
Depot Headlease

[Name of Landlord]

Transport for NSW on behalf of the State of New South Wales

[Note: Subject to further consideration to address issues in respect of ZEB]

Reference Schedule

1 Landlord

[insert Operator name]

2 Tenant

Transport for NSW, a corporation constituted under the Transport Administration Act 1988 (NSW) on behalf of the State of New South Wales (TfNSW) of 231 Elizabeth Street New South Wales 2000

3 Land (Clause 1.1)

[insert]

4 Premises (Clause 1.1)

[insert]

5 Term (Clause 2.1)

[insert but note that the Term cannot exceed 2 years (clause 22.6(c)(ii)(B)(III) of the Services Contract]

6 Commencement Date

[insert]

7 Termination Date

[insert]

8 Further Term (Clauses 1.1 and 2.2)

[insert but note that the Term and Further Term cannot together exceed 2 years]

9 Rent (Clauses 1.1 and 3)

\$(insert) (GST exclusive) in the first year and then annually reviewed in accordance with 10.

10 Review Dates (Clauses 3.3, 3.4 and 3.5)

CPI Review: [insert]

Fixed Review: [insert]

Fixed Percentage: [insert]

Market Review: [insert]

11 Permitted Use (Clause 1.1)

Use as a bus depot including the ability to use the premises as commercial offices associated with a bus depot and to clean, service, refuel and maintain buses and other modes of transport and any other lawful use.

12 Public Risk Insurance (Clause 7.3)

\$[X]

13 Right of First Refusal (Clause 12)

Clause 12 applies.

14 Rent Review – Maximum and Minimum Levels (Clause 3.7(a))

Maximum - [insert]%

Minimum - [insert]%

15 Market Review – Maximum and Minimum Levels (Clause 3.7(b))

Maximum - [insert]%

Minimum - [insert]%

16 Notices (Clause 14.1)

Tenant: Transport for NSW

address 231 Elizabeth Street Sydney, New South Wales 2000

fax [insert]

email [insert]

Landlord: [insert]

address [insert]

phone [insert]

fax [insert]

email [insert]

1 Interpretation

1.1 Definitions

The following definitions together with those in the Schedule apply unless the context requires otherwise.

- (a) **Australian Institute** means the State division of the Australian Property Institute;
- (b) **Authorised Officer** means:
 - (i) in respect of the Tenant, any agent or person acting for the Tenant whose title includes the word “manager”, and a solicitor nominated by the Tenant acting on behalf of the Tenant; and
 - (ii) in respect of the Landlord, any director or secretary, and a solicitor nominated by the Landlord acting on behalf of the Landlord;
- (c) **Authority** includes:
 - (i) (government) any government in any jurisdiction, whether federal, state, territorial or local;
 - (ii) (public utility) any provider of public utility services, whether statutory or not; and
 - (iii) (other body) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited);
- (d) **Building** means the improvements erected on the Land from time to time;
- (e) **Business Day** means any day except Saturday or Sunday or a day that is a public holiday in New South Wales;
- (f) **Claim** includes any claim, order, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;
- (g) **Commencement Date** means the Commencement Date referred to in Item 6;
- (h) **Consent** means prior written consent;
- (i) **Contamination** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:
 - (i) a presence that presents a risk of harm to human health or any other aspect of the Environment; or
 - (ii) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica,

and the word 'Contaminant' has the corresponding meaning;

- (j) **Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid but excluding loss of profits and economic loss), including where appropriate all Rates and all legal fees;
- (k) **CPI Review** means review in accordance with clause 3.3;
- (l) **Date of Termination** means:
 - (i) the Termination Date;
 - (ii) any earlier date on which this lease is determined; or
 - (iii) the end of any period of holding over under clause 2.3, being the Date which the Tenant is required to vacate the Premises;
- (m) **Environment** means components of the earth, including:
 - (i) land, air and water;
 - (ii) any layer of the atmosphere;
 - (iii) any organic or inorganic matter and any living organism; and
 - (iv) human-made or modified structures and areas,and includes interacting natural ecosystems that include components referred to in paragraphs (i) to (iii).
- (n) **Event of Default** means any event referred to in clause 10.1;
- (o) **Fixed Review** means review in accordance with clause 3.4;
- (p) **Further Term** means the further term (if any) referred to in Item 8;
- (q) **Index Number** means:
 - (i) (Consumer Price Index) the Consumer Price Index for the capital city of the State All Groups number published from time to time by the Australian Bureau of Statistics;
 - (ii) (other cost of living index) if the system or practice of the determination of the State's Consumer Price Index ceases, the index published by the Australian Bureau of Statistics which reflects changes in the cost of living in the State's capital city at the date of this Lease and at the time of variation of the Rent is determined by;
 - (iii) agreement between the parties; or
 - (iv) if the parties are unable to agree, the President of the Australian Institute, or by some person nominated by him, whose decision is conclusive and binding;
- (r) **Item** means an item in the Schedule;

- (s) **Land** means the land specified in Item 3 and includes the subsoil;
- (t) **Landlord** means the party specified in Item 0;
- (u) **Landlord's Employees** includes employees, agents, contractors, consultants, customers, workmen, invitees, clients and visitors of the Landlord and others who may at any time be on the Premises whether with or without invitation;
- (v) **Landlord's Fixtures** includes:
 - (i) (general) all plant and equipment (mechanical and otherwise), fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings from time to time in the Premises or any part of them and owned or supplied by the Landlord; and
 - (ii) (fire fighting) all, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land;
- (w) **Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise;
- (x) **Lease Year** means every 12 month period commencing on and from the Commencement Date;
- (y) **Market Review** means review in accordance with clause 3.5 and (if applicable) clause 3.6;
- (z) **Permitted Use** means the use entitled to be carried on in the Premises specified in Item 11;
- (aa) **Premises** means the Land and the Building;
- (bb) **Proposed Work** means any proposed major structural alteration to the Premises;
- (cc) **Rates** means:
 - (i) (council rates) all charges payable to an Authority:
 - (A) relating to the Premises;
 - (B) for any Services of the type from time to time provided by the local government Authority for the locality in which the Premises are situated; and
 - (C) for waste and general garbage removal from the Premises (including any excess); and
 - (ii) (water rates) all charges payable to an Authority:
 - (A) relating to the Premises; and
 - (B) for the provision, reticulation or discharge of water, sewerage or drainage (including water and sewerage usage charges and meter rents);

- (dd) **Relocation Expenses** means the Tenant's costs of:
- (i) vacating the Premises during the Term;
 - (ii) obtaining alternative accommodation excluding rent except to the extent that rent for the alternative accommodation exceeds Rent under this Lease;
 - (iii) the installation and establishment of the Tenant in alternative accommodation including the cost of a standard office fitout after deduction of any amount received by the Tenant from any party towards the cost of the fitout or as an incentive to lease; and
 - (iv) if applicable, the return and re-establishment of the Tenant in the Premises when it is again fit for the Tenant to occupy and use;
- (ee) **Rent** means the rent specified in Item 9 as varied from time to time in accordance with this Lease;
- (ff) **Report** means the environmental report on the condition of the Land if obtained by the Tenant under clause 13.1;
- (gg) **Requirement** includes any requirement, notice, direction, recommendation, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise, and regardless of to whom it is addressed or directed;
- (hh) **Review Date** means each of the dates specified in Item 10;
- (ii) **Schedule** means the Reference Schedule at the start of this Lease;
- (jj) **Schedule of Tenant's Fittings** means the schedule so called at the end of this Lease;
- (kk) **Services** means all services from time to time provided to the Premises or available for use at the Premises, and means those of the following which are part of the Premises on the Commencement Date, namely:
- (i) lighting, gas, fuel, power, water, sewerage, and drainage; or
 - (ii) fittings, fixtures, appliances, plant and equipment utilised for any of these Services;
- (ll) **Site Change** means any substantial permanent change to:
- (i) the access to the Land; or
 - (ii) the ability for the Tenant to use the Land effectively for the Permitted Use and the Tenant's Business;
- (mm) **State** means NSW;
- (nn) **Structure** in relation to the Building includes all walls (whether load-bearing or not), floors, doors, windows, gutters, downpipes, facades, foundations, ceilings and roofs and "structural" has a corresponding meaning;

- (oo) **Sublease** means any sublease granted by the Tenant to a sublessee of the Premises or part of the Premises;
- (pp) **Tenant** means the party specified in Item 2;
- (qq) **Tenant's Business** means the business carried out by the Tenant on the Premises;
- (rr) **Tenant's Employees** means the employees agents, contractors or consultants of the Tenant;
- (ss) **Tenant's Fittings** includes corporate identification and signage and all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (excluding stock-in-trade) which are not owned by the Landlord and at any time are in the Premises including the items specified in the Schedule of Tenant's Fittings;
- (tt) **Term** means the term of the Lease specified in Item 5;
- (uu) **Termination Date** means the terminating date specified in Item 7;
- (vv) **Umpire** means a person who:
 - (i) is at the relevant time a Valuer;
 - (ii) is appointed under clause 3.6(g)(ii);
 - (iii) accepts their appointment in writing; and
 - (iv) undertakes to hand down their determination within 28 days after being instructed to proceed; and
- (ww) **Valuer** means a person who:
 - (i) is at least an associate member of the Australian Institute and has been for the last 5 years;
 - (ii) is active in the relevant market at the time of his or her appointment and has made at least 7 valuations of vehicle depot premises in the 24 months prior to his or her appointment;
 - (iii) has at least 5 years' experience in valuing premises of the kind leased under this Lease; and
 - (iv) undertakes to act promptly.

1.2 General

- (a) Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) Where a word or phrase is defined its other grammatical forms have a corresponding meaning.

- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) "Clause", "Sub-Clause", "Paragraph", "Sub-Paragraph, or "Schedule" refers to this Lease and "Item" refers to the Schedule.
- (g) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (h) A reference to a right or obligation of any 2 or more parties to this Lease confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (i) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (j) A reference to legislation or to a provision of legislation includes a modification, re- enactment of or substitution for it and a regulation or statutory instrument issued under it.
- (k) A reference to "dollars" or "\$" is to Australian currency.
- (l) Each schedule of, annexure to or, exhibit relating to this Lease forms part of it.
- (m) A reference to conduct includes any act, omission, statement or undertaking, whether or not in writing.
- (n) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (o) "Substantial" means not merely nominal.
- (p) Unless stated otherwise, one word or provision does not limit the effect of another.
- (q) Reference to the whole includes part.
- (r) All obligations are taken to be required to be performed duly and punctually.
- (s) Words importing do, include do, permit or omit, or cause to be done or omitted.
- (t) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as the person, body or Authority to which reference was originally made.
- (u) Any reference to the President of a body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the body or Authority or any other person fulfilling the duties of President.
- (v) Unless the context otherwise requires, where the Landlord has a discretion or its consent or approval is required for anything the Landlord must not unreasonably withhold or delay its decision, consent or approval.

- (w) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (x) Month means calendar month.
- (y) Subject to clause 1.2(z) every obligation under this Lease:
 - (i) regardless of the form or context of the wording, is a covenant by the party undertaking that obligation; and
 - (ii) continues throughout the Term and any holding over period and after that so far as the obligation remains to be observed or performed.
- (z) The covenants on the part of the Landlord include the person from time to time immediately entitled to the Premises at the end of this Lease.
- (aa) Words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this Lease.

1.3 Exclusion of provisions

To the extent permitted by Law the covenants, powers and provisions implied in leases by virtue of any Law are expressly negated.

2 Term

2.1 Term of Lease

The Landlord leases the Premises to the Tenant for the Term.

2.2 Option of renewal

- (a) If a Further Term is specified in Item 8 the lease will be automatically extended by the Further Term, unless the Tenant notifies in writing to the Landlord in writing not less than 1 month before the Termination Date that it does not wish to extend the lease.
- (b) The Landlord must, not less than 6 months, and then again not less than 3 months before the Termination Date, notify the Tenant of the upcoming Termination Date.
- (c) That further lease will be on the same conditions as this Lease except that:
 - (i) the term to be specified in Item 5 of the further lease will be that specified in Item 8;
 - (ii) the date to be specified in Item 6 of the further lease will be the day after the Termination Date;
 - (iii) the date to be specified in Item 7 of the further lease will be the last day of the term specified in Item 8 after the date of the commencement of the further lease;
 - (iv) the amount of rent to be specified in Item 9 of the further lease will be determined as specified in Item 10;

- (v) the number of Further Terms specified in Item 8 will be reduced by 1 from the number specified in Item 8 of this Lease; and
- (vi) if in any further lease the number of Further Terms specified in Item 8 would by the operation of clause 2.2(c)(v) be zero, then this clause 2.2 will not be included in that further lease so that the last further lease will end on the date specified in Item 8 of this Lease.

2.3 Holding over

If the Landlord does not inform the Tenant in writing prior to the expiration of the Term of the Landlord's refusal to the Tenant continuing to occupy the Premises beyond the Termination Date (otherwise than under a further lease) then:

- (a) the Tenant does so as a monthly tenant and must pay Rent:
 - (i) monthly on the first day of each month; and
 - (ii) equal to one-twelfth of the annual rate of the Rent payable immediately prior to the Termination Date; and
- (b) the monthly tenancy is determinable at any time by either the Landlord or the Tenant by 1 months' notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease.

3 Rent

3.1 Payment of Rent

- (a) The Tenant must pay the Rent to the Landlord by monthly instalments in advance:
 - (i) upon receipt by the Tenant from the Landlord of a tax invoice; or
 - (ii) on the Commencement Date and the corresponding day of each month after the Commencement Date;whichever is the later.
- (b) The provisions of this clause 3.1(b) only apply if the Tenant notifies the Landlord that the Tenant wishes to automate the payment of the Rent and, upon such notification, the following provisions apply to this Lease:
 - (i) the Tenant must pay the Rent to the Landlord by monthly instalments in advance on the Commencement Date and the corresponding day of each month after the Commencement Date;
 - (ii) the Landlord must serve on the Tenant a written notice of any change in the Rent under this Lease prior to every Review Date; and
 - (iii) the Tenant and Landlord agree that the Lease is a Tax Invoice in respect of the Rent for the purposes of subsection 29-70(1) of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

3.2 Payment of instalments

The first instalment of Rent must be paid on the Commencement Date. All instalments must be paid to a place in Australia and in the manner reasonably determined by the Landlord from time to time (including by way of electronic funds transfer to a bank account nominated by the Landlord).

3.3 CPI Review

On each Review Date for which a CPI Review is specified in Item 10, the Rent will be varied in accordance with the following formula (subject to clause 3.7):

$$R = \frac{A \times B}{C}$$

Where:

R = the Rent payable for the following Lease Year;

A = the Rent payable during the Lease Year just ended;

B = the Index Number last published before the end of the Lease Year just ended; and

C = the Index Number last published before the commencement of the Lease Year just ended.

3.4 Fixed Review

On each Review Date for which a Fixed Review is specified in Item 10, the Rent will be increased by the percentage specified in Item 10 for that Fixed Review:

3.5 Market review of Rent

- (a) If either party wishes to review the Rent at a Review Date (**relevant Review Date**) for which a Market Review is specified in Item 10, then this clause 3.5 and clause 3.6 apply.
- (b) Not earlier than 3 months before and not later than 3 months after the relevant Review Date (time of the essence) (**Notification Period**) a party (**first party**) may notify the other of the first party's assessment of the current market rent for the Premises. This assessment must take into account the criteria contained in clause 3.6(h), which apply at the relevant Review Date.

3.6 Tenant's dispute of Rent

- (a) If the parties do not agree with one party's assessment of the current market rent and the parties are unable to agree on the current market rent to apply from a particular Review Date, then the following procedure applies.
- (b) A party must within 60 days of being notified of the other party's assessment of the current market rent notify that party that it disputes that assessment and requires the Rent to be reviewed in accordance with this clause 3.6.
- (c) Each of the parties may, within 21 days of a party's notice of dispute, nominate a Valuer to the other.

- (d) Subject to clause 3.6(e) and 3.6(f), the parties must endeavour to ensure that the nominated Valuers, within 28 days after being nominated, determine the current market rent of the Premises as at that particular Review Date. Each party must provide to the other a copy of the assessment by the Valuer nominated by it as soon as practicable.
- (e) If a party fails to notify the other party that it disputes that party's assessment of the current market rent within the time required, the Rent will be as assessed by the party making the assessment and will be payable by the Tenant accordingly.
- (f) If one party nominates a Valuer under clause 3.6(c) within the time required, but the other fails to do so:
 - (i) the Rent must be determined by the appointed Valuer within 28 days after being nominated, and his determination will be final and binding on the parties (in the absence of manifest error) as if he had been appointed by consent; and
 - (ii) the Costs of the appointed Valuer's determination will be apportioned equally between the Landlord and the Tenant.
- (g) If the respective assessments of the Valuers are not the same or the Valuers do not provide a valuation of the current market rent of the Premises within the time specified in clause 3.6(d) then:
 - (i) if the difference between the respective assessments of the Valuers is not greater than 3% of the aggregate of their assessments, then the Rent of the Premises will be one half of that aggregate (subject to clause 3.7);
 - (ii) in all circumstances other than those covered by clause 3.6(g)(i), the Valuers must agree on and appoint an Umpire;
 - (iii) if either or both of the Valuers for any reason fail to agree on and appoint the Umpire within 7 days from the end of the time required for them to make a determination, then the Landlord or the Tenant may request the President of the Australian Institute to appoint the Umpire; and
 - (iv) if it becomes necessary for the Umpire to determine the current market rent, his determination will be final and binding on the parties (in the absence of manifest error) and in considering his determination the Umpire must:
 - (A) have regard to any evidence submitted by the Valuers and the parties as to their assessments of the current market rent; and
 - (B) give his determination and the reasons for it in writing to the Landlord and the Tenant.
- (h) In determining the current market rent, each Valuer (including the Umpire) will be taken to be acting as an expert and not as an arbitrator, and must assess and determine respectively the current market rent for the Premises as at the particular Review Date having regard to this Lease and must:
 - (i) disregard:

- (A) the value of any goodwill of the Tenant's Business, the Tenant's Fittings and any other interest in the Premises created by the Tenant;
 - (B) any impaired condition of the Premises if that condition results from any work effected or not carried out on the Premises by the Tenant or from any breach under this Lease by the Tenant; and
 - (C) any refurbishment or upgrade of the Premises carried out by the Tenant with the consent of the Landlord or otherwise permitted by the Lease, with the intent of both the Tenant and the Landlord being that in determining the then current market rent the Valuer must exclude any factor arising from the enhanced value and amenity of the Premises which have resulted from the Tenant's own expenditure or work. The Tenant and the Landlord must provide to any Valuer any drawings, plans, photographs or specifications of any nature relating to the Premises either or before or after such refurbishment or upgrade has been completed to enable the Valuer to give effect to this sub-clause; and
- (ii) consider, among other things:
- (A) the Premises as available for use for any purpose for which the Premises may be used in accordance with this Lease;
 - (B) any Site Change that has occurred or about to occur; and
 - (C) any incentives provided by the Tenant to the Landlord under the Lease or for the purposes of the Rent review.
- (i) The Costs incurred in the determination of the current market rent under this clause 3.6 will be equally borne by the Landlord and by the Tenant.
 - (j) Any variation in the Rent resulting from a determination under clause 3.4 or 3.6 (as appropriate) will be effective on and from that particular Review Date.
 - (k) Pending the determination, the Tenant must pay to the Landlord on account of the Rent, an amount equivalent to the Rent due for the last Lease Year before the Review Date, and an adjustment must be made between the Landlord and the Tenant immediately after the market rent has been agreed or determined.

3.7 Rent payable after Review

Despite any other provision of this clause 3, as from a Review Date until the next review:

- (a) the Rent payable after a review under clause 3.3 will not exceed the Rent payable immediately before the relevant Review Date increased by the percentage specified in Item 14(a); and
- (b) the Rent payable after a review under clauses 3.4 or 3.6 (as appropriate) will not exceed the Rent payable immediately before the relevant Review Date increased by the percentage specified in Item 15(a).

3.8 Rent reduction if default under Sublease

The Tenant may set off against the Rent and other monies payable under this Lease, amounts due and payable but unpaid by the Sublessee under a Sublease.

4 Use of Premises

4.1 Permitted use

The Tenant must not use the Premises for any purpose other than that the Permitted Use without the Landlord's consent.

4.2 Compliance with Laws and Requirements

- (a) The Tenant must:
 - (i) subject to clause 4.2(e) comply with and observe at its Cost all Laws and Requirements in relation to the Premises or any of the Tenant's Fittings installed in them resulting from the particular use by the Tenant of the Premises; and
 - (ii) where any Law or Requirement is notified to or served on the Tenant, promptly give a copy of it to the Landlord.
- (b) If the Tenant has not in good faith commenced to comply with any Law or Requirement within a reasonable time of becoming aware of the need to comply, the Landlord may give at least 30 days' notice in writing to the Tenant (without prejudice to any of the Landlord's other rights) that the Landlord elects to comply with any Law or Requirement either in part or whole if the Tenant fails to comply within a reasonable time with any of its obligations. However, in an emergency, no notice is required.
- (c) The Tenant is not required under this clause 4.2 to effect structural or capital alterations or additions or carry out any structural or capital works of any nature except those caused by any deliberate or negligent act or default on the part of the Tenant or of the Tenant's Employees.
- (d) The Tenant must on demand pay to the Landlord all reasonable Costs incurred in good faith by or on behalf of the Landlord in complying with any Law or Requirement pursuant to clause 4.2(b).
- (e) Without limiting any other obligations of the Landlord, the Landlord must at its Cost comply with and observe all Laws and Requirements in relation to the Building and the Landlord's Fixtures when such requirement for compliance:
 - (i) has not been brought about by the deliberate or negligent act or default of the Tenant or the Tenant's Employees; and
 - (ii) has been brought about by general requirements for uses such as the use by the Tenant of the Premises and the Landlord's Fixtures under the Lease.

4.3 Signs

The Tenant is permitted to display erect or affix any sign or advertisement on any part of the Premises in conjunction with the Tenant's Business provided that the sign or advertisement complies with all relevant Laws.

4.4 For Sale/To Let

- (a) The Landlord is entitled at reasonable times to:
 - (i) upon giving 48 hours prior notice in writing to the Tenant, place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate where the Premises are either for sale or (where the Tenant has notified the Landlord in writing that it will not extend the Lease for the Further Term) available for lease; and
 - (ii) during the hours of 9am to 5pm on days when the Tenant's Business is open and after reasonable notice show interested persons through the Premises.
- (b) The Landlord must not in exercising its rights under this clause 4.4 do anything likely to cause any confusion to members of the public or any inconvenience to the Tenant or the Tenant's Business.

5 Maintenance, repairs, alterations and additions

5.1 Tenant's repair obligations

- (a) The Tenant must, during the Term and any extension or holding over, keep the Premises in good repair and condition having regard to their state of repair and condition at the commencement of this Lease. That obligation excludes:
 - (i) fair wear and tear; and
 - (ii) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out, or which would be covered by any insurance which is required to be taken out by the Landlord in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect or default of the Tenant or the Tenant's Employees).
- (b) This clause 5.1 does not oblige the Tenant to carry out any structural or capital maintenance, replacement or repair except as set out in clause 5.1(c).
- (c) The Tenant must:
 - (i) immediately make good any damage to the Premises caused by any deliberate or negligent act or default of the Tenant or the Tenant's Employees or by the Tenant's use of the Premises;
 - (ii) immediately make good any damage to the Premises caused by any act or default of the Tenant or of the Tenant's Employees by the installation, use or removal of the Tenant's Fittings; and
 - (iii) immediately replace all glass broken by the Tenant or by any of the Tenant's Employees.

5.2 Landlord's repair obligations

- (a) Subject to the obligations of the Tenant to repair in clause 5.1 the Landlord must keep the:
 - (i) Premises, including the Structure;
 - (ii) Landlord's Fixtures; and
 - (iii) Services,maintained, serviced and in good repair in good repair and condition.
- (b) This clause 5.2 obliges the Landlord to carry out any structural and capital maintenance, replacement or repair and make good any damage except where the maintenance, replacement, repair or make good is rendered necessary by any deliberate or negligent act or default of the Tenant or the Tenant's Employees or by the Tenant's Fittings.
- (c) The Landlord must rectify all defects in the Building which result from faulty design, supervision or materials or construction not having been carried out in a proper and workmanlike manner.
- (d) The Landlord must effect and maintain contracts for the maintenance and repair of the Services in accordance with the relevant Australian Standards with respectable and recognised maintenance and repair contractors provided that this clause does not limit, in any way, the Landlord's obligations to keep and maintain the Services in accordance with this Lease.
- (e) The Landlord warrants that the Premises and the Building:
 - (i) are and will remain fit for use and occupation for the Permitted Use; and
 - (ii) will comply with the relevant Australian Standards and the industry standards which apply at the Commencement Date provided.
- (f) The Landlord is responsible for all loss and damage suffered by the Tenant, including Relocation Expenses occasioned by or arising out of structural faults or defects including those inherent in the Building or the Premises which make the Premises unfit for use and occupation by the Tenant.

5.3 Landlord's right of inspection

The Landlord may in the presence of a responsible officer of the Tenant at all reasonable times on giving to the Tenant reasonable notice (except in the case of an emergency when no notice is required) enter the premises and view their state of repair and condition but the Landlord must make good any damage caused in doing so and must do everything reasonably necessary to minimise disruption to the Tenant's Business during the viewing.

5.4 Landlord's rights to enter to repair

If:

- (a) the Landlord wishes to carry out any repairs to the Premises which the Landlord is obliged to do under this Lease: or

- (b) any Authority requires any repair or work to be undertaken on the Premises which the Landlord must do and for which the Tenant is not liable under this Lease,

then the Landlord must use appropriately qualified personnel to conduct such repairs and works, and its architects, workmen and others authorised by the Landlord may at all reasonable times on giving to the Tenant reasonable notice (except in the case of an emergency when no notice is required) enter and carry out any of those works and repairs provided that the Landlord must:

- (c) not cause undue inconvenience to the Tenant when;
- (d) not interfere with the conduct of the Tenant's Business when;
- (e) promptly make good any damage caused by; and
- (f) indemnify and keep indemnified the Tenant from and against all Claims in any way resulting from,

entering and accessing the Premises and/or carrying out those works or repairs.

5.5 Landlord's failure to repair

- (a) If the Landlord fails to repair, replace or maintain anything which the Landlord is obliged to do under this Lease, including under clause 5.4(b), Lease (except a repair relating to a malfunction of the Services) within 7 Business Days after receipt of a notice from the Tenant requiring it to effect a repair (or immediately in the case of an emergency), the Tenant may:
 - (i) (but is not obliged to) using its architects, workmen and others authorised carry out those works or repairs at the Landlord's Cost and risk; and/or
 - (ii) abate rent until the Landlord carries out the repair.
- (b) The Landlord must within 30 days, of receiving notice from the Tenant of the Cost of the repairs carried out by the Tenant under clause 5.5, reimburse the Tenant for that Cost. If the Landlord fails to do so, the Tenant may offset the costs against the Rent.

5.6 Services malfunction

- (a) If any of the Services becomes unusable or otherwise incapable of being operated from any cause the Landlord must, within a reasonable time, repair or replace those Services.
- (b) Without prejudice to any other right or cause of action available to the Tenant, if the occupation, use or enjoyment of the Premises by the Tenant is diminished as a result of a malfunction of the Services from a cause not attributable to the negligent act or omission of the Tenant, the Tenant may give the Landlord a notice to that effect.
- (c) If the malfunction is not rectified within 1 days of first occurring ("the grace period") the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable from the expiration of the grace period until the Services are restored. During and for the period of suspension the

Tenant's liability to pay the Rent and all other amounts, calculated on a daily basis, ceases.

- (d) If a malfunction remains uncorrected for a period of 5 Business Days after the grace period, the Tenant may carry out the necessary repairs and recover the cost of the repairs from the Landlord by a set-off in Rent or other moneys payable by the Tenant under this Lease.

5.7 Alterations to Premises

- (a) The Tenant is permitted to effect any Proposed Work only after obtaining the Landlord's Consent which must not be unreasonably withheld or delayed.
- (b) At least one month prior to the commencement of the Proposed Work the Tenant must submit to the Landlord a copy of plans and specifications of the Proposed Work.
- (c) Within 14 days after receipt of the copy of the plans and specifications, the Landlord may by notice in writing to the Tenant require:
 - (i) the Tenant to obtain and keep current all necessary approvals and permits from all Authorities necessary to enable any Proposed Work to be lawfully carried out, and on being required by the Landlord, provide for inspection by the Landlord of copies of all those approvals and permits; and
 - (ii) the Tenant on completion of the Proposed Work to within a reasonable time obtain and provide to the Landlord copies of any certificates of compliance or satisfactory completion issued by the appropriate Authority.

5.8 Notice to Landlord of damage, accident etc

The Tenant must use its reasonable endeavours upon becoming aware notify the Landlord of any damage, accident or defects to or in the Premises within a reasonable time.

6 Assignment and sub-letting

6.1 Application of this clause 6.1

- (a) This clause 6.1 applies where:
 - (i) Transport for NSW; or
 - (ii) any other government entity, is Tenant under this Lease.
- (b) The Tenant in its complete discretion may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or any part of them or this Lease or any interest in them.
- (c) The Tenant must give notice to the Landlord of any exercise by the Tenant of its rights under clause 6.1(b).

6.2 No disposal of Tenant's interest

Except as permitted under clause 6.1(b) the Tenant must not assign, transfer, sublet or otherwise deal with or part with possession of the Premises or this Lease or any part of them or any interest in them or attempt to do so without the Consent of the Landlord.

6.3 Assignments and subleases

The Landlord must consent to any assignment or sublease if:

- (a) there is no subsisting Event of Default by the Tenant at the date of proposed assignment or sublease of which the Tenant has received notice and a reasonable opportunity to remedy;
- (b) the Tenant pays to the Landlord all reasonable third-party Costs incurred by the Landlord (whether or not the proposed assignment or sublease proceeds to completion) including the Landlord's, legal and other reasonable consultant's Costs of and incidental to the proposed assignment or sublease;
- (c) the Tenant proves to the reasonable satisfaction of the Landlord that the incoming tenant is respectable, solvent and capable of conducting the Tenant's Business;
- (d) the Tenant and the incoming tenant enter into a deed with the Landlord in the form reasonably required by the Landlord which includes provisions that the incoming tenant:
 - (i) if an assignee, will comply with all the Tenant's obligations under this Lease on and from the date of assignment and the Landlord will comply with the Landlord's obligation under this Lease in favour of the assignee on and from the date of assignment; or
 - (ii) if a sublessee, will not cause or contribute to a breach of this Lease; and
- (e) the Tenant and the incoming tenant comply with the Landlord's reasonable requirements in relation to the documentation, stamping and registration of the proposed assignment or sublease.

6.4 Release of Assignor

Upon an assignment taking place in accordance with clause 6.3, the Tenant (as assignor) is released by the Landlord from any Claims and Costs (including loss of profits and economic loss) from and including the date of assignment, to be documented between the parties in a separate deed.

7 Insurance and indemnities

7.1 Application of this clause 7.1

- (a) This clause 7.1 applies where:
 - (i) Transport for NSW; or
 - (ii) any other government entity, is Tenant under this Lease.

- (b) Despite clause 7.2 the Tenant will not be required to take out insurance whilst it 'self-insures'.

7.2 Insurance to be taken out by Tenant

The Tenant must:

- (a) insure the Premises against public risk for an amount in respect of any single accident of not less than the amount specified in Item 12;
- (b) be responsible for damage to all plate glass windows (other than external windows), doors and display showcases forming part of or within the Premises;
- (c) in respect of any policy of insurance to be effected by the Tenant under this clause 7, whenever reasonably required by the Landlord, give to the Landlord a certificate of currency; and
- (d) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy whenever they are due and payable.

7.3 Insurances to be taken out by the Landlord

- (a) The Landlord must:
 - (i) take out and keep current during the Term (and any extension or holding over) an insurance policy for:
 - (A) all insurable risks against damage or destruction to the Building; and
 - (B) public risk (including sudden and accidental pollution occurrences) for not less than the amount specified in Item 12 in respect of each and every occurrence covering the liabilities of the Landlord
 - (ii) ensure that the insurance policies taken out under this clause 7.3:
 - (A) are taken out with an independent and reputable insurer approved by the Tenant acting reasonably;
 - (B) are for amounts necessary to enable complete replacement and reinstatement of the Building;
 - (C) contain conditions reasonably acceptable to or reasonably required by the Tenant;
 - (D) have no exclusions, endorsements or alterations unless first approved in writing by the Tenant acting reasonably; and
 - (E) are taken out in the names of the Landlord and the Tenant for their respective rights and interests;
 - (F) that the respective rights and interests of the Landlord and the Tenant under the policies are independent of each other and a breach of a condition of the policies by one party will not impact or affect the rights and interests of the other party; and

- (G) to the extent permissible at Law, waive all express and implied rights of subrogation against officers, employees and agents of the Tenant;
 - (iii) in respect of any policy of insurance to be effected by the Landlord under this clause 7.3, whenever reasonably required by the Tenant, give to the Tenant copies of the insurance policy or similar evidence of insurance, the receipt for the last premium and a certificate of currency;
 - (iv) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy under clause 7.2(a) whenever they are due and payable; and
 - (v) pay all premiums, proceeds of claims and other money payable in respect of any policy in clause 7.3(a) towards the repairs, reconstruction or reinstatement of the Building.
- (b) The Landlord must, in respect of any policy of insurance to be effected by the Landlord under this clause 7.2, ensure that the policy obliges the insurer to immediately notify the Tenant if at any time the policy expires, terminates or is cancelled.
- (c) In respect of any policy of insurance to be effected by the Landlord under clause 7.3, if:
- (i) the Landlord terminates or cancels a policy;
 - (ii) the insurer terminates or cancels the policy; or
 - (iii) a policy expires by the effluxion of time during the term of the Lease or any holding over period,
- without any replacement insurance cover being in place in accordance with clause 7.3 from and including the date of termination, cancellation or expiry of the policy then the Tenant may elect to take out and keep current the insurance required under clause 7.3 on behalf of the Landlord.
- (d) The Landlord must within a reasonable time, but no later than 14 days after notification by the Tenant, reimburse the Tenant for costs and premiums paid to establish any policy referred to in clause 7.3(c).
- (e) If the Landlord fails to reimburse the Tenant for the costs and premiums referred to in clause 7.3(c) then the Tenant will be entitled to set off the costs and premiums against the Rent payable by the Tenant under this Lease.
- (f) The Landlord hereby provides power of attorney to the Tenant to do all things necessary to take out any insurance policy referred to in clause 7.3(c).

7.4 Tenant's indemnities

The Tenant indemnifies the Landlord in respect of all claims for which the Landlord will or may be or become liable, during the Term, in respect of or arising directly from any loss, damage or injury to property or person caused or contributed to by:

- (a) any wilful or negligent act or omission; or
- (b) any default under this Lease,

by or on the part of the Tenant except to the extent caused by the Landlord or any of the Landlord's Employees.

7.5 Exclusion of Tenant's liability

- (a) The Tenant and the Tenant's Employees will not be liable for any Claim that the Landlord or the Landlord's Employees or any person claiming by, through or under the Landlord may incur or make or any which arises from any fault in the construction or state of repair of the Building or any part of it or the Landlord's Fixtures or from any other cause except to the extent caused by the negligence of the Tenant or any servant or agent of the Tenant.
- (b) The Landlord releases the Tenant and the Tenant's Employees from liability in respect of any Claim relating to any property of the Landlord in the Premises or any part of them except to the extent the Claim, damage or injury is caused by the negligence of the Tenant or the Tenant's Employees.

7.6 Landlord's indemnities

The Landlord indemnifies the Tenant in respect of all Claims for which the Tenant will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from any loss, damage or injury to property or person caused or contributed to by:

- (a) any wilful or negligent act or omission (whether before the commencement of or during or after the Term);
- (b) any default under this Lease; or
- (c) any Contamination existing in the Premises and introduced to the Premises,

by or on the part of the Landlord, the Landlord's Employees or any prior lessee or licensee of the Landlord or other occupier of the Premises except to the extent caused by the Tenant or the Tenant's Employees.

8 Damage, destruction and resumption

8.1 Damage to or destruction of Premises

- (a) If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) are substantially inaccessible, then:
 - (i)
 - (A) the Rent and any other money payable periodically under this Lease, or a proportionate part of that Rent or money according to the nature and extent of the damage or destruction sustained or the inaccessibility suffered, will abate; and
 - (B) all remedies for recovery of Rent and other money (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

until the Premises have been restored or made fit for the occupation and use or accessible to the Tenant (as appropriate); and

- (ii) the Landlord must make good the destruction or damage, reinstate the Premises, make the Premises fit for occupation and use and accessible to the Tenant including obtaining approvals from all appropriate Authorities as soon as possible; and
 - (iii) if the damage or destruction arises from any act, omission or breach of the Landlord, at the request of the Tenant, the Landlord must if the Tenant elects to vacate the Premises, pay the reasonable Relocation Expenses of the Tenant, until the Premises have been restored or made fit for the occupation and use or accessible to the Tenant (as appropriate).
- (b) If the Landlord has not complied with clause 8.1(a)(ii) within 6 months from the date of commencement of the abatement referred to in clause 8.1(a)(i) then the Tenant may:
- (i) at any time terminate this Lease by giving written notice to the Landlord; or
 - (ii) carry out the Landlord's obligations in clause 8.1(a)(ii) at the Landlord's cost recoverable by the Tenant as a debt due and payable on demand.
- (c) The provisions of clauses 8.1(a)(i), 8.1(a)(ii), 8.1(a)(iii) and 8.1(b) do not apply where and to the extent that:
- (i) the damage or destruction has been caused or contributed to, or arises from, any act or default of the Tenant or the Tenant's Employees; and
 - (ii) any insurance policy or policies for the Building have been avoided, or payment of the policy money refused or reduced, as a result of that act or default.

8.2 Resumption of Premises

If at any time:

- (a) the whole of the Premises are resumed;
- (b) part of the Premises is resumed so that the residue of them is wholly or substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) is wholly or substantially inaccessible; or
- (c) the Tenant is of the reasonable opinion that the Tenant's Business will be adversely affected due to a Site Change,

the Tenant may determine this Lease by giving not less than one month's notice to the Landlord. At the end of that notice this Lease will be at an end.

8.3 Liability

- (a) Neither the Landlord nor the Tenant will have any liability to each other because of the determination of this Lease under clause 8.2. However, any determination of the Lease under clause 8.2 will be without prejudice to the

rights of either party in respect of any preceding breach or non-observance of this Lease; and

- (b) Despite clause 8.3(a), if this Lease is determined under clause 8.2 and the Tenant has paid Rent in advance, the Tenant is entitled to recover from the Landlord the appropriate pro-rata proportion of the prepaid Rent.

8.4 Dispute

- (a) Any dispute arising under clause 8.2 must be determined by an appropriate independent person who is:
 - (i) agreed between the Landlord and the Tenant; or
 - (ii) if they cannot agree, a member of a professional body nominated at the request of either the Landlord or the Tenant by the President of the State division of the Property Council of Australia.
- (b) The appointed person:
 - (i) must have substantial experience in relation to premises of a similar type within the area in which the Premises are located or other comparable area; and
 - (ii) in making his determination will act as an expert and not as an arbitrator, and his determination will be final and binding on the parties (in the absence of manifest error).
- (c) The Cost of that determination will be borne equally by both of the parties unless the person making the determination otherwise decides.

9 Landlord's covenants

9.1 Quiet enjoyment

The Tenant may occupy and enjoy the Premises during the Term without any interruption by the Landlord or by any person rightfully claiming through, under or in trust for the Landlord.

9.2 Landlord's mortgaging obligation

The Landlord must obtain from any mortgagee, chargee or encumbrancee at the Commencement Date, and must not mortgage, charge or otherwise encumber its interest in any part of the Premises without first obtaining, a deed in a form reasonably required by the Tenant, pursuant to which the mortgagee, chargee or encumbrancee covenants with the Tenant:

- (a) to exercise any rights or powers under the mortgage, charge or encumbrance subject to the Tenant's rights under the Lease; and
- (b) if it does exercise any of its rights or powers under the mortgage, charge or encumbrance to observe and perform the provisions of the Lease which are to be observed and performed by the Landlord as if it had executed the Lease as lessor.

9.3 Rates taxes and outgoings

- (a) Subject to any obligations of the Tenant to pay money under this Lease, the Landlord must pay all rates and taxes in respect of the Land, the Building and the Premises and all other outgoings in respect of the Land, the Building and the Premises.

10 Default and determination

10.1 Default

Each of the following is an Event of Default:

- (a) the Rent or any part of it is in arrears and unpaid for 30 days after demand from the Landlord, and remains unpaid and not subject to a bona fide dispute at the expiry of a further 45 days period of receipt of demand from the Landlord;
- (b) any money (other than Rent) payable by the Tenant to the Landlord is in arrears and unpaid within 30 days of demand from the Landlord, and remains unpaid and not subject to a bona fide dispute at the expiry of a further 45 days period of receipt of demand from the Landlord; and
- (c) the Tenant or the Landlord fail to materially perform or observe any of their other material obligations under this Lease within a reasonable time after receiving notice requiring performance or observance.

10.2 Essential terms

Each obligation of the Tenant to pay Rent or any other money to the Landlord is an essential term of this Lease.

10.3 Termination by Landlord

If an Event of Default on the part of the Tenant occurs the Landlord may, without prejudice to any other Claim which the Landlord has or may have or could otherwise have against the Tenant or any other person in respect of that default:

- (a) provide the Tenant with reasonable (but not less than 6 month) written notice of the Event of Default and of the Landlord's intentions to determine this Lease and take possession of the Premises if the Event of Default is not rectified; and
- (b) after the time period from the provision of the notice in clause 10.3(a):
 - (i) re-enter into and take possession of the Premises or any part of them, in which event this Lease will be at an end; or
 - (ii) by notice to the Tenant determine this Lease immediately and after the date of giving that notice this Lease will be at an end.

10.4 Termination by Tenant

If the Event of Default on the part of the Landlord occurs the Tenant may, without prejudice to any other Claim which the Tenant has or may have or could otherwise have against the Landlord or any other person in respect of that default:

- (a) provide the Landlord with at least 30 days written notice of the Event of Default and of the Tenant's intentions to determine this Lease if the Event of Default is not rectified; and
- (b) after 30 days from the provision of the notice in clause 13.4(a) by notice to the Landlord determine this Lease immediately and after the date of giving that notice this Lease will be at an end.

10.5 Waiver

- (a) No:
 - (i) failure to exercise and no delay in exercising any right, power or remedy under this Lease; or
 - (ii) custom or practice existing between the parties in relation to the Lease, operates as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) No waiver by a party of one breach of a covenant under this Lease is a waiver of another breach of that same covenant or of any other.
- (c) The demand by the Landlord for, or acceptance by the Landlord of, Rent or any other money payable under this Lease after default by the Tenant is not a waiver of any earlier breach by the Tenant.
- (d) The subsequent acceptance by the Landlord of Rent or other money (as appropriate) is a waiver by the Landlord only in relation to the Tenant's failure to make that particular payment when due.

10.6 Offer of money after deduction

Any money offered by the Tenant after the determination of this Lease under clause 10.3(a) or 10.3(b)(ii) and accepted by the Landlord will be applied on account of:

- (a) first: any Rent and other money accrued and due under this Lease but unpaid at the date of determination of this Lease; and
- (b) second: the Landlord's reasonable Costs in relation to the determination.

11 Termination

11.1 Tenant to yield up and remove its Fittings

Subject to clause 11.3, at the Date of Termination, the Tenant:

- (a) must yield up the Premises in the state of repair and condition described in clause 5.1; and
- (b) may (but is not required to) remove from the Premises all of the Tenant's Fittings including any improvements erected by the Tenant.

11.2 Tenant not to cause damage

Subject to clause 11.3 the Tenant must:

- (a) use reasonable endeavours not to cause or contribute to any damage to the Premises in the removal of the Tenant's Fittings. If it does, however, it must make good that damage; and
- (b) leave the Premises in a clean state and condition. If it fails to do so the Landlord may make good and clean the Premises at the reasonable Cost of the Tenant and recover from the Tenant the reasonable Cost to the Landlord of doing so.

11.3 Extension of period to remove Tenant's Fittings

If the Tenant has not removed all or any of the Tenant's Fittings as referred to in clause 11.1(b), then the Tenant may by notice in writing to the Landlord have up to 28 days from the Date of Termination to remove all or any of the Tenant's Fittings. During that period, the Tenant will be treated as holding over under clause 2.3.

12 Right of First Refusal

- (a) If and so often as the Landlord during the term of this Lease or at any time while the Tenant or anyone holding under the Tenant is in possession of the Premises:
 - (i) receives from a third party an acceptable bona fide offer to purchase the Premises or enter into a concurrent lease of the Premises or some other arrangement under which a third party would effectively become the landlord under this Lease (**Concurrent Lease**);
 - (ii) receives from a third party an acceptable bona fide offer to lease the Premises for a term commencing on or after the expiration of the term of this Lease or any extension thereof;
 - (iii) is desirous of selling the Premises to a third party or entering into a Concurrent Lease; or
 - (iv) is desirous of leasing the Premises to a third party for a term commencing on or after the expiration of the term of this Lease or any extension thereof,

then the Landlord must forthwith give to the Tenant written notice of such offer or of the Landlord's desire to sell, lease or grant a Concurrent Lease of the Premises (referred to as "the notice"). The notice must contain all the terms and conditions (including details of the Premises and proposed price or rental) upon which the Landlord is willing to sell, lease or grant a Concurrent Lease of the Premises and must be accompanied by a true copy of any bona fide offer received from a third party. The notice will constitute an irrevocable offer by the Landlord to the Tenant to purchase, lease or grant a Concurrent Lease of the Premises upon the terms and conditions contained in the notice.

- (b) The Tenant or its nominee will have 90 days (or such longer period as agreed) from the date of receipt of the notice within which to notify the Landlord of its acceptance of its terms and conditions. The acceptance must be by notice in writing to the Landlord signed by the Manager, Assistant Manager of, or a

Solicitor for the Tenant and upon the acceptance being notified to the Landlord, the Landlord will be bound to sell, lease or grant a Concurrent Lease of the Premises to the Tenant or its nominee upon the terms and conditions contained in the notice.

- (c) If the Tenant or its nominee fails to notify its acceptance within the period of 90 days (or such longer period as agreed) the Landlord will be at liberty to sell, lease or grant a Concurrent Lease of the Premises upon the terms and conditions contained in the notice. However, if the Landlord sells the Premises to a third party, or enters into a Concurrent Lease of the Premises, the sale or Concurrent Lease (Third Party Sale) must be made subject to all the terms and conditions of this Lease including this clause.
- (d) The Tenant agrees to notify the Landlord in writing of any nominee designated for the purpose of clause 12(b) and warrants that any nominee will be financially responsible and the Landlord agrees to recognise and accept the designation as nominee for the purposes of clause 12(b).
- (e) The Landlord covenants with the Tenant that it will be a condition of any Third Party Sale that any third party purchaser must (at the Landlord's cost and expense) prior to completion of the sale enter into a covenant with the Tenant that the purchaser agrees to be bound by the covenants and provisions on the part of the Landlord contained in this clause and that the purchaser must similarly procure that any subsequent purchaser will be bound. The covenant must be in a form acceptable to the Tenant or its Solicitors. A copy of the stamped covenant must be delivered to the Tenant by the Landlord prior to completion of any sale.

13 Environmental status

13.1 Environmental audit at commencement

The Tenant may arrange for an environmental report (Report) on the condition of the Premises prior to the Tenant commencing to operate the Tenant's Business in the Premises.

13.2 Report to be furnished

If the Tenant provides a copy of the Report to the Landlord the Report will be conclusive evidence of the existence of the matters contained in it at the date of it. The contents will be confidential between the parties and must remain confidential after the expiration or determination of this Lease except where the Report must be produced at Law or in relation to any court proceedings.

13.3 Treatment of Contamination

If any Contamination is identified in the Report or is at any time discovered in the Land or the Building that makes the Premises unsafe for use for the Permitted Use (and the presence of the Contamination is not attributable to the act or omission of the Tenant):

- (a) the Landlord must promptly notify the Tenant and promptly and in a safe manner remove or eradicate the Contamination; and
- (b) if the Tenant elects to vacate the Premises until such time as the Contamination is removed or eradicated and the Premises are rendered safe:

- (i) the Landlord must pay the reasonable Relocation Expenses of the Tenant; and
- (ii) from the time the Tenant vacates the Premises until the Premises are again rendered safe, the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable.

13.4 Tenant's rights

- (a) If the Landlord fails to render safe the Land and the Building within 3 months from the date on which the presence of the Contamination is identified the Tenant may by notice to the Landlord:
 - (i) terminate this Lease; or
 - (ii) carry out remediation of the Land in accordance with clause 13.3 at the Landlord's Cost and recover the Cost from the Landlord by a set-off in Rent or other moneys payable by the Tenant under this Lease.
- (b) If the Tenant terminates the Lease under clause 13.4(a):
 - (i) the termination will not prejudice the rights or claims of either Party in existence prior to that termination; and
 - (ii) despite any clause to the contrary, the Tenant is not required to remove the Tenant's Fittings or alterations, redecorate, restore, reinstate or make good the Premises.

13.5 Tenant to remediate

- (a) The Tenant must use all reasonable endeavours to remediate any Contamination the Tenant causes to the Land during the Term (if required) within 6 months of the Termination Date of this Lease or, if the parties enter into a lease for a Further Term, within 6 months of the termination date of the last lease for a Further Term.
- (b) In carrying out remediation of the Land the Tenant will not be obliged to:
 - (i) remediate any part of the Land which is beneath any structures which may be existing on the Land;
 - (ii) remediate any part of the Land where the source of the Contamination is any adjoining land; or
 - (iii) remediate the Land or any part of the Land beyond the condition as set out in the Report.
- (c) If the Tenant, acting reasonably, requires more than 6 months to comply with its obligations under this clause 13.3, then it may extend the 6 months period referred to in clause 13.5(a) by notice in writing to the Landlord by a reasonable period having regard to the works that remain to be performed.

13.6 Tenant's access to Land

- (a) The Landlord grants to the Tenant a licence to enter the Land for all purposes connected with the remediation of the Land by the Tenant for a period of 6 months commencing on the Termination Date of this Lease or, if the Parties

enter into a lease for a Further Term, the Termination Date of the last lease for a Further Term; and

- (b) The Landlord must not cause any interference to the Tenant during the Tenant's remediation of the Land and must ensure that any person deriving title to the Land through the Landlord causes no interference to the Tenant during the Tenant's remediation of the Land.

13.7 Tenant's decision to be final

The Landlord agrees that the manner and degree of remediation of the Land under this clause 13 will be determined by the Tenant in its reasonable discretion.

13.8 Survival

This clause 13 survives termination or expiration of this Lease.

14 Miscellaneous

14.1 Notices

- (a) All formal notices, demands and consents to or by a party to this Lease:
 - (i) must be in writing;
 - (ii) must be signed by the sender, or if a company, by its Authorised Officer;
 - (iii) must be given to the person identified in Item 16;
 - (iv) subject to sub-clause (v)(A), must be given by either personal delivery, registered post, facsimile or e-mail; and
 - (v) will be taken to be given or made in the case of:
 - (A) delivery in person, when left at the address specified in Item 16;
 - (B) delivery by post, when the registered post has been received;
 - (C) delivery by fax, when the sender receives a confirmation of the successful fax transmission; and
 - (D) delivery by e-mail, when the recipient confirms the receipt of the e-mail,

provided that, if delivery is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

- (b) Any notice which has an effect of terminating or determining the Lease cannot be given by e-mail.

14.2 Costs

The Tenant must pay to the Landlord on demand:

- (a) all stamp duty (including penalties and fines other than those incurred due to the default of the Landlord) properly assessed on this Lease; and
- (b) all reasonable Costs of the Landlord in relation to:
 - (i) the enforcement of or exercise of any rights, powers or remedies under this Lease;
 - (ii) any consent required to or under this Lease;
 - (iii) any assignment or subletting;
 - (iv) any surrender or determination of this Lease otherwise than by effluxion of time; and
 - (v) default by the Tenant or the Tenant's Employees in observing or performing the Tenant's obligations in this Lease,

including in each case reasonable legal costs.

14.3 Services

Subject to anything to the contrary in this Lease, the Landlord and all persons claiming by, through or under the Landlord may at reasonable times, after giving reasonable notice (except in the case of an emergency when no notice is necessary) install, maintain, use, repair, alter, service and replace any Services or any part of them including any pipe, duct, wire and plant at the Landlord's Cost but in doing so the Landlord must do everything reasonably necessary to minimise any disruption to the Tenant's Business.

14.4 Severance

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

14.5 Entire Agreement

This Lease contains all the contractual arrangements of the parties with respect to the transactions to which they relate. This Lease supersedes all earlier conduct by the parties with respect to those transactions.

14.6 Governing Law

This Lease is governed by the laws of the State. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

15 Goods and Services Tax

15.1 GST Exclusive Amounts

All amounts referred to in this Lease other than in this clause are exclusive of GST.

15.2 Payment of GST

- (a) Subject to clause 15.5, a recipient of a taxable supply made under this Lease must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount on account of any GST paid or payable by the supplier in respect of the taxable supply.
- (b) The recipient must pay the amount in clause 15.2(a) to the supplier:
 - (i) if there is a due date for the GST exclusive consideration for the taxable supply, on that date; or
 - (ii) if there is no due date, within 14 days of receiving a tax invoice for the taxable supply.

15.3 Reimbursements

Where a party incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set off against another party under this document, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the party being reimbursed or indemnified is entitled to claim in respect of that cost or expense) plus GST, as calculated under clause 15.2.

15.4 Tax invoice

Each party making a taxable supply under this Lease must issue a tax invoice to the other party for each taxable supply at or before the time it makes the taxable supply except when clause 3.8 applies.

15.5 GST on Claims

- (a) If a payment to satisfy a claim or a right to claim under or in connection with this Lease gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- (b) If a party has a claim under or in connection with this lease for a cost on which that party must pay GST, the claim is for the cost (reduced by the input tax credit to which that party is entitled) plus all GST.
- (c) If a party has a claim under or in connection with this Lease the amount of which depends on actual or estimated revenue or which is for loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (or if that amount is separate or included as part of a larger amount).