PREMISES

13.1 Maintain

The Lessee must maintain all fixtures, Facilities and Plant and Equipment in the Premises in safe, good repair, order and condition and must promptly replace any damaged parts or items.

13.2 Replacements

If the Lessee is liable to replace any of the fixtures, the Facilities or the Plant and Equipment in the Premises, the Lessee must:

- (a) replace that fixture, Facility or Plant and Equipment with an item of similar quality, colour, and design; and
- (b) carry out the replacement to the reasonable satisfaction of the Lessor.

13.3 Facilities

The Lessee must keep the Facilities within the Premises unobstructed.

13.4 Service of airconditioning plant

The Lessee must enter into a contract with a reputable airconditioning service company for the maintenance and regular servicing of any airconditioning plant and equipment within the Premises.

14. ALTERATIONS

14.1 Restriction on alterations

The Lessee must not:

- (a) make any alteration or addition to or demolish any part of the Premises;
- (b) remove, alter or add to any fixtures, the Plant and Equipment or any Facility in the Premises;
- (c) make any increased demand on Services;

without the prior consent of the Lessor and subject to:

- (d) the requirements of any statute in force from time to time, the insurer of any of the Insured Risks and the Insurance Council of Australia; and
- (e) any condition reasonably imposed by the Lessor.

14.2 Consent to alterations

In giving consent to any alteration, the Lessor may impose any reasonable condition, including, but not limited to, a condition that:

- (a) the work be carried out in accordance with drawings or specifications approved by the Lessor; and
- (b) the Lessor requires the Lessee to carry out other work to or in the Premises as a consequence of the alteration, addition, demolition or installation requested by the Lessee.

14.3 Other work necessitated by alteration

If any other work is:

- (a) required by the Lessor as a condition of giving consent as mentioned in clause 14.1; or
- (b) necessary to comply with a statute for the time being in force or the requirement of an insurer of the Insured Risks or the Insurance Council of Australia;

the Lessee must at the option of the Lessor either:

- (c) carry out that other work; or
- (d) permit the Lessor to carry out that other work;

at the cost of the Lessee in accordance with any requirement imposed by the Lessor in respect of that other work.

14.4 *Asbestos and other harmful substances*

The Lessee must:

- (a) not install in the Premises:
 - (i) asbestos; or
 - (ii) any other material having the potential to harm the health or safety of persons in the Premises; and
- (b) at the Lessee's cost remove from the Premises and make good any damage caused by the removal of:
 - (i) asbestos; or
 - (ii) any other material having the potential to harm the health or safety of persons in the Premises.

PART V

USE OF PREMISES

15. USE OF THE PREMISES

15.1 *Purpose*

The Lessee must not use any part of the Premises for any purpose other than the purpose specified in Item 5 of Schedule A.

15.2 *No warranty as to use*

The Lessor gives no warranty as to the use to which the Premises may be put.

15.3 Premises subject to restrictions

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

15.4 Consent or authority needed

If any business carried on by the Lessee at the Premises is permissible only with consent, licence or authority under any statute, the Lessee must obtain that consent, licence or authority and comply with that statute.

15.5 Continuous and Active Use

The Lessee must during the Term and any subsequent extension actively and regularly use substantially the whole of the Premises for the purpose of carrying out the Lessee's business on a substantive basis and if the Lessee fails to do so for any period of SIXTY (60) consecutive days then the Lessor may on the expiry of the SIXTY (60) day period immediately terminate the Term.

15.6 Light Premises at night

The Lessee must ensure that at night the exterior of the Premises is adequately lit in accordance with the requirements of the Lessor from time to time.

15.7 Occupational Safety and Health Act 1984

- (a) The Lessee acknowledges and agrees that for the purposes of the Occupational Safety and Health Act 1984, the Lessee has control of the Premises.
- (b) Except to the extent caused by the Lessor, the Lessee releases and indemnifies and agrees to keep indemnified the Lessor from and against all Losses for or in respect of which the Lessor is or may become liable by reason of the Occupational Safety and Health Act 1984, in respect of the Premises or its use.

16. FLOOR OVERLOADING

The Lessee must not do any act or thing which might result in excessive stress or floor loading to any part of the Premises.

17. CHEMICALS AND INFLAMMABLE SUBSTANCES

The Lessee must not, except for reasonable quantities for normal applications in connection with:

- (a) the cleaning of the Premises or any equipment in the Premises; or
- (b) the purpose specified in Item 5 of Schedule A,

use or store any chemical or inflammable substance within the Premises provided however that if the Lessee uses or stores any chemical or inflammable substance permitted by this clause, the Lessee must do so strictly in compliance with all statutes from time to time in force relating to the use or storage of such chemicals or inflammable substances.

18. MISCELLANEOUS RESTRICTIONS ON USE

18.1 Infectious diseases

If any notifiable infectious disease occurs in the Premises, the Lessee must:

- (a) notify each proper public Authority; and
- (b) comply with each requirement of each proper public Authority.

18.2 Advertisements, signs or notices

- (a) The Lessee must not display from or affix to the Premises any advertisement, sign or notice without the prior, written consent of the Lessor which consent the Lessor may withhold in its absolute discretion and the Lessor's consent may be withheld if:

- (i) the Lessee does not submit scale plans and specifications of the proposed advertisement, sign or notice to the Lessor prior to displaying or affixing that advertisement, sign or notice; or
- (ii) the advertisement, sign or notice displayed or affixed does not conform exactly to the plans and specifications first approved of by the Lessor under this clause; and

the Lessor in its absolute discretion may at any time withdraw its consent to an advertisement, sign or notice in the event that the Lessee does not comply with a reasonable direction from the Lessor in respect of the condition, repair and maintenance of that advertisement, sign or notice and the Lessee must remove that advertisement sign or notice within SEVEN (7) days of being notified by the Lessor that the Lessor no longer consents to a certain advertisement, sign or notice.

18.3 Aerials and amplified noise

- (a) The Lessee must not:
 - (i) construct or place in or on the Premises any radio, television or telecommunications aerial or antenna; or
 - (ii) use any sound producing equipment so as to be audible on or from outside the Premises;

without the prior written consent of the Lessor or after that consent is withdrawn provided however that the Lessor may not unreasonably withhold its consent to an aerial or antenna less

than FOUR (4) metres in length which is required by the Lessee for carrying on the business it is permitted under this Document to carry on from the Premises.

- (b) The Lessor may at any time withdraw a consent given under this subclause if the Lessor reasonably so determines, having regard to the rights or interests of the Lessor and the owners and occupiers of nearby properties, in which case the Lessee must remove the equipment.

18.4 *Offensive activities*

The Lessee must not do or carry on in the Premises:

- (a) any harmful, offensive or illegal act, matter or thing; or
- (b) any act or thing which causes nuisance, damage, or disturbance to the Lessor or any owner, or occupier of nearby properties.

18.5 *Not Reside*

Except with the prior written consent of the Lessor, the Lessee must not reside or stay overnight or permit any person to reside or stay overnight in the Premises.

18.6 *No Touting*

The Lessee must not, without the Lessor's prior written consent which consent may be withheld or withdrawn at any time by the Lessor in the Lessor's absolute discretion, advertise, solicit or tout for business, or spruik, whether verbally or by use of any loud speakers, sound producing equipment, hoardings, written materials or any other aid in any area within a FIVE HUNDRED METRE (500m) radius of the Premises.

18.7 *Not Pollute*

The Lessee must do all things necessary to prevent and must not do or permit or suffer to be done anything likely to cause pollution or contamination of the Premises or the Land or the waters adjacent to the Land by garbage, refuse, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Premises and in particular but without limiting the generality of the Lessee's obligations under this clause, to collect and dispose of all garbage, refuse waste, solid and liquid, oil and other pollutants from the Premises at a place and in a manner required or approved by the Authorities having control over the disposal of waste matter and the protection of the environment and if contrary to the covenants by the Lessee contained in this clause any garbage, refuse, waste matter, oil or other pollutants escape from the Premises into the Land or the waters adjacent to the Land, but without prejudice to any other right or remedy of the Lessor, to clear the Premises, the Land and the waters adjacent to the Land thereof, and to otherwise minimise and neutralise the effect of the escape.

18.8 *No Animals or Birds*

The Lessee must not keep or permit to be kept any animal or bird on the Premises without the prior written approval of the Lessor.

18.9 *Use of Services*

The Lessee must not overload, damage, misuse or modify any of the Services.

19. ENTRY BY LESSOR

The Lessee must permit entry to the Premises by the Lessor:

19.1 *General*

(a) at all reasonable times on the Lessor giving to the Lessee reasonable notice; or

(b) on demand in the case of emergency;

with or without:

(c) workers and others; and

(d) plant, equipment and materials:

for the purposes mentioned in this clause;

19.2 *Inspect state of repair*

to inspect the state of repair of the Premises and to ensure compliance with the Lessee's Covenants;

19.3 *Carry out surveys*

to carry out surveys or works which the Lessor in its absolute discretion considers necessary to be carried out without being liable in any way to the Lessee for any compensation but provided that those surveys or works are carried out in a manner which causes the least possible inconvenience to the Lessee;

19.4 *Comply with Authorities*

to comply with any requirement, notification or order of an Authority having jurisdiction or authority over or in respect of the Premises for which the Lessor is liable under this Document; or

19.5 *Affix Notices*

to affix re-letting notices to the Premises during the last SIX (6) months of the Term.

PART VI

INSURANCE, INDEMNITIES AND EXTENT OF LIABILITY

20. INSURANCE

20.1 Public liability insurance

- (a) The Lessee must effect and maintain with a reputable insurance company in respect of the Premises adequate public liability insurance in the names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being in an amount not less than the Public Liability Insurance Amount in respect of any one claim or any higher amount required by the Lessor from time to time and unlimited in the aggregate but the Lessee acknowledges that it is the Lessee's sole responsibility to ensure that it holds adequate public liability insurance and that the Lessor is under no obligation during the Term to ensure that the Lessee is adequately covered.
- (b) The Lessee must ensure that the policy of insurance effected under this clause contains a provision for cross liability.
- (c) The Public Liability Insurance Amount shall be increased in respect of each FIVE (5) years of the Term by that percentage of the insured amount prior to the increase that is equal to the percentage increase in the Consumer Price Index for Perth (All Groups) as published by the Australian Bureau of Statistics between that current at the commencement of the FIVE (5) year period and that current on the last day of the FIVE (5) year period.

20.2 Insurance of Premises

The Lessee must insure and keep insured to the full insurable value on a replacement or reinstatement value basis all structures and improvements situated on the Premises in the names of the Lessor and the Lessee for their respective rights and interests for the time being and against the Insured Risks and such other risks as the Lessor may reasonably require.

20.3 Insurance of Lessee's Fixtures

The Lessee must insure and keep insured to the full insurable value on a replacement or reinstatement basis the Lessee's fixtures against such risks as the Lessor may reasonably require.

20.4 Workers' compensation insurance

The Lessee must effect and maintain a policy of employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or from the Premises.

20.5 Glass

The Lessee must effect and maintain with an insurance company a policy of insurance against all risks in respect of the glass in the doors, walls or windows of or to the Premises.

20.6 Supply details etc.

The Lessee must in respect of the insurance mentioned in this clause:

- (a) supply to the Lessor details;
- (b) produce each policy or certificate of insurance and each receipt for premiums or certificates of currency issued by an Insurance Company or insurance broker approved by the Lessor when required to do so by the Lessor;
- (c) ensure that each insurance conforms to the reasonable requirements from time to time of the Lessor of which the Lessee is given notice;
- (d) not alter the terms or conditions of any policy without the prior written approval of the Lessor; and
- (e) deliver promptly to the Lessor particulars of any alteration of the terms and conditions of each policy.

20.7 Not to invalidate insurance

The Lessee must not without the Lessor's prior approval do or omit to do any act or thing or bring or keep anything in the Premises:

- (a) which might render the insurance on the Premises void or voidable; or
- (b) which might cause the rate of premium to be increased.

21. LESSEE'S INDEMNITIES

21.1 Indemnities paramount

The obligation of the Lessee to indemnify the Lessor:

- (a) under this Document; or
- (b) by law;

is unaffected by the obligation of the Lessee to effect insurance and the obligation of the Lessee to indemnify is paramount.

21.2 Indemnity in respect of Lessor's expenses

To the extent permitted by law, the Lessee must on demand pay to the Lessor an amount equal to all money paid by the Lessor in respect of any liability of the Lessee under this Document.

21.3 *Lessee responsible as if owner*

The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.

21.4 *General indemnity*

The Lessee INDEMNIFIES the Lessor against all Losses for which the Lessor becomes liable in respect of loss or damage to property or death or injury of any nature or kind and however or wherever sustained:

- (a) caused or contributed to by the use or occupancy of the Premises except to the extent caused or contributed to by the act or omission of the Lessor;
- (b) resulting from an act or omission of the Lessee; or
- (c) resulting from a notice, claim or demand to pay, do or perform any act or thing to be paid, done or performed by the Lessee under this Document except to the extent that the Lessor is obliged under the provisions of this Document to pay for or contribute to that cost.

22. LESSEE'S OBLIGATIONS AT RISK AND EXPENSE OF LESSEE

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

23. LIMIT OF LESSOR'S LIABILITY

23.1 *Lessor not liable for failure to perform and observe Lessor's Covenants*

The Lessor will not be liable for any failure to perform or observe the Lessor's Covenants due to any reason beyond the direct control of the Lessor.

23.2 *Lessor not liable for loss, damage or injury*

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

23.3 *Lessor liable while vested or registered proprietor*

The Lessor is only liable for breaches of the Lessor's Covenants occurring while the Land is vested in that person or that person is the registered proprietor of the Land.

PART VII
MISCELLANEOUS COVENANTS BY LESSEE

24. REPORT TO LESSOR

The Lessee must report promptly to the Lessor in writing and in the case of emergency, verbally:

24.1 *Damage to or defect in Premises*

any material damage to or defect in the Premises, the Services in or serving the Premises, the fixtures, the Plant and Equipment or the Facilities in the Premises of which the Lessee is or ought to be aware;

24.2 *Circumstance likely to cause damage or danger*

any circumstance likely to:

- (a) be a danger; or
- (b) cause any damage or danger;

to the Premises or any person on the Land or in the Premises or to the Services in or serving the Premises of which the Lessee is aware.

25. NOT IMPEDE EXERCISE OF LESSOR'S RIGHTS

The Lessee must not impede the exercise of the Lessor's Rights.

26. COMPLIANCE WITH STATUTES

Notwithstanding anything to the contrary contained or implied in this Document, the Lessee must duly and punctually comply with, observe, carry out and conform to the requirements of all statutes from time to time in force relating to the Premises or the use of the Premises.

PART VIII
DEFAULT

27. DEFAULT BY LESSEE

27.1 *Events of Default*

An event of default occurs if:

- (a) any Rent or other moneys payable under this Document is unpaid for SEVEN (7) days after becoming due whether or not demand for payment has been made;

- (b) the Lessee is in breach of any of the Lessee's Covenants other than covenants to pay Rent or other Money Payable under this Document for FOURTEEN (14) days after notice has been given to the Lessee;
- (c) the Lessee admits in writing its inability to pay its debts;
- (d) a mortgagee takes possession of any property of the Lessee;
- (e) the Lessee is in breach of a provision of an instrument other than this Document giving the Lessee a right to occupy or use any part of the Land;
- (f) the Lessee is in breach of an obligation to pay to the Lessor such charges levied in accordance with the Jetties Regulations 1940 as have been incurred pursuant to clause 9.1(k) for the provision of any relevant services by the Lessor to the Lessee;
- (g) any execution is issued against the Lessee (whether being a corporation or person) and is not satisfied or withdrawn within THIRTY (30) days of issuance;
- (h) 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;
- (i) 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;
- (j) the Premises is abandoned, deserted or vacated (other than for purpose of normal vacation periods) or the Lessee is dispossessed of the Premises by process of Law; or
- (k) any Insolvency Event occurs in respect of the Lessee.

27.2 Lessor may retake possession

After an Event of Default has occurred and without any notice or demand, the Lessor may at any time enter the Premises, and on re-entry the Term will immediately determine but without:

- (a) affecting any of the Lessor's Rights; or
- (b) releasing the Lessee from liability in respect of the Lessee's Covenants.

27.3 Acceptance of Money Payable not to prejudice Lessor's Rights

Demand by the Lessor for, or acceptance of, Money Payable after an Event of Default has occurred will not:

- (a) affect the exercise by the Lessor of the Lessor's Rights; or
- (b) operate as an election by the Lessor either to exercise or not to exercise the Lessor's Rights.

27.4 Lessor may remedy Lessee's default

If the Lessee:

- (a) omits or neglects to pay any Money Payable; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants;

the Lessor may on each occasion without affecting any right, remedy or power arising from that default:

- (c)
 - (i) pay that Money Payable;
 - (ii) do or cease the doing of that thing; or
 - (iii) do both;

as if it were the Lessee; and

- (d) enter and remain on the Premises for that purpose;

and the Lessee must pay to the Lessor on demand the Lessor's cost of remedying each breach or default.

27.5 Exercise of Lessor's Rights

- (a) If the Lessor exercises the Lessor's Rights, it is presumed that the Lessor is entitled to exercise the Lessor's Rights unless the Lessee proves otherwise.
- (b) The Lessor may exercise the Lessor's Rights:
 - (i) without notice being required other than as provided in this Document; and
 - (ii) notwithstanding laches, neglect or previous waiver by the Lessor in respect of any breach of the Lessee's Covenants or the exercise of the Lessor's Rights.

27.6 Essential terms

Each of the Lessee's Covenants which are specified in:

- (a) clauses 6.1 ('Rent'), 6.3 ('Harbour Area Contribution') and 9 ('OUTGOINGS');
- (b) clauses 12.1 and 12.2 ('LESSEE TO MAINTAIN PREMISES' 'General' and 'Repair promptly');
- (c) clause 14 ('ALTERATIONS');
- (d) clause 15.1 ('USE OF PREMISES' 'Purpose');
- (e) clause 18.2 ('ADVERTISEMENTS, SIGNS OR NOTICES');

- (f) clause 20 ('INSURANCE');
- (g) clause 32 ('ASSIGNING, SUBLETTING AND CHARGING'); and
- (h) clause 54 ('BANK GUARANTEE OR CASH BOND');

are essential terms of this Document but this subclause does not mean or imply that there are no other essential terms in this Document.

27.7 Damages for breach of essential terms

In addition to any other remedy or entitlement of the Lessor including the right to terminate the estate granted by this Document:

- (a) the Lessee must compensate the Lessor in respect of any breach of an essential term;
- (b) the Lessor is entitled to recover damages from the Lessee in respect of such breaches; and
- (c) the Lessee COVENANTS with the Lessor, which covenant will survive the Termination or any deemed surrender at law of the estate granted by this Document, that if the Term is determined:
 - (i) for breach of an essential term by the acceptance by the Lessor of a repudiation of this Document by the Lessee; or
 - (ii) following the failure by the Lessee to comply with a notice given to the Lessee to remedy any default;

the Lessee must pay to the Lessor on demand the total of:

- (iii)
 - (1) the Rent then payable under this Document; and
 - (2) the Lessor's reasonable estimate of the outgoings which would have been payable by the Lessee;

for the unexpired balance of the Term if the Term had expired by effluxion of time; and

- (iv) Losses incurred or reasonably expected to be incurred by the Lessor as a result of that early determination including, but not limited to, all costs of reletting or attempting to relet the Premises;

less the rent and other money which the Lessor reasonably expects to obtain by reletting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; but the Lessor:

- (v) must take reasonable steps to mitigate its Losses and endeavour to relet the Premises at a reasonable rent and on reasonable terms; and

- (vi) is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Document.

27.8 Certificate to be conclusive

A certificate given to the Lessee by the Lessor of the amount of the Rent and outgoings under clause 27.7(c) will be conclusive as between the Parties except in the case of manifest error.

27.9 Separate suits

The Lessor may without prejudice to any other remedy, sue the Lessee for any Money Payable which may from time to time become due and owing by the Lessee to the Lessor and in particular, the Lessor may:

- (a) sue for any instalments of Rent and outgoings as and when those instalments become due; and
- (b) by a separate suit or suits sue for any further sum or sums which may be found to be due or owing by the Lessee to the Lessor on the completion of the calculations made at the end of each year of the Term; and

neither the institution of any suit nor the entering of judgment in any suit will bar the Lessor from bringing a separate or subsequent suit or suits for the balance of any Money Payable.

PART IX

HOLDING OVER AND TERMINATION

28. DESTRUCTION OR DAMAGE TO PREMISES

- (a) If the Premises or any part of the Premises are so destroyed or damaged as to require major rebuilding, the Lessee may within SIX (6) months of the destruction or damage terminate the Term with immediate effect by giving notice to the Lessor.
- (b) Unless the Lessee has terminated the Term, the Lessee must within SIX (6) months of the destruction or damage give notice to the Lessor advising it:
 - (i) whether or not the Lessee intends to rebuild; and
 - (ii) if the Lessee intends to rebuild, how long that rebuilding is estimated to take.
- (c) If the Premises are so destroyed or damaged so as to require major rebuilding and:
 - (i) the Lessee has given the Lessor notice under paragraph (b) that it does not intend to rebuild; or

- (ii) the Premises remain Unfit for Occupation for a period of at least SIX (6) months;

the Lessor may give the Lessee notice to terminate the Term with immediate effect but without affecting the rights of either Party in respect of any antecedent breach by the other Party of the provisions of this Document.

- (d) If the Lessee elects to rebuild the Premises, the Lessee must proceed promptly with that rebuilding in accordance with the reasonable requirements of the Lessor and all relevant Authorities and the Lessee must cause all moneys received under any insurance policy effected by the Lessee in relation to the Premises to be applied towards rebuilding the Premises and promptly make up any deficiency out of the Lessee's own money.
- (e) For the avoidance of any doubt, if the Premises are Unfit for Occupation the Moneys Payable will not abate or cease to be payable.
- (f) If the Lessee does not elect to rebuild and the Term is terminated under this clause any insurance moneys received under any insurance policy effected by the Lessee in relation to the Premises must first be applied towards removing all remaining buildings, improvements and debris from the Premises and making good in accordance with Clause 30.4(b).

29. HOLDING OVER

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to the Rent for the period immediately preceding the expiry of the Term increased by TEN PER CENT (10%) and otherwise on the same terms and conditions as this Document with the necessary modifications including but not limited to the exclusion of any option the Lessee has to renew the Term.

30. TERMINATION

30.1 *Restoration of the Premises on Termination*

Prior to Termination, unless the Lessor requires the Lessee to remove the buildings and improvements under clause 30.4, the Lessee at the Lessee's cost must restore:

- (a) the Premises;
- (b) the Facilities; and
- (c) the Plant and Equipment;

to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants, including but without limitation the Lessee's environmental covenants under clauses 18.7 and 50, fair wear and tear excepted.

30.2 *Yield up and surrender keys*

On Termination the Lessee must:

- (a) peaceably surrender and yield up to the Lessor the Premises in a condition consistent with observance and performance of the Lessee's Covenants; and
- (b) surrender to the Lessor all keys and security access devices providing access to or within the Premises held by the Lessee whether or not provided by the Lessor.

30.3 *Removal of Property and Fixtures from Premises*

Prior to Termination, the Lessee must remove from the Premises:

- (a) all property of the Lessee which is not a fixture; and
- (b) those fixtures which the Lessor requires the Lessee to remove; and

promptly make good to the satisfaction of the Lessor any damage caused by that removal.

30.4 *Removal of Buildings and Improvements*

The Lessee must:

- (a) if requested to do so by the Lessor at the Lessee's cost remove within ONE (1) month of Termination or such other greater period approved by the Lessor from the Premises all buildings and improvements constructed or situated thereon and all debris which the Lessor in its absolute discretion requires the Lessee to remove; and
- (b) promptly make good to the satisfaction of the Lessor any damage to the Premises caused by that removal.

31. PROPERTY AND FIXTURES NOT REMOVED AT TERMINATION

31.1 *Lessor may remove*

On re-entry the Lessor will have the right to remove any property of the Lessee and any fixtures which the Lessor has advised the Lessee must be removed from the Premises.

31.2 *Lessee to indemnify*

The Lessee INDEMNIFIES the Lessor against all damage caused by the removal of and the cost of storing that property and fixtures.

31.3 *Property may be sold*

All fixtures which the Lessor requires the Lessee to remove and property belonging to the Lessee not removed at Termination will, at the Lessor's

option become the absolute property of the Lessor and may be disposed of by the Lessor as the Lessor thinks fit.

31.4 Lessee to pay damages

In respect of any period until either:

- (a) the Lessor exercises an option under clause 31.3; or
- (b) the damage caused by the removal of the fixtures or property is made good;

whichever is the later, the Lessee must pay to the Lessor by way of damages an amount equal to the amount in respect of Rent and outgoings which would have been payable by the Lessee if the Lessee were Holding Over the Premises during that period.

PART X ASSIGNMENT

32. ASSIGNING, SUBLETTING AND CHARGING

32.1 No assignment without consent

The Lessee must not assign, mortgage or charge the leasehold estate in the Premises nor sublet, part with possession, or dispose, of the Premises or any part of the Premises without the consent of the Lessor and except under this clause.

32.2 Exclusion of the Property Law Act

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

32.3 Changes in beneficial ownership of shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the Corporations Act will be deemed to be an assignment of the leasehold estate created by this Document.

32.4 Consent to assignment

The Lessor may not unreasonably withhold its consent to an assignment of the leasehold estate created by this Document if:

- (a) the proposed assignee is a respectable and responsible person of good financial standing, the onus of satisfying the Lessor in respect of those criteria being on the Lessee;

- (b) all Money Payable then due or payable has been paid and there is no existing unremedied breach of the Lessee's Covenants;
- (c) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party prepared and completed by the Lessor's lawyers at the cost of the Lessee in all respects;
- (d) the assignment contains a covenant by the assignee with the Lessor to pay all Money Payable and to perform and observe all the Lessee's Covenants; and
- (e) the Lessee pays to the Lessor the amounts specified in clause 32.8.

32.5 Directors or shareholders must guarantee

If the assignee is a corporation the shares in which are not quoted on any stock exchange in Australia, if required by the Lessor it will be a term of the Lessor's consent to the deed of assignment that the directors or the substantial shareholders at the option of the Lessor of that corporation guarantee to the Lessor the observance and performance by the assignee of the Lessee's Covenants including payment of all Money Payable.

32.6 Covenants of assignee supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not in any way relieve or be deemed to relieve the Lessee from the Lessee's Covenants.

32.7 Consent to charge

If the Lessor consents to a charge, that consent will only be in a form prepared and completed by the Lessor's lawyers at the cost of the Lessee in all respects and the Lessee must on demand pay to the Lessor all reasonable legal, professional and other costs, charges and expenses on a full indemnity basis incurred by the Lessor in relation to providing its consent including but without limitation the Managing Agent's fee for processing and arranging the execution of any documentation.

32.8 Costs in respect of assigning

If the Lessee wishes to assign the leasehold estate created by this Document, the Lessee must pay to the Lessor:

- (a) all reasonable legal, professional and other costs, charges and expenses on a full indemnity basis incurred by the Lessor of and incidental to:
 - (i) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;

- (ii) the Managing Agent's fee relating to and for processing the assignment; and
- (iii) all other matters relating to the proposed assignment;

whether or not the assignment proceeds; and

- (b) if required by the Lessor, a sum nominated by the Lessor on account of the amounts mentioned in paragraph (a).

32.9 Subletting

If the Lessee wishes to sublet part of the Premises or permit an assignment or variation of a sublease:

- (a) the Lessor may not unreasonably withhold its consent in respect of a sublease or an assignment or variation of a sublease which is:
 - (i) prepared by the Lessor's lawyers;
 - (ii) not inconsistent in its terms with the covenants, terms, and conditions, of this Document;
 - (iii) to a respectable and responsible person of good financial standing, the onus of satisfying the Lessor of those criteria being on the Lessee;
 - (iv) for a use which is consistent with the uses of the Premises permitted under this Document and which use is approved of by the Lessor in its absolute discretion; and
 - (v) in the case of a variation of sublease, is a variation which is approved of by the Lessor in its absolute discretion;
- (b) the form of the sublease or assignment or variation of sublease will be subject to the written approval of the Lessor and must contain:
 - (i) a covenant prohibiting the sublessee from doing or allowing any act or thing in relation to the sublet premises inconsistent with the provisions of this Document;
 - (ii) a condition for re-entry by the sublessor on breach of any covenant by the sublessee; and
 - (iii) the same restrictions on assignment, subletting, charging or parting with possession of the sublet premises as appear in this Document; and
- (c) the Lessee pays to the Lessor the amounts specified in subclause 32.10.

32.10 Costs in respect of Subletting

If the Lessee wishes to sublease part of the Premises or assign or vary a sublease, the Lessee must pay to the Lessor:

- (a) all reasonable legal, professional and other costs, charges and expenses on a full indemnity basis incurred by the Lessor of and incidental to:
 - (i) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each sublessee or assignee;
 - (ii) the Managing Agent's fee for processing the sublease or assignment or variation of sublease; and
 - (iii) all other matters relating to the proposed sublease or assignment or variation of sublease;whether or not the sublease or assignment or variation of sublease proceeds; and
- (b) if required by the Lessor, a sum nominated by the Lessor on account of amounts mentioned in paragraph (a).

PART XI**MISCELLANEOUS****33. CONSENTS**

Unless this Document otherwise expressly provides or provides that the Lessor may not unreasonably withhold its consent, the Lessor may withhold consent to any matter requiring consent.

34. ACT BY AGENTS

All acts and things which the Lessor is required or empowered to do under this Document may be done by the Lessor or the lawyer, agent, contractor or employee of the Lessor.

35. LESSEE LIABLE FOR PERMITTED PERSONS

The Lessee is liable for the acts or omissions of Permitted Persons arising out of and in connection with the rights and obligations created by this Document.

36. NOTICE

36.1 *Definition*

In this clause "Notice" includes each notice, demand, consent or authority given or made to any person under this Document.

36.2 *Form and Service*

A Notice to a person:

- (a) must be in writing;
- (b) may in the case of a notice to the Lessee be given or made by:
 - (i) delivering it to the Lessee personally;
 - (ii) addressing it to the Lessee and leaving it at or posting it to:
 - (1) the Lessee's address for notices specified in Item 8 of Schedule A;
 - (2) the Lessee's usual or last known place of residence;
 - (3) if the Lessee is in business as a principal, the Lessee's usual or last known place of business;
 - (4) if the Lessee is a corporation, its registered office or principal place of business; or
 - (5) any other address nominated by the Lessee by notice to the Lessor; or
 - (iii) sending the Notice by email to the email address nominated by the Lessee by notice to the Lessor which as from the date of this Document until otherwise nominated is the address specified in Item 8 of Schedule A;
- (c) may, in the case of a notice to the Lessor, be given or made by:
 - (i) delivering it to the Lessor;
 - (ii) addressing it to the Lessor and leaving it at or posting it to:
 - (1) the Lessor's address for notices specified in Item 8 of Schedule A; or
 - (2) any other address nominated by the Lessor by notice to the Lessee; or
 - (iii) sending the Notice by email to the email address nominated by the Lessor by notice to the Lessee which as

from the date of this Document until otherwise nominated is the address specified in Item 8 of Schedule A;

- (d) will be deemed to be given or made:
- (i) if by personal delivery, when delivered;
 - (ii) if by leaving the Notice at an address specified in paragraph (b) or paragraph (c), when left at that address unless the time of leaving the Notice is:
 - (1) not on a Business Day; or
 - (2) after FIVE (5) o'clock in the afternoon on a Business Day;

when it will be deemed to be given or made on the next following Business Day;
 - (iii) if by post, on the second Business Day following the date of posting of the Notice to an address specified in paragraph (b) or paragraph (c); and
 - (iv) if by email, when sent by email to the email address specified in paragraph (b)(iii) or paragraph (c)(iii), unless the sender receives an automated message that the email has not been delivered or the time of sending is:
 - (1) not on a Business Day; or
 - (2) after FIVE (5) o'clock in the afternoon on a Business Day;

when it will be deemed to be given or made on the next following Business Day; and
- (e) may be signed:
- (i) if given by an individual, by the person giving the Notice;
 - (ii) if given by a corporation, by a director, secretary or manager of that corporation; or
 - (iii) by a lawyer or other agent of the person giving the Notice.

36.3 Conclusive evidence

- (a) A certificate signed by the Lessor that a Notice has been given or made in a manner specified in this clause is conclusive evidence of the fact that that Notice was given or made on the date and time stated.
- (b) Without limiting paragraph (a), if a Notice is given to or made on any person other than the Lessor by posting to an address specified in clause 36.2(b), a document signed by an officer of a post office or stamped with a post office stamp, acknowledging

receipt of the Notice for posting, is conclusive evidence of the fact that the Notice was posted on the date stated.

37. PROPER LAW

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

38. ARBITRATION

38.1 Dispute referred to single arbitrator

Except as otherwise provided, any dispute arising out of this Document is to be determined by a single arbitrator under the provisions of the Commercial Arbitration Act 2012 and the Lessor and Lessee may each be represented by a legal practitioner of their choice.

38.2 No abatement

The Lessee must pay the Money Payable without abatement or deduction until whichever is the earlier of:

- (a) the date of the award of the arbitrator; or
- (b) agreement between the parties;

when the Lessor will refund to the Lessee any money paid by the Lessee not required to be paid within the terms of the award of the arbitrator or the agreement between the Lessor and Lessee.

39. ACCRUAL ON DAILY BASIS

Money Payable accrues on a daily basis.

40. STATUTORY POWERS

The powers conferred on the Lessor by or under any statute for the time being in force are, except to the extent inconsistent with the terms and provisions expressed in this Document, in augmentation of the powers conferred on the Lessor by this Document.

41. MORATORIUM NOT TO APPLY

To the fullest extent permitted by law, the provisions of a statute which would, but for this clause:

- (a) extend or postpone the date of payment of money;
- (b) reduce the rate of interest; or
- (c) abrogate, nullify, postpone or otherwise affect any condition;

under this Document do not apply to limit or affect the terms of this Document.

42. SEVERANCE

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

43. WAIVERS

43.1 Failure or delay is not waiver

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

43.2 Partial exercise does not preclude further exercise

A single or partial exercise of any right, power or privilege does not preclude:

- (a) any other or further exercise of that right, power or privilege; or
- (b) the exercise of any other right, power or privilege.

44. VARIATION

This Document may be varied only by deed executed by the Parties.

45. FURTHER ASSURANCES

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

46. COUNTERPARTS

This Document may be executed in any number of counterparts each of which is an original and all of which constitute one and the same instrument.

47. PAYMENT OF MONEY

Any sum of money to be paid to the Lessor must be paid to the Lessor to the address directed by the Lessor by notice from time to time.

48. EFFECT OF EXECUTION

This Document is binding on each Party who executes it notwithstanding:

- (a) the failure of any other person named as a Party to execute it; or
- (b) the avoidance or unenforceability of any part of the Document.

49. CAVEATS

49.1 *Not lodge absolute caveat*

The Lessee must not lodge an absolute caveat over the Land to protect the interest of the Lessee under this Document.

49.2 *Withdraw caveat on Termination*

The Lessee must withdraw any caveat lodged by or on behalf of the Lessee over the Land on Termination.

49.3 *Appointment of Lessor as attorney to withdraw any caveat*

In consideration of the Lessor granting the Lessee's Rights, the Lessee IRREVOCABLY APPOINTS the Lessor and every officer of the Lessor as defined by the Corporations Act, to be the attorney of the Lessee, in the name and on behalf of the Lessee, and as the act and deed of the Lessee on Termination to sign and lodge at Landgate:

- (a) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (b) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (c) a surrender of the Lease granted by this Document;

and the Lessee:

- (d) undertakes to RATIFY all that the attorney does or causes to be done under or by virtue of this clause; and
- (e) INDEMNIFIES the Lessor in respect of:
 - (i) any loss arising from any act done under or by virtue of this clause; and
 - (ii) the Lessor's costs and expenses of and incidental to:
 - (1) the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land; and
 - (2) registering this Document in order to exercise the power of attorney contained in this clause.

49.4 *Registration*

- (a) The Lessor will prepare at least ONE (1) execution copy of this Document with Landgate cover sheets but if the Lessee wishes to register this Document at Landgate the Lessee is at the Lessee's cost and expense responsible for ensuring that:

- (i) the land description of the Premises and all other relevant details on the Landgate cover sheets are completed to Landgate's satisfaction;
 - (ii) the plan attached to this Document is in a format that is acceptable to Landgate;
 - (iii) this Document is executed in a manner that is acceptable to Landgate; and
 - (iv) this Document is accepted by Landgate for registration.
- (b) The Lessee must pay any registration and requisition fees payable to Landgate in relation to the registration of this Document.
 - (c) The Lessor agrees to do, at the Lessee's cost and expense, including but without limitation the Lessor's lawyers' legal fees, everything reasonably required by the Lessee to enable the Lessee to register this Document at Landgate.
 - (d) The Lessee must on Termination execute all documents and do all other acts, matters and things as the Lessor may reasonably require, and pay all costs and expenses incurred by the Lessor including but without limitation the Lessor's lawyers' legal fees, in order to effect the removal of the registration of this Document from the title for the Premises.

50. ENVIRONMENTAL COVENANT

50.1 Definition

In this clause:

"Authorisation" includes:

- (a) a consent, authorisation, registration, agreement, certificate, permission, licence, approval, authority or exemption from, by or with the Lessor or an Authority; or
- (b) in relation to anything which will be prohibited or restricted in whole or part by law if an Authority intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without that intervention or action;

under an Environmental Law;

"Contaminant" means any substance which renders the environment contaminated;

"Contaminated" has the meaning given to it under section 4 of the Contaminated Sites Act;

"Contaminated Sites Act" means the Contaminated Sites Act 2003 (WA);

"Environmental Law" means all Laws concerning the environment including the Environmental Protection Act 1986 (WA), the Rights in Water and Irrigation Act 1914(WA), the Contaminated Sites Act 2003 (WA), the Dangerous Goods Safety Act 2004 (WA), the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the National Greenhouse and Energy Reporting Act 2007 (Cth);

"Environmental Notice" means any notice, direction, order, demand or other requirement to take action or refrain from taking action from any Authority whether written or oral, in connection with any Environmental Law;

"Pollution" means anything that is 'pollution' within the meaning of that term as defined in the Environmental Protection Act 1986 (WA) that is not authorised under any Law; and

"Relevant Land" means the Premises and any land or water adjacent to or in the vicinity of the Premises and the air generally above the Premises, and includes an affected site within the meaning of that term as defined in the Contaminated Sites Act.

50.2 Environment

The Lessee must:

- (a) use the Premises in a manner which complies with each Environmental Law and each Authorisation that is required for any conduct, activity or use undertaken by the Lessee on the Premises;
- (b) ensure that each Authorisation of any conduct or activity in relation to the Premises is obtained before that conduct or activity and is kept in full force and effect;
- (c) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Premises or any conduct or activity in relation to the Premises;
- (d) give to the Lessor notice immediately on becoming aware of:
 - (i) the existence of a Contaminant or any Pollution affecting the Relevant Land which relates to or arises from the Lessee's use of the Premises and in relation to which it might reasonably be expected that a breach of any Environmental Law has occurred and a clean up may reasonably be expected to be required; or
 - (ii) the filing of a complaint or the commencement of proceedings or the serving of an Environmental Notice against the Lessee in relation to an alleged failure to observe or perform obligations under an Environmental Law or Authorisation;
- (e) provide to the Lessor on demand:

- (i) an environmental assessment report on the effect of any Environmental Law or Authorisation applicable to the Premises or on the effect of any conduct or activity on the Premises or on the environmental condition of the Premises or on the existence of any Contaminant or Pollution on the Premises, whether known or suspected, prepared by an expert nominated by the Lessor at the expense of the Lessee; and
 - (ii) copies of all Authorisations relating to the Premises;
- within a reasonable time after receipt by the Lessee of that request;
- (f) on receiving any Environmental Notice or on demand by the Lessor at the Lessee's cost, clean up and remove:
 - (i) any Contaminant or Pollution from the Premises; and
 - (ii) any Contaminant or Pollution which escapes from the Premises onto the Land and the waters adjacent to the Land,

in accordance with all statutory requirements and to the Lessor's complete satisfaction and make good any damage caused by that clean up or removal; and
 - (g) in the event that the Lessee fails to comply with its obligations under this clause 50 within:
 - (i) the period specified or required under any Environmental Notice or Environmental Law; or
 - (ii) a reasonable period stated in a notice from the Lessor,

then in addition to other remedies available to the Lessor under this Document, the Lessor may take such action as is necessary to remedy the non-compliance and any costs incurred by the Lessor will be a debt due and payable on demand by the Lessee.

51. DEVELOPMENT OF COMMON AREAS

51.1 Definitions

In this clause:

"Common Areas" means those parts of the Land from time to time set aside by the Lessor as:

- (a) areas open to the public;
- (b) for common use by a lessee, licensee or other person having the right to occupy any part of the Land; or
- (c) for common amenity or convenience.

51.2 Lessor may develop Common Areas

The Lessor may at any time during the Term carry out any works to the Common Areas where the purpose of those works is to improve the amenity of the Common Areas or any part of the Land.

51.3 Exclusion of Lessor's Liability

The exercise by the Lessor of its rights under clause 51.2 will not constitute a breach of the Lessee's right of quiet enjoyment or entitle the Lessee to bring any claim against the Lessor for any Losses which the Lessee may suffer as a result of the works being carried out, including but without limitation a claim against the Lessor for private nuisance.

52. OPTION TO RENEW

If:

- (a) the Lessee at least THREE (3) months but not earlier than SIX (6) months prior to the date for commencement of the Further Term gives the Lessor notice to grant the Further Term ("Renewal Notice");
- (b) the Lessee has from the Date of Commencement up to the date of service of the Renewal Notice actively and appropriately used the Premises for the purpose specified in Item 5 of Schedule A to the Lessor's reasonable satisfaction;
- (c) there is no subsisting default by the Lessee at the date of service of the Renewal Notice and at the date for commencement of the Further Term in:
 - (i) the payment of the Money Payable; or
 - (ii) the performance or observance of the Lessee's Covenants; and
- (d) the Lessee is not holding over under clause 29;

the Lessor must grant to the Lessee the Further Term at the Rent and on the terms and conditions of this Document.

53. VARIATION OF STANDARD PROVISIONS

Notwithstanding any other provision contained in this Document, this Document is varied in the manner specified in Schedule B.

54. BANK GUARANTEE OR CASH BOND

54.1 Definitions

In this clause:

"Bank Guarantee" means a guarantee in favour of the Lessor issued by an Australian trading bank in a form acceptable to the Lessor;

"Cash Bond" means a bank cheque made payable to the Lessor; and

"Sum" means the amount specified in Item 14 of Schedule A.

54.2 Lessee to give bank guarantee or cash bond

- (a) The Lessee must on execution of this Document, deliver to the Lessor a Bank Guarantee or a Cash Bond for an amount equal to the Sum.
- (b) If the Lessee:
 - (i) fails to pay any Money Payable; or
 - (ii) fails to observe and perform the Lessee's Covenants;the Lessor may demand that the bank giving the Bank Guarantee pay to the Lessor, or the Lessor may draw on the Cash Bond, the amount which in the opinion of the Lessor is due to the Lessor as a result of an Event of Default but not more than an amount equal to the Sum.
- (c) The liability of the Lessee to the Lessor under this Document is not limited to the amount of the Sum.
- (d) A demand made does not in any way constitute a waiver by the Lessor of any Event of Default and does not affect any other right of the Lessor arising from that Event of Default.
- (e) If at any time any part of the Bank Guarantee is demanded by the Lessor or any part of the Cash Bond is drawn on by the Lessor, the Lessee must within FOURTEEN (14) days of demand by the Lessor deliver to the Lessor a further Bank Guarantee or Cash Bond for the amount demanded or drawn, in order to reinstate the amount of the Bank Guarantee or the Cash Bond to an amount at least equal to the Sum.
- (f) The amount of the Sum is to be reviewed by the Lessor in respect of each THREE (3) years of the Term and in carrying out that review the Lessor is to take into account that:
 - (i) inflation has affected the real value of the Sum; and
 - (ii) Rent and outgoings payable under this Document have increased.
- (g) On any increase of the Sum, the Lessee must, within FOURTEEN (14) days from the date of demand by the Lessor, deliver to the Lessor a further Bank Guarantee or Cash Bond for an amount necessary to then bring it to the amount of the Sum.
- (h) The Lessee is not entitled to offset the Bank Guarantee or the Cash Bond against any obligation of the Lessee under this Document.

- (i) If the Lessee complies with the Lessee's Covenants, the Lessor must return to the Lessee the Bank Guarantee or the Cash Bond at the expiry of THREE (3) months after Termination.

55. PPSA

55.1 The Lessor's Personal Property

For the purposes of this clause 55:

- (a) "the Lessor's Personal Property" means all personal property the subject of a security interest granted under this Document;
- (b) "PPSA" means the Personal Property Securities Act (2009) (Cth);
- (c) "PPS Law" means the PPSA and any amendments made at any time to the Corporations Act or any legislation as a consequence of the PPSA; and
- (d) words and phrases used in this clause 55 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

55.2 Further assurance

If the Lessor determines that this Document (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Lessee agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lessor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Lessor to apply for any registration, complete any financing statement or give any notification in connection with the security interest ; and
- (c) enabling the Lessor to exercise rights in connection with the security interest.

55.3 No requirement for PPSA notices

The Lessor need not give any notice under the PPSA (including notice of a verification statement) unless the obligation to give the notice under the PPSA is required by the PPSA to be given and cannot be excluded.

55.4 Negative undertakings

The Lessee must not:

- (a) create any security interest or lien over any of the Lessor's Personal Property whatsoever (other than security interests granted in favour of the Lessor);

- (b) sell, lease or dispose of its interest in the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person except where the Lessor expressly authorises it to do so; or
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset that is not part of the Premises.

55.5 *Costs and expenses*

Everything the Lessee is required to do under this clause 55 is at the Lessee's expense.

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SCHEDULE A

1. Premises:

, comprising an area of approximately SQUARE METRES (m²) as shown for the purpose of identification only as the area hatched in black on the plan attached to this Document and marked Annexure "A".

2. Land:

All the land and the seabed comprised in together with all buildings and improvements from time to time erected thereon and being known as

3. Term:

commencing on the Date of Commencement.

4. Date of Commencement:

The date being the later of:

- (a) ;
- (b) The first day of the month immediately following the month during which this Document is executed by the Lessor.

5. Purpose:

6. Rent:

From the Date of Commencement until varied the rent is DOLLARS (\$) per annum plus GST payable by quarterly instalments in advance of DOLLARS (\$) plus GST on the first day of , and of each year of the Term.

7. Rent Review Dates:

Every third anniversary of the Date of Commencement during the Term and any period of Holding Over.

8. Address for Notices:

- (a) Lessee:

Lessee's address:

Lessee's telephone no:

Lessee's email:

(b) Lessor:

Lessor's address: 5 Newman Court, Fremantle WA 6160
Attention: Director, Coastal Facilities
Management of the Department of
Transport

Lessor's telephone no: (08) 9435 7646

Lessor's email: .

9. Rate of Interest:

FOUR PER CENT (4%) above the Westpac Indicator Lending Rate published by Westpac from time to time or, if that Rate is suspended or discontinued, the Rate substituted for it by Westpac or if Westpac does not have an appropriate rate the method of calculation of the Rate will be determined by the President for the time being of the Law Society of Western Australia.

10. Public Liability Insurance Amount:

TWENTY MILLION DOLLARS (\$20,000,000.00).

11. Management Fee:

The greater of:

(a) FOUR PER CENT (4%) per annum of all amounts billed to the Lessee by the Lessor or its Managing Agent and payable by the Lessee in accordance with this Document; or

(b) FIVE HUNDRED DOLLARS (\$500.00) per annum plus GST;

payable by quarterly instalments in advance on the first days of July, October, January and April of each year of the Term.

12. Harbour Area Contribution:

From the Date of Commencement until varied, the Harbour Area Contribution is the greater of:

(a) SIXTY CENTS (\$0.60) plus GST per square metre of the area of the Premises per annum to a maximum of FIVE THOUSAND DOLLARS (\$5,000.00) per annum plus GST; or

(b) FIVE HUNDRED DOLLARS (\$500.00) per annum plus GST;

payable by quarterly instalments in advance on the first days of July, October, January and April of each year of the Term.

13. Further Term:

commencing on and expiring on .

14. Sum:

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SCHEDULE B

VARIATION TO STANDARD LEASE PROVISIONS

There are no variations to this Document.

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EXECUTED AS A DEED.

SIGNED by)
PETER WORONZOW, DIRECTOR)
GENERAL IN THE DEPARTMENT OF)
TRANSPORT of the State of Western)
Australia as the delegate of **THE MINISTER**)
FOR TRANSPORT in the presence of:)

.....
PETER WORONZOW

.....
Signature of witness

.....
Name of witness in full (print)

.....
Address

.....
Occupation

EXECUTED by)
(ACN) in accordance with Section)
127(1) of the Corporations Act by authority)
of the Directors:)

.....
Signature Director

.....
*Signature Director/Secretary**

.....
Print full name of signatory

.....
Print full name of signatory

* Delete if not applicable

