

I certify that the within is a true and correct copy of Lease No.  
3006/100.

  
Mark Webb  
Director General

**GLOUCESTER NATIONAL PARK  
RESERVE 42473**

CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY

(LESSOR)

and

AERIAL ADVENTURE PEMBERTON PTY LTD

(LESSEE)

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LEASE NO. 3006/100

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## **SCHEDULE 1**

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### **1. LEASED AREA DETAILS**

#### **1.1 Leased Area**

SEE AREA SHOWN HATCHED ON THE ATTACHED LEASE PLAN

#### **1.2 Land**

Land means Gloucester National Park (Reserve no. 42473)

#### **1.3 Lessor's Property**

Existing shelter

### **2. TERM DETAILS**

#### **2.1 Original Term**

The period of 20 years from the Commencement Date to the Expiry Date.

#### **2.2 Commencement Date**

1 June 2022

#### **2.3 Expiry Date**

31 May 2042

#### **2.4 Further Term**

10 years

### **3. RENT DETAILS**

#### **3.1 Rent**

Year one – two (2) percent of Quarterly Gross Revenue for each Quarter.

Year two – three (3) percent of Quarterly Gross Revenue for each Quarter.

Year three – four (4) percent of Quarterly Gross Revenue for each Quarter.

Year four and each year thereafter for the Term – five (5) percent of Quarterly Gross Revenue for each Quarter, subject to future rent review.

#### **3.2 Rent Payment Date**

Within 30 days of the receipt of an invoice issued by the Lessor following the end of each and every Quarter for the Term.

#### **3.3 Address for Payment of Rent**

U52/48 McMaster Road Victoria Park WA 6100

#### **3.4 Rent Review Date**

Every 5 years from the Commencement Date during the Term.

### **4. PERMITTED USE OF THE LEASED AREA**

High ropes course and café.

**5. MINIMUM INSURANCE COVER**

**5.1 Minimum Public Liability Insurance**

\$20,000,000

**6. ADDRESS FOR NOTICES**

**6.1 Notices to be sent to Lessor**

- (a) Address: Locked Bag 104, Bentley Delivery Centre WA 6983
- (b) Email: [leasing@dbca.wa.gov.au](mailto:leasing@dbca.wa.gov.au)
- (c) Attention: Property Unit Leasing Officer

**6.2 Notices to be sent to Lessee**

- (a) Address: U52/48 McMaster Road, Victoria Park WA 6100
- (b) Email: [adrienleclere@hotmail.com](mailto:adrienleclere@hotmail.com) and [cecileleclere05@gmail.com](mailto:cecileleclere05@gmail.com)
- (c) Attention: Mr Adrien Leclere and Mrs Cecile Leclere

**THIS DEED OF LEASE**

is made on the 28<sup>TH</sup> day of APRIL 2022 between the following parties:

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY, a body corporate established under section 36 of the *Conservation and Land Management Act 1984* (WA), of Locked Bag 104, Bentley Delivery Centre, Bentley Western Australia 6983 ("**Lessor**")

AND

Aerial Adventure Pemberton Pty Ltd of U52/48 McMaster Road Victoria Park WA 6100 ("**Lessee**")

Each a "party", and together, the "parties"

**RECITALS**

- A. The Conservation and Parks Commission is established under section 18(1) of the CALM Act. Pursuant to section 7(1) of the CALM Act the land in Gloucester National Park (the "**Land**") is vested in the Conservation and Parks Commission.
- B. Pursuant to Section 100 of the CALM Act, the Chief Executive Officer of the Department (the "**CEO**") has the power to grant a lease in respect of the Land for a term not exceeding 99 years on such terms and conditions as the CEO thinks fit.
- C. Section 36 of the CALM Act allows for the Lessor to be established and to be governed by the CEO. Section 37 of the CALM Act allows for the Lessor, as a body corporate, to perform functions of the CEO, including to grant this Lease.
- D. The Lessee has applied to the Lessor for a lease of a portion of the Land together with the Lessor's Property in, or forming part of, the leased area (collectively the "**Leased Area**").
- E. The Lessor has agreed to lease the Leased Area to the Lessee for the Term on the terms and conditions set out in this Lease.
- F. Pursuant to section 100(3) of the CALM Act, this Lease shall be laid before each House of Parliament within 14 sitting days of its execution by all parties and will be incorporated into Hansard.
- G. The Lessee acknowledges that the Leased Area and surrounding Land is environmentally significant and sensitive and that it will seek to protect the environmental values throughout the Term of this Lease.

**THE PARTIES AGREE AS FOLLOWS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Lease, unless the context requires otherwise:

**Annexures** means any and all of the Annexures at the end of this Lease, which Annexures are incorporated in and form part of this Lease.

**Authority** means any government or any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, statutory corporation or position, agency, entity or Parliament, whether State, Federal or otherwise.

**Authorisation** means any approval, agreement, certificate, authorisation, notification, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Authority required



under any Law, and includes any renewal of, or variation to, any of them but does not include any act or omission by the Lessor under this Lease.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Western Australia.

**CALM Act** means the *Conservation and Land Management Act 1984* (WA) and any subsidiary legislation made under the CALM Act.

**Claim** means any claim, proceeding, action, cause of action, demand or suit of any nature (including by way of contribution or indemnity) made or asserted under or in connection with this Lease or under any Law.

**Commencement Date** means the date in item 2.2 of the Schedule.

**Contamination** is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003* (WA).

**Corporations Act** means the *Corporations Act 2001* (Cth) and any subsidiary legislation made under the Corporations Act.

**Department** means the department of the public service principally assisting in the administration of the CALM Act.

**Environment** has the same meaning as that term is defined in the *Environmental Protection Act 1986* (WA).

**Environmental Harm** has the same meaning as that term is defined in the *Environmental Protection Act 1986* (WA).

**Environmental Law** means all planning, environmental, Contamination or Pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

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

**Event of Default** means any of the events specified in clause 18.2.

**Expiry Date** means the date in item 2.3 of the Schedule.

**Forest Produce** has the same meaning as in the CALM Act.

**GST** means GST within the meaning of the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means the happening of any of the following events in relation to the Lessee:

- (a) the Lessee is unable to pay all the Lessee's debts as and when they become due and payable or the Lessee has failed to comply with a statutory demand as provided in section 459F of the Corporations Act, or the Lessee is taken to be unable to pay the Lessee's debts under section 585 of the Corporations Act;
- (b) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) a corporation enters into voluntary liquidation;
- (d) an order is made for the administration, dissolution or winding up of a corporation;
- (e) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days after being made;

- (f) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the other party;
- (g) the appointment of a controller (as defined in section 9 of the Corporations Act) of any of the Lessee's assets;
- (h) the Lessee proposes to enter into or enters into any form of arrangement (formal or informal) with the Lessee's creditors or any of them, including a deed of company arrangement;
- (i) the Lessee becomes an insolvent under administration, as defined in section 9 of the Corporations Act, or action is taken which could result in that event;
- (j) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

**Land** means the area of land described in item 1.2 of the Schedule.

**Law** means all present and future laws including:

- (a) all statutes, regulations, proclamations, ordinances or by-laws, present or future, and whether State, Federal or otherwise, and includes Environmental Law;
- (b) Authorisations;
- (c) rules or principles of the common law or equity; and
- (d) standards, codes, policies and guidelines.

**Lease** means this lease including the Schedule and Annexures, as it is amended from time to time, varied, supplemented, replaced, extended, renewed or assigned, as permitted by this lease, and includes any deed of variation of this lease.

**Leased Area** means the leased area the subject of this Lease as described in item 1.3 of the Schedule together with the Lessor's Property in, or forming part of, the leased area.

**Lessee's Property** means all:

- (a) plant or equipment, fittings, furniture and furnishings not owned by the Lessor and which the Lessee brings on to the Leased Area during the Term; and
- (b) Lessee's Works (once completed in accordance with clause 31.12 of this Lease) subject to the provisions of clause 32.14.

**Lessee's Visitors** means each of the Lessee's employees, agents, contractors, service suppliers, sub-lessees, customers, invitees, guests, volunteers, licensees, sub-licensees and other visitors and any other person who at any time is on the Leased Area with or without the express or implied consent of the Lessee.

**Lessee's Works** has the same meaning as in clause 32.1 of this Lease.

**Lessor's Agents** includes the Lessor and the officers, agents, servants, employees, advisors, consultants and contractors of the Lessor and the State.

**Lessor's Property** means all:

- (a) plant or equipment, fittings, furniture and furnishings not owned by the Lessee and which the Lessor brings on to the Leased Area during the Term; and

- (b) Lessee's Works (once completed in accordance with clause 31.12 of this Lease) subject to the provisions of clause 31.14.

**Loss** means any loss, cost (including legal costs), expense, injury, debt, compensation, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent, or any fine or penalty.

**Parties** means the Lessor, the Lessee and the guarantor (if any) and "party" is a reference to any of them.

**Permitted Use** means the use described in item 4 of the Schedule.

**Pollution** has the same meaning as that term is defined in the *Environmental Protection Act 1986* (WA).

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

**PPS Law** means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

**Quarter** means a period of 3 calendar months (or part thereof for the first and final Quarters of the Term) commencing on the first day of January, April, July or October in any year within the Term for the Term and the first Quarter is that in which the Commencement Date falls.

**Quarterly Gross Revenue** includes the total of all money (and the monetary value of things other than money) received or receivable by the Lessee or any other person from the sale, hire, lease, licence or provision of any goods, services or rights of occupation or use or the conduct of any business or other activity on, from, at or in connection with all or part of the Leased Area in a Quarter.

**Quarterly Statement** means a written statement for each Quarter provided by the Lessee to the Lessor for the purpose of calculating the Rent that:

- (a) details the amount and breakdown of the Quarterly Gross Revenue;
- (b) is certified as true and correct by a senior manager of the Lessee; and
- (c) is in a form and contains such information as reasonably required by the Lessor.

**Rates and Taxes** means any rate, tax, levy or any other charge imposed at any time during the Term of this Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the supply or use of the Leased Area or anything under or in connection with this Lease.

**Relevant Land** means the Leased Area and the Surrounding Area.

**Rent** means the amount of rent specified in item 3.1 of the Schedule as varied from time to time under this Lease.

**Rent Payment Date** means the date on which Rent is due and payable under this Lease as specified in item 3.2 of the Schedule.

**Sales Records** means all books, accounts and records, in any form or medium, relating to all transactions in the course of all business or other activities carried out on, from, at or in connection with all or part of the Leased Area and includes all supporting data and documentation of the Sales Records, including invoices, receipts and financial institution statements.

**Schedule** means the Schedule at the front of this Lease, which is incorporated in and forms part of this Lease.

**Security Interest** means any one or more of:

- (a) a mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or the compliance with any other obligation; and

- (b) a "security interest" within the meaning of the PPSA.

**Services** means all services running through or servicing all or part of the Leased Area, whether installed by the Lessor or Lessee, including air conditioning, electricity, gas, water, sewerage, drainage, telecommunications and fire sprinkler systems and all associated pipes, ducts, cables, wiring, connections, equipment and facilities.

**State** means the State of Western Australia and includes any department, agency, emanation or instrumentality of the State of Western Australia, the Parliament and any Minister, whether body corporate or otherwise, and each of their respective employees, agents, contractors, servants, advisors and consultants.

**Surrounding Area** means the land or water adjacent to or in the vicinity of the Leased Area and the air generally above the Leased Area and includes an affected site within the meaning of that term as defined in the *Contaminated Sites Act 2003* (WA).

**Sustainability Performance Assessment and Audit Schedule** means a schedule developed jointly between the Lessor and the Lessee attached at Annexure B which sets out benchmarks for the Lessee to achieve environmental and ecological goals during the Term of this Lease, as may be varied by agreement of the Lessor and Lessee in accordance with clause 10.8(f) from time to time and which relates to the Leased Area.

**Term** means the term for which the Leased Area is let by the Lessor to the Lessee as referred to in item 2.1 of the Schedule and every period of holding over, every renewed or extended term of this Lease and any other period during which the Lessee occupies or uses the Leased Area with the Lessor's express or implied consent.

## 1.2 Interpretation

In this Lease, unless the context indicates otherwise:

- (a) a reference to the Lessee includes the Lessee's employees, agents, contractors, sublessees, licensees, customers, invitees and any other person who is in the Leased Area with the Lessee's permission (direct or implied);
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;
- (c) the singular includes the plural and vice versa;
- (d) references to a "person" includes an individual, a firm, a body corporate, an unincorporated association, an Authority, a joint venture (whether incorporated or unincorporated) or a partnership;
- (e) an obligation, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;
- (f) each obligation of a party to this Lease has effect as a covenant given in favour of the party who may enforce the obligation;
- (g) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;
- (h) a reference to a day is a reference to the 24-hour period commencing at midnight;
- (i) a reference to time is a reference to Western Australian Standard Time;
- (j) a reference to a month is to a calendar month and a reference to a year is a calendar year;
- (k) headings are for convenience only and do not affect the interpretation of this Lease;

- (l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party drafted this Lease or any part;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models, plans, records and other documents in all forms including the electronic form in which it was generated;
- (o) if the word "including" or "includes" is used, the words: "without limitation" are deemed to immediately follow;
- (p) a reference to the termination of this Lease includes the expiry of the Term;
- (q) if a party consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then:
  - (i) an obligation imposed on a party under this Lease binds each person who comprises that party jointly and severally;
  - (ii) each person who comprises a party agrees to do all things necessary to enable the obligations imposed on that party under this Lease to be undertaken; and
  - (iii) the act of one person who comprises a party binds the other person or persons who comprise that party;
- (r) a reference to any party or person includes their and each of their legal representatives, executors, administrators, successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (s) reference to any authorities, associations and bodies whether statutory or otherwise shall in the event of any such authority association or body ceasing to exist or being re-constituted or re-named or replaced or the powers or functions thereof being transferred to any other authority association or body be deemed to refer respectively to the authority association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof;
- (t) a reference to this Lease or to any other deed, agreement, document or instrument is deemed to include a reference to this Lease or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (u) a reference in this Lease to a clause or an item is a reference to a clause of this Lease or an item of the Schedule, respectively; and
- (v) a reference to a contractor includes a subcontractor at any tier.

## **2. GRANT OF LEASE**

The Lessor leases the Leased Area to the Lessee pursuant to the CALM Act for the Term on the terms and conditions of this Lease and the Lessee accepts this Lease.

## **3. QUIET ENJOYMENT**

For as long as the Lessee complies with this Lease, the Lessee may occupy and use the Leased Area during the Term without disturbance or interference by the Lessor except as permitted by this Lease or by Law.

#### **4. RENT**

##### **4.1 Amount of Rent**

- (a) The Lessee must pay to the Lessor the Rent on and from the Commencement Date for the Term.
- (b) Within 15 days of the end of each and every Quarter, the Lessee must provide to the Lessor a Quarterly Statement together with copies of all Sales Records as the Lessor may require to verify the Quarterly Statement.

##### **4.2 Manner of Payment**

The Lessee must pay to the Lessor the Rent:

- (a) by consecutive quarterly payments on each Rent Payment Date;
- (b) at the place and in the manner notified by the Lessor in writing at any time or in the absence of that direction, at the address specified in item 3.3 of the Schedule; and
- (c) in accordance with clause 22.5 of this Lease.

If this Lease is terminated other than by the expiry of the Term, the Rent payable by the Lessee to the Lessor in respect of that portion of the Quarter prior to the termination of this Lease will be a proportionate part of the Rent for that Quarter subject to the provisions of clause 18.

##### **4.3 Lessee to keep records**

The Lessee must prepare and retain Sales Records that, at a minimum, verify the accuracy of the Quarterly Gross Revenue for each and every Quarter of the Term for at least 5 years from the end of each Quarter.

##### **4.4 Audit rights**

- (a) The Lessee must make all Sales Records available to the Lessor, either at the Leased Area or the Lessee's business office so long as it is located in Perth, Western Australia, for the Lessor to inspect, audit and copy upon the Lessor providing reasonable notice.
- (b) The Lessor may request, and the Lessee must make available or provide a copy, of any additional information the Lessor believes is relevant to the calculation of the Quarterly Gross Revenue.
- (c) If the Lessor identifies a discrepancy between the amount of Rent payable by the Lessee and the amount received by the Lessor, it may inform the Lessee of the discrepancy and the Lessee must pay to the Lessor within 14 days the shortfall in Rent that it would otherwise have been entitled to under this Lease.
- (d) If the discrepancy identified exceeds 5% of the Rent that would otherwise have been payable to the Lessor, the Lessee must reimburse the Lessor the reasonable cost of the audit within 30 days upon demand.

##### **4.5 Lessee's accountant's certificate**

- (a) The Lessee must, at its cost, provide the Lessor a written statement from an independent Chartered Account verifying that each Quarterly Statement is a true and correct statement of the amount of Quarterly Gross Revenue for each Quarter of the year within 60 days of the end of each financial year during the Term and within 60 days of the termination of this Lease.

- (b) If the Lessee is unable to obtain the statement referred to clause 4.5(a), the Lessee must advise the Lessor as soon as practicable and provide corrected Quarterly Statements for the relevant financial year that are verified in accordance with clause 4.5(a).
- (c) The Lessee must pay the Lessor within 14 days any shortfalls in Rent that it would have otherwise been entitled to under this Lease had the Quarterly Statement(s) or calculation of Quarterly Gross Revenue been correct.

## **5. VARIATION OF RENT**

### **Rent Review**

- (a) On each Rent Review Date, and before any assignment of this Lease, the Lessor may review the Rent in consultation with the Lessee, taking into account (amongst other things) the value of the Leased Area, the status of the Lessee's business and the value of the Lessee's business to visitors to the Land.
- (b) If the Lessor acting reasonably decides to increase the Rent, it must first give the Lessee 2 months notice in writing of the new Rent [and its reasons for the increase] (**Notice of Rent Increase**) that will take effect on and from the end of the 2 months notice period, subject to clause 5.2 below.

### **5.2 Lessee Break Clause**

- (a) During the 2 months notice period, if the Lessee does not agree to the increase in Rent set out in the Notice of Rent Increase, it must notify the Lessor as such and that it proposes to exercise its right of termination in clause 5.2(c) below unless the Notice of Rent Increase is withdrawn.
- (b) Upon receipt of the notice from the Lessee referred in clause 5.2(a) above, the Lessor may withdraw the Notice of Rent Increase by notice in writing to the Lessor.
- (c) If the Lessor does not withdraw its Notice of Rent Increase, this Lease will terminate at the end of the 2 months notice period and the Lessee shall quietly deliver up the Leased Area to the Lessor in such state of repair and condition as shall be consistent with the proper performance by the Lessee of the covenants herein contained and the Lessor will not be liable for compensation in respect of such sooner determination or in respect of any improvements erected by the Lessee in the Leased Area remaining after such termination of this Lease but without prejudice to any right of action of the Lessor in respect of any breach of the Lessee's covenants agreements or of any conditions and provisions herein contained.

## **6. OUTGOINGS**

### **6.1 Rates and Taxes**

- (a) The Lessee must pay the Rates and Taxes either to the relevant Authority before those Rates and Taxes become overdue or, in the case of any Rates and Taxes imposed on the Lessor, to the Lessor within 30 Business Days after the Lessor's written demand.
- (b) If any of the Rates and Taxes are not assessed separately on the Leased Area but also on other property which includes the Leased Area, the amount which the Lessor can require the Lessee to pay is the same proportion of those Rates and Taxes as the area of the Leased Area bears to the area of the property the subject of the assessment.
- (c) The Lessee must at the request of the Lessor produce to the Lessor the receipts of payment of the Rate and Taxes where these are paid to the relevant Authority.

**6.2 Service Charges**

- (a) The Lessee must pay all charges for Services which are imposed in respect of the Leased Area either to the supplier of the Services before those charges become overdue or, in the case of any such charges imposed on the Lessor, to the Lessor within 30 Business Days after the Lessor requests payment.
- (b) If any Services are assessed or imposed in respect of other property as well and not only in respect of the Leased Area, the Lessee must pay a proportion of those Services to the Lessor within 30 Business Days after the Lessor requests payment. The proportion is the proportion that the Leased Area bears to the area of the property the subject of the assessment or imposition.

**7. GOODS AND SERVICES TAX**

**7.1 Definitions**

Expressions set out in italics in this clause have the same meaning as those expressions in the GST Act.

**7.2 Amounts payable by Lessee exclusive of GST**

Except where express provision is made to the contrary, all amounts payable by the Lessee specified in this Lease are stated exclusive of GST.

**7.3 Liability to pay any GST**

If the Lessor makes a *taxable supply* in connection with this Lease for a *consideration* which represents an amount which is exclusive of GST, then the Lessee must pay to the Lessor (subject to the Lessee receiving the relevant tax invoice), at the same time and in the same manner as such *consideration* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

**7.4 Reimbursements**

If this Lease requires the Lessee to pay, reimburse or contribute an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor's recovery from the Lessee is a *taxable supply*, any GST payable under clause 7.3.

**7.5 Tax invoice**

The Lessor shall provide to the Lessee a valid *tax invoice* in respect of any GST paid pursuant to clause 7.3 before any GST is payable by the Lessee.

**8. USE OF LEASED AREA**

**8.1 Permitted Use**

The Lessee may only use the Leased Area for the Permitted Use and must not use the Leased Area for any other purpose unless the Lessor consents in writing.

**8.2 Lessee's own enquiries and no representation**

- (a) The Lessee has relied on its own enquiries about:
  - (i) the suitability of the Leased Area for any purpose to which it is to be put and not on any representation from the Lessor;



- (ii) all planning and any other requirements, prohibitions or restrictions applying to the Leased Area under any Law or as a result of the requirements or orders of any Authority; and
  - (iii) the Services (if any) that supply the Leased Area and their state of repair.
- (b) The Lessee acknowledges that no representation was given by the Lessor that the Leased Area or any part of the Lease Area is suitable for the carrying out of the Permitted Use, including any development of the Leased Area or the carrying out of the Lessee's business or other activities.
- (c) Any defect, problem or other issue which is found to exist on, around or in respect to the Leased Area in no way relieves the Lessee of its obligations under this Lease and the Lessee will be responsible and bears the costs for all works and other activities required to resolve the defect, problem or other issue.

### **8.3 No warranty by Lessor**

The Lessor does not make or give any warranty or representation of any kind, either expressly or impliedly, that the Leased Area is or will remain suitable for all or any of the purposes of the Lessee. Any warranty in relation to the Leased Area which is implied by Law is excluded to the extent that the Law permits the warranty to be excluded.

### **8.4 Contamination, Pollution or Environmental Harm at Lessee's risk**

- (a) The Lessee relies on its own investigations concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.
- (b) The Lessor does not make any representation or warranty concerning the existence, non-existence, level or quantity of Contamination, Pollution or Environmental Harm on the Relevant Land.
- (c) If the Lessee becomes aware of any Pollution, Contamination or Environmental Harm affecting the Leased Area, the Lessee may elect to either:
  - (i) remediate the Leased Area at the Lessee's cost, to a state that, in the opinion of the Lessee, is suitable; or
  - (ii) continue in possession of the Leased Area in accordance with the terms of this Lease at its own risk.

## **9. BUILDING WORK, MAINTENANCE AND REPAIR AND CLEANING**

### **9.1 No damage or alteration without consent**

- (a) The Lessee must not cause or allow damage to the Leased Area, or modify or interfere with the Services without the Lessor's consent. If the Lessee becomes aware of any damage to the Leased Area or defective operation of any of the Services, the Lessee must immediately notify the Lessor.
- (b) The Lessee must not make any alterations or additions to the Leased Area without first obtaining the Lessor's consent and subject to compliance with clause 9.4 of this Lease.

### **9.2 Maintenance and repair**

The Lessee must at its cost:

- (a) maintain the Leased Area, including all drains, access tracks, roads, walking or cycling trails, signage, fences, sanitary and water apparatus, windows, doors, locks, keys, fastenings and other fixtures and fittings, in good and substantial repair and condition;
- (b) promptly repair any damage to the Leased Area to the same or similar quality to that in place on the Commencement Date, including carrying out any work of a structural nature required to comply with this clause 9.2(b);
- (c) keep and maintain the Lessee's Property (including signs) located on the Leased Area, and the Lessor's Property, in good and substantial repair and condition and replace items that are lost, worn out, destroyed or rendered unserviceable with items of the same nature;
- (d) properly care for and maintain any lawns, gardens or other landscaped areas of the Leased Area; and
- (e) ensure that the buildings located within the Leased Area are:
  - (i) inspected on an annual basis for the presence of termites and other pests;
  - (ii) treated with chemicals by a registered pest controller and in accordance with the Department of Health standards and stipulations of the Lessor if inspections indicate termites or other pests may be present;
  - (iii) made good and repaired following any damage from termite attack; and
  - (iv) supply, upon the Lessor's request, a certificate in respect to each annual pest control inspection and treatment.

### **9.3 Services**

- (a) The Lessee acknowledges that the Lessor has no obligation to and is not responsible for providing any Services to the Leased Area or maintaining, repairing or replacing any Services within the Leased Area or outside of the Leased Area where those Services exist for the purposes of providing Services to the Leased Area.
- (b) The Lessee must construct, install and connect all Services that comprise the Lessee's Works in accordance with clause 32 of this Lease. The Lessee must obtain the Lessor's approval in writing for any additional Services the Lessee may require during the Term, which approved Services must be installed, constructed and connected in accordance with clause 9.4 of this Lease.
- (c) The Lessee acknowledges its obligations to maintain and repair the Leased Area under clauses 9.2(a) and 9.2(b) of this Lease apply to the Services. The Lessee must also maintain and repair all damage to Services outside of the Leased Area where those Services exist for the purposes of providing Services to the Leased Area.
- (d) The Lessee is responsible for obtaining permission to access land and all Authorisations to construct, install and connect any Services outside of the Leased Area required for the purposes of the Leased Area.

### **9.4 Building work**

If the Lessee is permitted to construct or install anything on, in or under the Leased Area, or is required under this Lease or by Law or an Authority to carry out work (including the making of repairs), the Lessee must at its cost in respect of such work:

- (a) obtain the Lessor's written approval to the plans and specifications for the work before carrying out the work (which approval may be subject to conditions);
- (b) obtain any Authorisations required for the work, including development approval and building licences;
- (c) comply with those Authorisations and any other requirements of any Authority and all Laws and applicable building standards which apply to the work;
- (d) carry out the work in a safe and proper manner and strictly in accordance with the plans and specifications for the work approved by the Lessor, including any conditions of approval;
- (e) use only good quality (and new where required by the Lessor) materials and employ only qualified, skilled and competent persons; and
- (f) pay any costs incurred by the Lessor to:
  - (i) provide its approval; and
  - (ii) supervise the work if the Lessor requires,including fees paid to architects, engineers, contractors or other advisors.

#### **9.5 Historical significance of Leased Area**

- (a) The Lessee acknowledges that:
  - (i) the whole or part of the Leased Area may be of historical significance; and
  - (ii) special circumstances and obligations may apply upon the Lessee seeking to make any alterations or undertaking any works to the Leased Area.
- (b) The Lessee must not at any time during the Term dig or otherwise disturb the ground surface of the Leased Area:
  - (i) without the Lessor's prior written consent; and
  - (ii) first obtaining all necessary Authorisations from all relevant Authorities, including obtaining all necessary archaeological, heritage or native title clearances, required for that ground-breaking activity.
- (c) The Lessee must notify the Lessor, and report to the relevant Authority as required by Law, if it finds or locates any items or places of historical significance and must comply with reasonable directions provided in response to the notice or report.

#### **9.6 Cleaning and waste management**

- (a) The Lessee must, at its own cost:
  - (i) keep the Leased Area and, where the Lessee is able to lawfully do so, the Surrounding Area for a distance of 10 metres from the Leased Area boundary, clean and tidy and free from rubbish, vermin and pests originating from the Leased Area;
  - (ii) ensure the Lessee's Visitors do not do anything to cause rubbish, vermin or pests in the Leased Area and the Surrounding Area;

- (iii) remove any graffiti from the Leased Area as soon as reasonably practicable after becoming aware of that graffiti appearing on the Leased Area; and
  - (iv) comply with the Lessor's directions for the disposal and recycling of rubbish and, if no directions are given, the Lessee must store all rubbish in a proper and hygienic manner within the Leased Area and attend to its prompt disposal in an appropriate recycling or rubbish disposal site outside the Leased Area.
- (b) The Lessee must not dispose of rubbish in any bins provided for public use.

## **10. LESSEE'S ENVIRONMENTAL OBLIGATIONS**

### **10.1 Fire prevention and emergency response**

- (a) The Lessee must as soon as reasonably practicable after the Commencement Date, and before any development or other work is undertaken in respect of the Leased Area, prepare an emergency response plan that meets the requirements of the Lessor as advised in writing (ERP). The ERP must be reviewed and updated annually by the Lessee and submitted for approval by the Lessor. Each latest approved ERP must be implemented by the Lessee.
- (b) The Lessee must not do or omit to do anything which causes or may cause a fire on the Leased Area.
- (c) The Lessee must use all reasonable precautions to prevent fires in or around the Leased Area and comply with all directions concerning fire prevention and control given to the Lessee by the Lessor or any Authority.
- (d) If a fire is detected in or around the Leased Area, the Lessee must immediately:
  - (i) call the 000 emergency number and report the fire and comply with any directions given;
  - (ii) notify the Lessor and comply with any directions given;
  - (iii) take all reasonable and safe action which the Lessee is able to take to try to extinguish or contain the fire; and
  - (iv) implement all applicable measures in the latest approved version of the Lessee's ERP.

### **10.2 Contamination, Pollution and Environmental Harm**

- (a) The Lessee must not cause or permit any Contamination, Pollution or Environmental Harm of the Relevant Land and must take all measures necessary to prevent Contamination, Pollution or Environmental Harm of the Relevant Land, including the use or storage of any chemicals and other potential pollutants in a way that prevents their access or spread to the environment.
- (b) The Lessee must notify the Lessor immediately on becoming aware of:
  - (i) the existence of any Contamination;
  - (ii) any Pollution affecting, or the potential for Pollution to affect, the Relevant Land;

- (iii) an Environmental Notice being served on the Lessee or any other person which relates to or arises from the Lessee's use or occupation of the Leased Area; or
  - (iv) the making of a complaint to any person, including to the Lessee or the commencement of proceedings against the Lessee relating to an alleged failure by the Lessee to observe or perform an obligation under an Environmental Law or Authorisation.
- (c) The Lessee must, at its cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Lessee's use or occupation of the Leased Area, whether the notice is served on Lessor or the Lessee.
- (d) Without affecting:
  - (i) the obligations of the Lessee at Law or in this clause 10; or
  - (ii) limiting any right of, or indemnity in favour of, the Lessor,

if any Contamination, Pollution or Environmental Harm occurs, the Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the absolute satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.
- (e) The obligations of the Lessee under this clause 10.2 continue after the expiration or earlier determination of this Lease.

### **10.3 Environmental Authorisations**

- (a) The Lessee must:
  - (i) obtain any Authorisation required under Environmental Law for any conduct, activity or use undertaken by the Lessee on the Leased Area, including the Permitted Use, before that conduct, activity or use is undertaken and keep all such Authorisations in full force and effect throughout the Term;
  - (ii) use the Leased Area in a manner which complies with each Environmental Law and each Authorisation held by the Lessee in accordance with sub-clause 10.3(a)(i); and
  - (iii) not do or omit to do any act which may directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Leased Area or any conduct or activity relating to the use or occupation of the Leased Area.
- (b) Nothing in this Lease is to be taken as exempting the Lessee from or limiting the obligation of the Lessee to comply with all Environmental Law.

### **10.4 Protection of vegetation and soil**

- (a) The Lessee must take all reasonable actions necessary to:
  - (i) protect the trees and other vegetation growing on the Leased Area; and
  - (ii) prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Area.

- (b) The Lessee may only use timber on the Leased Area, unless otherwise approved by the Lessor, for fencing or other authorised improvements and only after obtaining the Lessor's written consent.
- (c) This Lease does not grant to the Lessee any rights to Forest Produce on the Leased Area.

**10.5 Prevention of diseases and pests**

- (a) The Lessee must:
  - (i) comply with all of the Lessor's directions relating to the prevention of, or minimising the impact or spread of, any diseases or pests in connection with the Leased Area; and
  - (ii) arrange for other measures as may be necessary (including as directed by the Lessor) to prevent the spread of *Phytophthora cinnamomi* (dieback).
- (b) The Lessee must control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976* (WA) in relation to the Leased Area, as required by that Act.

**10.6 Dangers or threats to the public**

- (a) The Lessee must take all measures necessary to prevent accidents and to protect the safety of the Lessee's Visitors and the public generally on the Leased Area, including warning the public of any actual or potential dangers or threats.
- (b) If the Lessee believes it needs to prune or remove any vegetation which it considers is in a dangerous condition or which may threaten the safety of any person, it may only do so after consultation with the Lessor, unless the taking of such action is immediately required to protect people or property.
- (c) The Lessee shall arrange for an annual inspection to be carried out by a suitably qualified and experienced arborist of all trees within the Leased Area to ensure they meet the safety requirements required for the Permitted Use.

**10.7 No degradation of the Environment**

- (a) In this clause 10.7, **Degradation** includes:
  - (i) destroying, spoiling, excavating, polluting, contaminating or changing (including adding to) the land, air or water on or comprising the Relevant Land or its natural features or characteristics (including topography);
  - (ii) destroying, cutting, injuring, threatening or jeopardising any flora or fauna on, in or inhabiting the land, air or water comprising the Relevant Land;
  - (iii) removing stones, rocks, earth, sand, soil or other material from the Leased Area;
  - (iv) introducing or bringing onto the Leased Area any flora or fauna or disease, or harming or endangering any flora or fauna on the Leased Area;
  - (v) lighting fires or causing explosions on or near the land, air or water comprising the Relevant Land;
  - (vi) altering the natural drainage on the Leased Area or taking water from the local environment;

- (vii) the causing or leaving of rubbish, useless material, pollutants or contaminants on or in the land, air or water comprising the Relevant Land;
  - (viii) the application of fertilisers; and
  - (ix) anything else which in connection with the Leased Area may be harmful to the environment.
- (b) The Lessee acknowledges that the Leased Area may be environmentally sensitive and that the Lessor has a general duty to protect the environment.
- (c) Without limiting the Lessee's obligations in this clause 10, unless expressly authorised under this Lease the Lessee must not effect, cause or suffer any Degradation without first obtaining the consent of the Lessor.
- (d) If Degradation has occurred, the Lessee must promptly notify the Lessor in writing and, at its own cost, restore the environment to the condition it was in immediately before the Degradation occurred to the Lessor's satisfaction.
- (e) The Lessee must, at its cost, promptly comply with any directions of the Lessor in respect of the Degradation, the restoration of the environment or the prevention of any future Degradation.

#### **10.8 Sustainability performance**

- (a) During the Term, the Lessee must use reasonable endeavours to achieve the benchmarks/key performance indicators itemised in the Sustainability Performance Assessment and Audit Schedule.
- (b) The Lessor may no more than annually engage a person of its choosing (the **Auditor**) to audit the Lessee's performance against the benchmarks/key performance indicators itemised in the Sustainability Performance Assessment and Audit Schedule (**Sustainability Audit**). The Lessor must consult with the Lessee before notifying the Lessee of the proposed time, place and duration of each Sustainability Audit. The Lessee must allow the Lessor, the Lessor's Agents and the Auditor to enter the Leased Area for the purpose of undertaking the Sustainability Audit.
- (c) The Lessee must fully co-operate with the Lessor and Auditor in undertaking the Sustainability Audit and promptly provide to the Lessor and Auditor all such documents, records and other information as may be requested by the Lessor or Auditor either before, during or after each Sustainability Audit to enable it to undertake the Sustainability Audit.
- (d) The Lessee must pay to the Lessor on demand the reasonable cost of each Sustainability Audit, including the Auditor's fees and reasonable Auditor travel costs.
- (e) The Lessor must provide to the Lessee a written report setting out where, in the opinion of the Auditor, the Lessee is not achieving any of the benchmarks/key performance indicators in the Sustainability Performance Assessment and Audit Schedule and the measures by which the Lessee must use reasonable endeavours to undertake in order to achieve the relevant benchmarks/key performance indicators.
- (f) The Lessor may vary or add to the Sustainability Performance Assessment and Audit Schedule from time to time in consultation with and by written notice to the Lessee in such a manner and to such an extent as the Lessor considers reasonably necessary or appropriate for the proper performance and observance of, and compliance with, the Lessor's responsibilities under the Law and provided that such

amendments are standard procedure of the Lessor for the management of the Land and any other land vested in the Conservation and Parks Commission.

## **11. LESSEE'S GENERAL OBLIGATIONS**

### **11.1 Obligations**

The Lessee must:

- (a) conduct the Lessee's business or activities in the Leased Area in a safe and proper manner;
- (b) ensure that Lessee's officers, employees, contractors, agents, service suppliers, sublessees, licensees and sub-licensees maintain a high standard of professional and courteous conduct towards the Lessee's customers, invitees, guests, volunteers and other visitors, the Lessor, the Lessor's Agents and the general public;
- (c) use its best endeavours to ensure that the Lessee's Visitors to the Leased Area comply with all Laws applicable to the Land and any rules that the Lessor may make from time to time;
- (d) use its best endeavours to protect and keep safe any property on the Leased Area from theft or robbery and securely lock all exterior doors and windows of any property when not occupied;
- (e) allow persons having an interest in the Leased Area superior to, or concurrent with, the Lessor's interest to exercise the Lessor's or that other person's rights and perform their obligations in connection with the Leased Area;
- (f) withdraw any 'subject to claim' caveat lodged to protect the Lessee's interest under this Lease at the termination, or on an assignment, of this Lease;
- (g) promptly give the Lessor a copy of every notice from any Authority received by the Lessee relating to the Leased Area;
- (h) immediately notify the Lessor if the Lessee becomes aware of any threat to the Leased Area and comply with the Lessor's directions for the purpose of protecting property or persons in the Leased Area;
- (i) promptly inform the Lessor after becoming aware of any damage to the Leased Area or of the faulty operation of any Services; and

### **11.2 Negative obligations**

In connection with the Leased Area, the Lessee must not (and must not permit anyone else to):

- (a) give any person a Security Interest in the Leased Area;
- (b) modify, interfere with or obstruct the operation of or access to the Services;
- (c) do anything which is offensive, illegal or a nuisance and must promptly abate any nuisance which does occur;
- (d) do, cause or omit to do any act or thing that may detract from the reputation of the Lessor, the Land or the Leased Area;
- (e) store or use inflammable or explosive substances, including fuels, paint, solvents and pesticides in the Leased Area except those normally used for any activity



included in the Permitted Use but then only if they are stored in proper containers and used only in accordance with all relevant Laws and the requirements of any Authority; or

- (f) place on, or on any window or exterior surface of any building or other structure forming part of, the Leased Area, any signs, advertisements, televisions, antennae, amplifiers, loudspeakers, radio, mast or other apparatus (either temporarily or permanently), except as authorised by this Lease or in writing by the Lessor;
- (g) permit any other person to carry on business on or from the Leased Area unless the prior approval is obtained from the Lessor;
- (h) use the Leased Area as a residence, other than for an approved caretaker's residence for security purposes;
- (i) bring on the Leased Area any heavy machinery or other plant and equipment which is not reasonably necessary or proper for the Permitted Use, and in no circumstances is any such machinery, plant or equipment to be of such nature or size as may cause any damage to or degradation of the Leased Area; or
- (j) vacate the Leased Area, except as required by this Lease, or abandon the Leased Area.

#### **11.3 No absolute caveat**

The Lessee must not lodge an absolute caveat affecting the Leased Area to protect the Lessee's interest under this Lease.

#### **11.4 Lessee's warranty**

The Lessee warrants that it has the power to enter into this Lease and to perform and observe the Lessee's covenants contained in this Lease.

#### **11.5 Cost of complying with obligations**

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

### **12. COMPLIANCE WITH LAWS AND REQUIREMENTS**

At all times during the Term, the Lessee must at its expense:

- (a) comply with all applicable requirements of any Authority and all Laws relevant or applicable to, or in connection with, this Lease, the Leased Area, the Lessee's Property and the Lessee's activities in relation to the Leased Area;
- (b) obtain, maintain and comply with all Authorisations required to use the Leased Area for the Permitted Use; and

pay when due to the relevant Authority all application and other fees of and incidental to the obtaining and maintaining of the Authorisation of any relevant Authority.

### **13. INSURANCE**

#### **13.1 Lessee's insurance**

- (a) Throughout the Term, the Lessee must effect and maintain with a reputable insurer at the Lessee's expense the following insurance policies in the names of the Lessee and Lessor for their respective rights and interests:

- (i) public liability and products liability insurance of at least the amount specified in item 5.1 of the Schedule for each occurrence in the Leased Area and unlimited as to the number of occurrences;
  - (ii) a property insurance policy to cover the Leased Area (including the Lessor's Property) and the Lessee's Property (including vehicle insurance) to their full insurable replacement value against all usual risks against which a prudent tenant should ordinarily insure, including but not limited to loss or damage occasioned by fire, fire-fighting activities, fusion, explosion, lightning, civil commotion, storm, tempest, flood, earthquake, burglary and malicious damage;
  - (iii) workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability and unlimited as to the number of occurrences; and
  - (iv) any other insurance required by law as a result of the Lessee's use of the Leased Area or which the Lessor acting reasonably may from time to time require the Lessee to effect and maintain.
- (b) Each policy of insurance effected and maintained as required by clause 13.1(a) must:
  - (i) provide that each party named in the insurance policy is to be treated as separate insured parties and the insurers waive rights of subrogation against the Lessor and the State;
  - (ii) include a cross liability endorsement for the benefit of the Lessor and the State so that the insurance policy operates in the same manner as if there were a separate policy of insurance covered each such party;
  - (iii) provide that any breach of the conditions of the insurance policy by an insured other than the Lessor or the State must not in any way prejudice or diminish any rights which the Lessor has under the insurance policy;
  - (iv) provide that the insurance policy is primary with respect to the interests of the Lessor and the State, and any other insurance or self-insurance arrangements maintained by the Lessor or the State is in excess to and not contributory with the insurance policy; and
  - (v) provide that a notice of claim given to the insurer by an insured other than the Lessor will be accepted by the insurer as a notice or claim given also by the Lessor.

### **13.2 Variation of insurance amount**

The Lessor may by notice to the Lessee at any time require the Lessee to increase the minimum cover for any of the Lessee's insurance policies required under clause 13.1 if in the circumstances it is reasonable for the cover to be increased. The Lessee must promptly increase the amount or extent of cover at its cost as and when notified by the Lessor.

### **13.3 Insurance obligations**

The Lessee must:

- (a) pay all insurance premiums on all policies referred to in clause 13.1 before the due date for payment and, when reasonably requested by the Lessor, provide evidence of payment;

- (b) produce to the Lessor evidence of currency certified by the insurer for each of the insurance policies upon effecting, the renewal of or a change of each insurance policy and when reasonably requested by the Lessor;
- (c) not surrender, let lapse or cancel any of the insurance policies referred to in clause 13.1;
- (d) immediately notify the Lessor if an event occurs which may give rise to a claim under any insurance policy referred to in clause 13.1 or which could adversely affect either or both parties or if an insurance policy is cancelled and must not settle, compromise or waive any claims in respect of any such insurances except on terms first approved by the Lessor in writing;
- (e) immediately expend and apply all money recovered in respect of any claim against an insurance policy referred to in clause 13.1 in and towards the satisfaction of the liability or the payment of damages or the reinstatement or replacement of the property for which that money is received; and
- (f) on demand make up from the Lessee's own money any deficiency, shortfall or insufficiency of money recovered from insurance for that purpose.

#### 13.4 Voiding insurance policies

- (a) Unless the Lessor consents, the Lessee must not:
  - (i) do or allow anything to be done which could adversely affect any insurance taken out by the Lessor in connection with the Leased Area or which could increase the cost of obtaining that insurance; or
  - (ii) settle, compromise or waive any claim under any policy of insurance held by the Lessor relating to the Leased Area.
- (b) If the Lessee or Lessee's Visitors does or causes or omits to do anything which has the effect of invalidating or avoiding any policy of insurance taken out by either the Lessor or the Lessee, or by virtue of which the insurer may lawfully refuse a claim in whole or in part, then the Lessee must pay within 30 days of the Lessor's demand any resulting cost, expense, injury, damage, liability or loss which the Lessor suffers, sustains or incurs and (without limiting any other rights or remedies of the Lessor) must pay to the Lessor within 30 days of the Lessor's demand any increased amount of premium which may be charged on any such insurance to the extent the policy was invalidated or the increased premium was caused by the act of the Lessee or the Lessee's Visitors.
- (c) If the Lessee or Lessee's Visitors does or causes or omits to do anything which causes the Lessor to claim on any policy of insurance taken out by the Lessor, the Lessee must pay any excess payable on that policy in respect of or in consequence of that claim to the Lessor within 30 days of demand.

#### 13.5 No limitation of other liabilities

Nothing in this clause **Error! Reference source not found.** limits the Lessee's other liabilities or obligations under this Lease or restricts the Lessee from insuring for sums or risks greater than those required under this Lease.

### 14. INDEMNITIES AND RELEASE

#### 14.1 Indemnities by the Lessee

- (a) The Lessee indemnifies and must keep indemnified the Lessor and the State from and against any and all Claims and Loss incurred or suffered (by either or both of

the Lessor and the State) that is caused by, contributed to or arises out of or in connection with (whether directly or indirectly):

- (i) any breach of this Lease by or on behalf of the Lessee;
- (ii) the use or occupation of the Leased Area by the Lessee or the Lessee's Visitors;
- (iii) any work carried out by, for or on behalf of the Lessee on or in respect to the Leased Area;
- (iv) the Lessee's activities, operations, business or other use of any kind under this Lease;
- (v) the presence of Contamination, Pollution or Environmental Harm in, on or under the Relevant Land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Visitors;
- (vi) any act, omission or default of the Lessee or the Lessee's Visitors;
- (vii) any act, omission or default of the Lessee that affects, prevents or interferes with a third party exercising a right or interest granted pursuant to clause 16.8 of this Lease;
- (viii) any danger or hazard created, or made worse, by the Lessee or the Lessee's Visitors; or
- (ix) any fire which starts on the Leased Area unless the Lessee can prove to the reasonable satisfaction of the Lessor that the fire:
  - (A) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's default under this Lease; or
  - (B) was started by a cause beyond the Lessee's reasonable control,

except to the extent that such Claims or Losses are caused by the gross negligence of the Lessor.

- (b) The Lessee indemnifies and must keep indemnified the Lessor and the State from and against all Claims and Losses relating to, or in respect of, the remediation of Contamination, Pollution or Environmental Harm required under any Environmental Notice, by any Law or by any Authority as a result of any Contamination, Pollution or Environmental Harm emanating on, or from, the Leased Area as a result of, or relating to, the use or occupation of the Leased Area by the Lessee or Lessee's Visitors.
- (c) The Lessee acknowledges and agrees that the Lessee's public liability insurer is aware of the conditions that apply to this Lease and the indemnity granted pursuant to this clause 14.1 and that the Lessee's public liability policy covers the activities that are specified in this Lease.
- (d) The obligations of the Lessee under this clause 14.1:
  - (i) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount; and
  - (ii) continue after the expiration or earlier determination of this Lease in respect of any act, omission, deed, matter or thing occurring before the expiration or earlier determination of this Lease.

**14.2 Release and no claim**

- (a) The Lessee agrees to occupy, use and keep the Leased Area at the sole risk of the Lessee.
- (b) Neither the Lessor nor the State shall be liable (in negligence or howsoever) to the Lessee, and the Lessee will not make a claim against and releases to the full extent permitted by Law, the Lessor and the State from and against:
  - (i) any Loss which may arise in respect of any accident or damage to any property, or death or injury to, or illness of, any person, of any nature in or near the Leased Area;
  - (ii) loss or malfunction of or damage to Lessee's Property or any fixtures or personal property of the Lessee;
  - (iii) all Claims and Losses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Relevant Land at any time throughout the Term;
  - (iv) any act, omission or default of any other occupier of the Land (including the Leased Area); and
  - (v) any breakdown in, or interruption or defective operation of any Service or associated equipment,except to the extent that such loss or damage is caused by the gross negligence of the Lessor.
- (c) The obligations of the Lessee under this clause 14.2 continue after the expiration or earlier determination of this Lease in respect of any act, omission, deed, matter or thing occurring before the expiration or earlier determination of this Lease.

**14.3 Part 1F of the Civil Liability Act excluded**

Should the Lessee actually or allegedly commit or be responsible for the commission of a tortious act or contractual breach, Part 1F of the *Civil Liability Act* 2002 (WA) is excluded from this Lease and its operation.

**15. LESSOR'S GENERAL RIGHTS AND OBLIGATIONS**

**15.1 Exercise of rights under the CALM Act**

The Lessor reserves the right for it, and for Lessor's Agents, to enter the Leased Area at any time in order to exercise any right, power or authority which the Lessor (or another agent of the State) has under the CALM Act. The Lessee is not entitled to any compensation or to make any other claim against the Lessor for anything done or not done by the Lessor on the Leased Area in the exercise of any right, power or authority under the CALM Act.

**15.2 Right to enter**

The Lessor or the Lessor's Agents may, after giving reasonable notice to the Lessee (or in an emergency, without notice), enter the Leased Area to do any one or more of the following things:

- (a) inspect the state of repair and condition of the Leased Area;
- (b) maintain or repair the Leased Area and equipment or facilities in the Leased Area;

- (c) inspect, maintain, repair, alter, install or remove the Services;
- (d) carry out structural work to the Leased Area or any other work required by an Authority;
- (e) remove anything which is actually or potentially harmful or dangerous;
- (f) undertake the Sustainability Audit;
- (g) anything which should have been done by the Lessee but which has not been done to the Lessor's satisfaction, or at all;
- (h) anything else which the Lessor is required or permitted to do by Law or under this Lease,

without affecting the Lessee's obligations under this Lease.

### **15.3 Lessor's power with respect to contractors**

- (a) The Lessor retains the right to approve or not to approve any contractor, tradesperson, employee, firm or company to carry out any repairs, renovation, alteration, addition or cleaning whatsoever to the Leased Area within the responsibility of the Lessor, regardless of whether the Lessee is liable for costs or not and irrespective of whether the work to be carried out is a requirement under this Lease or not.
- (b) The Lessor retains the right to appoint a contractor, agent, employee or tradespeople of its choice to carry out any work of any nature to the Leased Area which may be required and if the work is such which is the responsibility of the Lessee under this Lease then the Lessee shall be liable to pay within 30 days of written demand by the Lessor the costs so incurred.

### **15.4 Lessor may rectify**

The Lessor or Lessor's Agents may do anything which should have been done by the Lessee under this Lease but which has not been done or has not been done properly within 30 days after written notice has been received by the Lessee and the Lessor may enter the Leased Area for that purpose. The Lessee must pay any reasonable costs incurred by the Lessor in taking action under this clause 15.4 within 30 days after the Lessor requests payment.

### **15.5 Lessor's right to alter buildings**

- (a) In respect of any building or other structure that may be present at the Leased Area, the Lessor reserves the right to carry out any works which, acting reasonably, it considers to be necessary, desirable or appropriate, including:
  - (i) demolishing or reconstructing any part of a building or structure;
  - (ii) renovation or refurbishment, or constructing additions;
  - (iii) altering the size, location, composition and arrangement of any part of a building or structure; and
  - (iv) altering the means of access,

provided always that the Lessor takes all reasonable steps to minimise interference with the Lessee's business conducted at the Leased Area.

- (b) If the Lessor employs reputable contractors or tradespeople to carry out the abovementioned works, and if they do so during hours and using methods and practices which are not unusual for work of the kind they are doing and they use reasonable efforts to avoid causing the Lessee undue loss, injury, damage or nuisance, the Lessor will not be in breach of this Lease and will not be liable to the Lessee for any Loss in consequence of carrying out the abovementioned works or for anything incidental or ancillary thereto.
- (c) The Lessor will not exercise its rights under clause 15.5(a) without first giving the Lessee at least 30 days prior written notice (except in the case of an emergency, in which case no notice shall be required).

The Lessor may, at its discretion and after giving notice to the Lessee, exclude from the Leased Area any additions or improvements it makes to the Leased Area.

## **16. ASSIGNMENT AND SUBLETTING**

### **16.1 No interest to be created without consent**

The Lessee must not:

- (a) give any person any right or interest in this Lease or the Leased Area (including a licence to use or occupy the Leased Area) or allow any person to use or occupy the Leased Area; or
- (b) assign, transfer, mortgage, novate, charge or otherwise encumber this Lease or any payment or other right, benefit, money or interest under of in respect of this Lease,

without the Lessor's written consent, which consent must not be unreasonably withheld and may be subject to conditions.

### **16.2 Requirements for Consent**

If the Lessor consents to a proposed assignment, transfer, sub-lease or licence then, within a reasonable time before the proposed date of change in possession, the Lessee must:

- (a) supply to the Lessor evidence reasonably acceptable to the Lessor that the proposed assignee, transferee, licensee or sub-lessee is respectable, responsible, solvent, fit and proper and is technically and financially able to perform all the Lessee's obligations under this Lease;
- (b) remedy any default under this Lease to the Lessor's satisfaction unless it has been waived by the Lessor;
- (c) deliver to the Lessor a deed executed by the Lessee and proposed assignee, transferee, licensee or sublessee in a form prepared by, or approved by, the Lessor, by which:
  - (i) the proposed assignee, transferee, licensee or sub-lessee agrees to be bound by and comply with this Lease on and from the date that the assignment, transfer, licence or sub-lease takes effect; and
  - (ii) any guarantor requested under clause 16.6 gives the Lessor a guarantee and indemnity as required by that clause;
  - (iii) in the case of an assignment or transfer, the Lessee agrees to: (A) remain liable to the Lessor for any matter arising under this Lease prior to the date that the assignment or transfer takes effect; and (B) release the Lessor

from the Lessor's obligations to the Lessee on and from the date the assignment or transfer takes effect;

- (d) pay to the Lessor within 30 days of the Lessor's written demand the Lessor's reasonable costs and expenses including agents fees and legal costs in connection with the preparation or examination of any documents relating to the assignment, transfer, licence or sub-lease and the duty on those documents;
- (e) in the case of an assignment or transfer, withdraw any caveat lodged in respect of the Lessee's interest in the Leased Area; and
- (f) comply with any other requirement of the Lessor,

and the Lessor's consent is taken to be conditional on the Lessee complying with the obligations in this clause 16.2.

#### **16.3 Lessee Remains Liable**

The Lessee remains fully liable under this Lease even if the Lessee sublets the Leased Area or gives any right (including a licence) in relation to this Lease or the Leased Area to any other person.

#### **16.4 Change in Control**

- (a) For the purposes of this clause 16.4, the terms "**Control**", "**Subsidiary**" and "**Holding Company**" each have the same meaning as the corresponding term in the Corporations Act.
- (b) If there is a change in Control of the Lessee, the Lessor may require the Lessee to obtain from the persons who have acquired control, as reasonably nominated by the Lessor, a guarantee of the Lessee's obligations under this Lease in a form prepared or approved by the Lessor's solicitors.
- (c) If the Lessee is a Subsidiary a change in Control includes a change in Control of its Holding Company.

#### **16.5 Exclusion of Statutory Provisions**

The provisions of sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Lease.

#### **16.6 Guarantee required**

If the Lessee at any time intends to assign or transfer this Lease or if clause 16.4 applies, and if the Lessor requests, the Lessee must obtain a guarantee of the assignee's, transferee's or lessee's obligations under this Lease from the directors and principal shareholders of the assignee, transferee or lessee (if a company) or any other person reasonably required by the Lessor. The guarantee is to be on terms reasonably acceptable to the Lessor. In this clause 16.6 "guarantee" means guarantee and indemnify.

#### **16.7 Fees**

The Lessee must pay to the Lessor within 30 days of the Lessor's demand all fees and expenses payable by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.



**16.8 Dealing by Lessor with the Leased Area**

- (a) The Lessor may transfer, mortgage, charge, licence or encumber the Land (including the Leased Area) or any part of it or any right, benefit, money or interest under this Lease without the Lessee's consent.
- (b) Without limiting clause 16.8(a), the rights and interests which the Lessor may grant include the right to cut down and remove timber or other vegetation from the Leased Area, the right to draw water or the right to excavate and remove rocks, earth, soil or other materials from the Leased Area.
- (c) The Lessee is not entitled to any compensation or to make any other claim against the Lessor in relation to the proper exercise of any right given to another person by the Lessor. The Lessee is responsible for and indemnifies the Lessor against any Loss resulting from any Claim made by a person to whom a right or interest has been granted by the Lessor in connection with any negligent act or omission of the Lessee or any default by the Lessee under this Lease.

**17. HOLDING OVER**

If the Lessor consents to the Lessee continuing to occupy the Leased Area after the Expiry Date or after the end of any extended term, the Lessee is a six-monthly Lessee of the Leased Area and:

- (a) the six-monthly tenancy may be terminated by either party giving to the other at least one month's notice which may expire on any day; and
- (b) the rent is the same as the Rent payable in accordance with clause 4 as varied in accordance with clause 5; and
- (c) all the other provisions of this Lease apply to the six-monthly tenancy (including the variation of Rent under clause 5) except any option to extend this Lease.

**18. DEFAULT**

**18.1 Essential terms**

Every obligation of the Lessee under this Lease:

- (a) to pay money;
- (b) not to do something without the Lessor's consent;
- (c) to do something by a particular timeframe; or
- (d) relating to damage to or degradation of the Leased Area or to the state of repair or condition of the Leased Area,

is an essential term of this Lease.

This clause does not prevent any other obligation of the Lessee under this Lease being an essential term.

**18.2 Events of Default**

An Event of Default occurs if:

- (a) the Lessee repudiates this Lease;

- (b) the Lessee abandons the Leased Area, or ceases to use the Leased Area for the Permitted Use other than for a temporary period;
- (c) the Rent is at any time unpaid for 60 Business Days after becoming due, whether formally demanded or not;
- (d) (subject to clauses 18.2(a) and 18.2(b)) the Lessee breaches this Lease and does not remedy that breach within 10 Business Days (or such longer period as specified by the Lessor) after being given a notice by the Lessor requiring the Lessee to remedy that breach;
- (e) a judgment, order or a Security Interest is enforced, or becomes enforceable, against the Lessee's interest in this Lease or the Lessee's Property;
- (f) an Insolvency Event occurs in respect of the Lessee;
- (g) the Lessee commits more than 3 breaches of this Lease in any 180-day period (whether any of those breaches are remedied or not); or
- (h) the Lessee fails to comply with any other requirement of this Lease, which failure expressly constitutes an Event of Default for the purposes of this Lease.

#### **18.3 Lessor's right to terminate**

If an Event of Default occurs, the Lessor may terminate this Lease by:

- (a) re-entering the Leased Area without notice; or
- (b) notice to the Lessee.

#### **18.4 Damages**

- (a) If the Lessee defaults by not performing or complying with any obligation which is an essential term, the Lessor is entitled to:
  - (i) recover damages for losses over the whole Term, including losses caused by the non-payment of money by the Lessee over that period, even if this Lease is terminated by the Lessor as a result of an Event of Default before the Expiry Date or the end of any extended term or period of holding over;  
  
less:
  - (ii) amounts which the Lessor could be reasonably expected to obtain by re-letting the Leased Area until the date on which the Term would have expired if the Lessor had not terminated this Lease before the end of the Term (but the Lessor is not to be taken to be required to accept the same or similar terms as those in this Lease).
- (b) The Lessor's right to recover damages is not affected by the occurrence of any of the following events:
  - (i) the Lessor accepts the Lessee's repudiation or abandonment of this Lease;
  - (ii) the Lessor terminates this Lease by notice or re-entry;
  - (iii) the Lessee has abandoned the Leased Area;
  - (iv) there is a surrender of this Lease by Law.

## **18.5 Indemnities**

- (a) The Lessee indemnifies and must keep indemnified the Lessor against any Claim or Loss resulting from:
- (i) an Event of Default; or
  - (ii) if this Lease is terminated by the Lessor for any reason:
    - (A) the Lessor re-entering the Leased Area; or
    - (B) the Lessor not receiving the benefit of the Lessee performing the Lessee's obligations under this Lease from the date of termination until the end of the Term,
- including in each case, legal costs and expenses relating to any of those matters.
- (b) The benefit of the Lessee performing the Lessee's obligations referred to in subclause 18.5(a)(ii)(B) is to be calculated on the assumption that this Lease continues in force until the end of the Term and taking into account the provisions in this Lease relating to Rent and other payments required by the Lessee.
- (c) This indemnity is not affected by the Lessor accepting a repudiation or abandonment of this Lease by the Lessee.

## **18.6 Interest on overdue money**

The Lessee must pay interest on any amount payable by the Lessee under this Lease from the date the amount becomes due for payment until it is paid. The interest is to be paid within 30 days of the Lessor's written demand and is to be calculated on daily balances. The rate to be applied to each daily balance is the rate prescribed under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA) from time to time.

## **18.7 Acceptance of Rent or mitigation**

The acceptance of Rent or other money owing under this Lease or an attempt by the Lessor to mitigate its loss is not a waiver of a breach by the Lessee of its obligations under this Lease or a surrender by operation of Law.

## **19. LESSEE'S OBLIGATIONS ON TERMINATION**

### **19.1 Lessee to vacate**

The Lessee must vacate the Leased Area and remove all the Lessee's Property from the Leased Area and make good any damage caused by their removal by the end of the Term, except that if this Lease is terminated other than through the expiry of the Term, the Lessee must vacate the Leased Area and remove the Lessee's Property within 3 months after this Lease is terminated (or such longer period as specified by the Lessor).

### **19.2 Lessee to leave property required by Lessor**

The obligation to remove the Lessee's Property in clause 19.1 does not apply to any buildings, improvements or other fixtures which the Lessee agrees with the Lessor will not be removed.

### **19.3 Removal of Lessee's Property**

If the Lessee does not comply with clause 19.1, the Lessee's Property shall at the option of the Lessor become the property of the Lessor (without any entitlement by the Lessee to compensation in respect thereof). If the Lessor does not assume ownership of any of the

Lessee's Property under the previous sentence, the Lessor may remove the Lessee's Property from the Leased Area at the cost of the Lessee and either store it at the risk and cost of the Lessee or treat the Lessee's Property as abandoned and deal with it in any manner the Lessor chooses at the Lessee's cost.

#### **19.4 Risk**

The Lessee's Property remains at the Lessee's risk at all times before and after the termination of this Lease, except for any property which the Lessor requires not to be removed under clause 19.2, which is at the Lessor's risk after termination of this Lease.

#### **19.5 Condition of the Leased Area**

- (a) When the Lessee vacates the Leased Area, the Lessee must leave the Leased Area in good repair and condition and in a good state of decoration comparable to that which existed as at the Commencement Date and in accordance with the obligations of the Lessee under this Lease.
- (b) If the Lessee has made any improvements or alterations to the Leased Area or carried out any work on the Leased Area or done anything else to change the Leased Area, if the Lessor requires, the Lessee must reinstate the Leased Area before the end of the Term so that the Leased Area is returned to the condition it was in before the improvements or alterations were made, or the work carried out or the other changes were made, to the satisfaction of the Lessor, acting reasonably. The Lessee's obligations under this clause include removing any building or other structure erected in the Leased Area by the Lessee unless the Lessor agrees otherwise or unless this Lease provides otherwise.

#### **19.6 Survive Termination**

The Lessee's obligations under this clause 19 shall survive termination of this Lease.

#### **19.7 Recovery of Damages**

- (a) For the purposes of this clause 19.7, **Liquidated Damages** means a daily sum equal to 1/365<sup>th</sup> of the aggregate of the Rent and Rates and Taxes payable by the Lessee under this Lease for the 12 months immediately preceding the date of the expiry or termination of this Lease.
- (b) Without prejudice to any other right or remedy of the Lessor contained or implied in this Lease, the Lessor may recover from the Lessee, and the Lessee must pay to the Lessor, Liquidated Damages for each day of the period that starts on the day immediately after the expiry or termination of this Lease and ends on the day the Lessee completes the performance of its obligations under this clause 19 (or such earlier date on which the Lessor may cause any default by the Lessee in the performance of such obligations to be remedied).

### **20. FORCE MAJEURE**

#### **20.1 Force Majeure Event**

For the purposes of this clause 20, a "Force Majeure Event" means an event that prevents a party from performing its obligations, or receiving the benefit of the other party's obligations, in whole or part, under this Lease and which is unforeseeable and beyond the reasonable control of the affected Party, including:

- (a) an act of God;
- (b) an explosion or fire;

- (c) a war, riot, civil unrest, insurrection, sabotage or terrorism;
- (d) an epidemic or pandemic or shortages caused thereby;
- (e) industrial action (other than industrial action limited to the affected party);
- (f) inclement weather; and
- (g) a law, rule or regulation of any government or governmental agency, and executive or administrative order, act or requirement of general application;

but does not include:

- (h) a lack or inability to use funds for any reason; or
- (i) any occurrence which results from the wrongful or negligent act or omission of the affected party (including breach of this Lease or other contract) or the failure by the affected party to act in a reasonable and prudent manner; or
- (j) the breakdown of equipment; or
- (k) the failure by a third party to fulfil a contractual commitment with the affected party (other than as a result of any of items (a) to (g) above; or
- (l) or any act or omission of a subcontractor.

## **20.2 Effect of Force majeure**

- (a) A party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this Lease (other than an obligation to pay Rent or other monies unless clause 20.5 applies), to the extent that, and during the time that, the inability or delay is caused by a Force Majeure Event.
- (b) If a party is prevented from performing its obligations under this Lease by a Force Majeure Event, then that party must:
  - (i) notify the other party as soon as reasonably practicable of the Force Majeure Event, giving details of the nature of the Force Majeure Event, the effect the Force Majeure Event will have on the party's performance of its obligations under this Lease (including which obligations it is prevented from performing), and the expected duration of the Force Majeure Event; and
  - (ii) use its best endeavours to minimise the effect of the Force Majeure Event on the party's performance of its obligations under this Lease.
- (c) Subject to clause 20.2(f), the time for performance of any obligation by either party under this Lease will be extended by a period which is reasonable in the circumstances. For the avoidance of doubt, any extension of time under this clause 20.2(c) does not in any way operate to extend the Term.
- (d) The affected party must provide the other party with regular updates as to the affected party's circumstances and the impact of the Force Majeure Event during the time that it is prevented from performing its, or receiving the benefit of the other party's, obligations under this Lease and in any event must provide the other party with an update within 2 Business Days of a request at any time by the other party.
- (e) The affected party must notify the other party in writing as soon as, and in any event within 2 Business Days of, the Force Majeure event ceasing to prevent it from performing under this Lease.

- (f) If a party's performance is affected by a Force Majeure Event for a period equal to or greater than six months, either party may terminate this Lease with immediate effect by notice in writing to the other party.

**20.3 No other liability**

Neither the Lessee nor the Lessor is liable to the other solely because of the termination of this Lease under this clause 20.

**20.4 No obligation to reinstate**

Nothing in this clause 20 or elsewhere imposes an obligation on the Lessor to repair, remediate, replace or reinstate the Leased Area.

**20.5 Rent reduction where Leased Area is damaged or destroyed**

If any part of the Leased Area is damaged or destroyed so that the whole or a substantial part is unfit for use by the Lessee, from the date the damage or destruction occurs until the earlier of the date of termination of this Lease or until the date on which the Leased Area is made fit for use by the Lessee, the Lessee may reduce payments in respect of Rent and Rates and Taxes by a percentage equal to the percentage loss of amenity in respect of the Leased Area caused by the damage or destruction. The extent of the loss of amenity is to be agreed between the Lessor and the Lessee or, if agreement is not reached within 1 month after the damage or destruction occurs, determined under clause 20.6.

**20.6 Dispute resolution**

A dispute arising under clause 20.5 about the loss of amenity is to be determined by a qualified person nominated by the President of the Insurance Council of Australia Limited. Either the Lessor or the Lessee may ask the president to nominate that person, who is to act as an expert and not an arbitrator.

**20.7 Interim payments**

If clause 20.5 applies, the Lessee must continue making payments in respect of Rent and Rates and Taxes under this Lease by reference to the Rent and the amount of the Rates and Taxes payable immediately before the damage or destruction occurred until the amount of the reduction is agreed under clause 20.5 or determined under clause 20.6. Immediately afterwards, an adjustment is to be made for any amount overpaid.

**20.8 Non-payment of insurance money**

The Lessee's rights to terminate this Lease under clause 20.2(f) or to a reduction of Rent under clause 20.5 do not apply if:

- (a) insurance money otherwise payable under an insurance policy in connection with the Leased Area is not paid by the insurer as a result of an act or omission by the Lessee or the Lessee's Visitors; or
- (b) any contractual breach, or actionable, civil or criminal wrong, by or on the part of the Lessee or the Lessee's Visitors, caused the destruction or damage of or to the Leased Area.

**21. COSTS AND EXPENSES**

**21.1 Costs and expenses**

The Lessee must pay or reimburse the Lessor within 30 days of the Lessor's written demand for all the Lessor's reasonable costs and expenses in relation to:

- (a) arranging for any survey or demarcation drawing necessary to identify the Leased Area;
- (b) the instructions for and the negotiation, preparation, execution and stamping of this Lease and any document assigning, varying or surrendering this Lease requested by the Lessee;
- (c) the exercise or enforcement by the Lessor of any right under this Lease, and the preparation and service of a notice under section 81 of the *Property Law Act 1969* (WA) except if the Lessee is successful in any relief against forfeiture;
- (d) any act or omission by the Lessee causing cost or expense to the Lessor; and
- (e) obtaining or giving any consent or approval under this Lease,

which includes in each case the Lessor's reasonable legal costs and expenses on a full indemnity basis and reasonable consultants' and agents' fees.

## **21.2 Duties and Fees**

The Lessee must pay or reimburse the Lessor within 30 days of the Lessor's written demand for all stamp duty, taxes and fees (including fines and penalties attributable to the Lessee) payable in connection with this Lease.

## **22. MISCELLANEOUS**

### **22.1 Survival**

The following clauses of this Lease survive the termination or expiry of this Lease and will continue in full force and effect:

- (a) Clause 1 (Definitions and Interpretation);
- (b) Clause 7 (GST);
- (c) Clauses 9.2(b), 9.3 and 9.6 (Building Work, Maintenance and Repair and Cleaning);
- (d) Clause 10 (Lessee's Environmental Obligations);
- (e) Clause 11 (Lessee's general obligations);
- (f) Clause 12 (Compliance with laws and requirements);
- (g) Clause 13 (Insurance);
- (h) Clause 14 (Indemnities and Release);
- (i) Clause 15 (Lessor's general rights and obligations);
- (j) Clause 16 (Assignment and subletting) with respect to any obligation of the Lessee to pay the Lessor any costs, expenses or fees or indemnify the Lessor;
- (k) Clause 17 (Holding Over);
- (l) Clause 18.5 (Indemnities);
- (m) Clause 18.6 (Interest on overdue money);
- (n) Clause 19 (Lessee's obligations on termination);

- (o) Clauses 20.3, 20.4, 20.5, 20.6, 20.7 and 20.8 (Force Majeure);
- (p) Clause 21 (Costs and expenses);
- (q) Clause 22.1 (Survival);
- (r) Clause 22.5 (Payments);
- (s) Clause 22.8 (Governing Law and jurisdiction);
- (t) Clause 22.13 (Entire Agreement);
- (u) Clause 24 (Notices);
- (v) Clause 27 (Trust);
- (w) Clause 28 (Guarantee); and
- (x) any other clause that expressly or impliedly survives the expiry or termination of this Lease.

The preceding provisions of this clause 22.1 do not oust or limit the operation of the common law pertaining to the survival of contractual provisions post-termination. Such operation of the common law is hereby preserved and applies in its entirety to this Lease (even after termination).

#### **22.2 Remedies Cumulative**

The rights, powers, authorities, discretions and remedies arising in connection with this Lease are cumulative and do not exclude any other right, power, authority, discretion or remedy otherwise available to the Lessor.

#### **22.3 Accrued Rights**

The termination of this Lease for any reason does not affect the rights of the Lessor in relation to a breach of this Lease by the Lessee before termination.

#### **22.4 Schedules etc**

The expressed and implied terms of each schedule (including the Schedule), appendix and annexure to this Lease form part of this Lease and must therefore be complied with in accordance with their expressed and implied terms.

#### **22.5 Payments**

- (a) The Lessee must make all payments under this Lease without set-off, counterclaim, abatement or deduction.
- (b) Payments by the Lessee under this Lease are to be made to the Lessor or any other person nominated by the Lessor.
- (c) The Lessor is not required to make a demand for payment of any amount required to be paid by the Lessee under this Lease unless required by Law.
- (d) If this Lease does not specify when a payment is due, it is due within 30 days after the Lessor requests payment.



**22.6 Transfer of Land Act 1983**

The covenants and powers implied in every lease made under the *Transfer of Land Act 1893* (WA) are implied in this Lease, whether registered under that Act or not, except:

- (a) to the extent that they are modified by this Lease; and
- (b) the implied covenant set out in section 92(b) of that Act is excluded.

**22.7 Variation**

Any variation of any term of this Lease must be in writing and signed by the parties.

**22.8 Governing Law and jurisdiction**

- (a) This Lease is governed by the Law in force in Western Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with this Lease. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**22.9 Lessor may act by agent**

All acts and things which the Lessor is required or empowered to do under this Lease may be done by the Lessor, the Lessor's Agents or the solicitor of the Lessor.

**22.10 Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to the provisions and purpose of this Lease.

**22.11 Approvals and consents**

- (a) Unless otherwise stated, whenever the Lessor's approval or consent is required under this Lease, the Lessor may give it conditionally or unconditionally. Each approval or consent, to be valid and effective, must be in writing and be given prior to the happening of the event for which the approval or consent is required.
- (b) The Lessee agrees that any failure by it to comply with or perform a condition imposed under clause 22.11(a) will constitute a breach of this Lease by the Lessee.

**22.12 Waiver and estoppel**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Lease by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Lease.
- (b) A waiver given by a party under this Lease is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No course of dealings between the parties removes the requirement under clause 22.12(b) that a waiver must be in writing to be effective and binding upon the parties.
- (d) No waiver of a breach of a term of this Lease operates as a waiver of any other breach of that term or of a breach of any other term of this Lease.

- (e) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Lease by the Lessor does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Lease.

**22.13 Entire Agreement**

This Lease states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

**22.14 Counterparts**

This Lease may be executed in any number of counterparts. Each counterpart is deemed an original and all the counterparts together constitute one instrument, which is deemed to be dated on the earlier of the date of exchange or the date of acceptance as is communicated in writing.

**22.15 Relationship of the parties**

- (a) Nothing in this Lease gives a party authority to bind the other party in any way.
- (b) Neither this Lease, nor the relationship created by it, is intended to create, and will not be construed as creating any partnership or joint venture or fiduciary relationship, as between the parties.
- (c) Neither the Lessee's staff, personnel or contractors will be deemed to be employees, agents, contractors, or consultants of the Lessor and each party must pay all costs associated with its employees.

**22.16 Corporate power and authority**

Each party represents and warrants to the other that it has full power to enter into and perform its obligations under this Lease and that when executed this Lease will constitute legal, valid, and binding obligations under its terms.

**22.17 State's interest and statutory functions**

- (a) Any right of the Lessor may be exercised for the benefit of any other part of the State and any reference in this Lease to the Loss of, or costs incurred by, the Lessor includes direct Losses of, and direct costs incurred by, any other part of the State.
- (b) Except where this Lease expressly provides otherwise, to the extent permitted by Law, nothing in this Lease gives rise to any duty on the part of the Lessor to consider interests other than the Lessor's interests (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) Nothing contained in this Lease or contemplated by this Lease has the effect of constraining the Lessor or any other part of the State or placing any fetter on the Lessor's or any other part of the State's statutory rights, duties, powers or functions.
- (d) Notwithstanding anything contained or implied in this Lease to the contrary, the parties agree that the Lessor is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Authority, or to influence, override or direct any Authority in the proper exercise and performance of its legal duties and functions.
- (e) The Lessee is not entitled to make any Claim against the Lessor for any Loss relating to any exercise or failure by the Lessor to exercise its statutory rights or duties.

**22.18 Break clause**

Notwithstanding anything to the contrary expressed or implied contained in this Lease at any time from the date of commencement of any further term granted by this Lease pursuant to the exercise by the Lessee of any option of renewal, the Lessor, acting reasonably, may terminate this Lease by giving to the Lessee six (6) months prior notice in writing in the event that the Lessor requires the Leased Area for the purposes of the Lessor or the State. Upon the expiration of such notice this Lease shall cease and determine and the Lessee shall quietly deliver up the Leased Area to the Lessor in such state of repair and condition as shall be consistent with the proper performance by the Lessee of the covenants herein contained and the Lessor will not be liable for compensation in respect of such sooner determination or in respect of any improvements erected by the Lessee in the Leased Area remaining after such termination of this Lease but without prejudice to any right of action of the Lessor in respect of any breach of the Lessee's covenants agreements or of any conditions and provisions herein contained.

**23. POWER OF ATTORNEY**

The Lessee for valuable consideration irrevocably appoints the Lessor and every senior officer of the Lessor (jointly and severally) as the Lessee's attorney for the purpose of withdrawing any caveat which the Lessee is obliged to withdraw under this Lease.

In this clause "**senior officer**" means every person designated by the Lessor as a senior officer.

**24. NOTICES**

**24.1 Form of notice**

A notice, consent, request, advice, direction, notification or other communication (howsoever described) that may or must be given under or in connection with this Lease is, if given, only valid and effective if it is:

- (a) in writing and signed by the party giving the notice, consent, direction or other communication or any authorised officer of that party or its solicitor or agent;
- (b) addressed to the person to whom it is to be given;
- (c) either sent by:
  - (i) pre-paid mail, couriered or hand-delivered to the person's address; or
  - (ii) sent by email to that person's email address and the sender receives confirmation on its server that the message has been transmitted, provided:
    - (A) the notice, consent, direction or other communication is sent as a .pdf attachment to the email and is not sent as a temporary file or link; and
    - (B) the size of the email is less than 10MB; and
- (d) the address or email address to which the notice, consent, request, advice, direction or other communication is sent is as set out in the Schedule or otherwise notified to the sender for the giving of notices, consents, directions or other communications under or in connection with this Lease.

**24.2 Receipt**

Unless a later time is specified in it, a notice, consent, direction or other communication that complies with this clause 24 takes effect from the time it is taken to be received, which is:

- (a) if sent by courier or email, or is hand-delivered, if received:
  - (i) by 5.00 pm on a Business Day - on that day; or
  - (ii) after 5.00 pm on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if sent by mail, five Business Days after posting.

**25. OPTION TO EXTEND THIS LEASE**

**25.1 Option**

If further terms have been added to item 2.4 of the Schedule, the Lessor gives the Lessee the option to extend this Lease for any further term specified in that item 2.4. Each option is exercisable by the Lessee giving notice to the Lessor not earlier than 6 months and not later than 3 months before the end of the Term specified in item 2.1 of the Schedule.

**25.2 Loss of option**

If, when the Lessee notifies the Lessor or, if the notice has been given at the end of the Term specified in item 2.1 of the Schedule, an Event of Default has occurred and it has not been remedied or waived, the option to extend this Lease ceases to have effect and the Lessee ceases to be entitled to an extension of this Lease.

**25.3 Terms of extension**

Any extension of this Lease is to be on the same terms as this Lease except that:

- (a) the rent applicable at the commencement date of the extended lease is to be the same as the Rent payable under this Lease immediately before the end of the Term unless the commencement date is also a Rent Review Date, in which case, the Rent is subject to review on that date by the method set out in this Lease;
- (b) any option to extend this Lease included in this Lease but which has been exercised does not apply.

**25.4 Documentation**

The Lessee must promptly sign a deed of extension of lease, to be prepared by the Lessor or its solicitors, when requested by the Lessor. Clause 21 relating to costs, expenses, duties and fees applies in relation to that deed.

**26. ADDITIONAL TERMS**

The parties to this Lease agree to be bound by and must comply with the additional terms, if any, set out in Annexure A to this Lease and which form part of this Lease.

**27. TRUST PROVISIONS**

If the Lessee has entered into this Lease as trustee of a trust, whether or not the Lessor is aware of the trust, the Lessee:

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

## **28. GUARANTEE AND INDEMNITY**

### **28.1 Application**

This clause applies if any Guarantor is a party to this Lease.

### **28.2 Guarantor's obligations**

In consideration of the Lessor entering into this Lease at the Guarantor's request, the Guarantor:

- (a) unconditionally and irrevocably guarantees to the Lessor the due and punctual payment by the Lessee to the Lessor of all amounts payable by the Lessee under this Lease and the due compliance by the Lessee with all the Lessee's other obligations under this Lease; and
- (b) as separate undertakings:
  - (i) unconditionally and irrevocably indemnifies the Lessor against all Loss incurred or suffered by the Lessor or any Claim against the Lessor arising from, or in connection with, any Event of Default or as a consequence of a disclaimer of this Lease by a liquidator or trustee of the Lessee; and
  - (ii) as principal debtor agrees to pay to the Lessor on demand a sum equal to the amount of any Loss described in subclause 28.2(b)(i).

### **28.3 Duration and application**

This guarantee and indemnity:

- (a) continues in full force and effect while the Lessee:
  - (i) occupies or is entitled to occupy the Leased Area under this Lease or any other form of tenancy or right of occupation or as a trespasser or other unauthorised occupier; or
  - (ii) holds an equitable interest in the Leased Area under an agreement for lease or as a periodical lessee,until the Lessee complies with all its obligations under this Lease;
- (b) extends to all extensions of this Lease and any new or replacement lease (taken by the Lessee) of the Leased Area; and

- (c) extends to claims by the Lessor for Loss arising from the repudiation of this Lease or breaches of the terms of this Lease by the Lessee, including the Lessor re-entering or terminating this Lease.

#### **28.4 Waiver**

The Guarantor waives:

- (a) all the Guarantor's rights as a surety in respect of this guarantee and indemnity; and
- (b) any right the Guarantor may have of first requiring the Lessor to commence proceedings or enforce rights against the Lessee before claiming under this guarantee and indemnity.

#### **28.5 No prejudice to rights**

The liability of the Guarantor and the rights of the Lessor under this clause are not prejudiced or otherwise affected by anything which might otherwise affect them in or under Law, including one or more of the following:

- (a) the Lessor granting time or other concession to, compromising with, partially releasing or waiving any rights the Lessor has or would have against, the Lessee or the Guarantor;
- (b) acquiescence, delay, acts or omissions by the Lessor;
- (c) a variation of this Lease with or without the consent of the Guarantor;
- (d) the death, dissolution or other incapacity of the Lessee or a Guarantor;
- (e) an Insolvency Event occurs in respect of the Lessee or a Guarantor;
- (f) the fact that a party to comprise the Guarantor may never execute this Lease or that the execution of this Lease by that party or the Guarantor is void or voidable;
- (g) the invalidity or unenforceability of an obligation or liability of the Lessee under this Lease;
- (h) the disclaimer of this Lease by a liquidator or trustee of the Lessee; or
- (i) the Lessor releasing, disposing of, or dealing in any other way with, any other Security Interest it may hold given by the Lessee or any other guarantor.

#### **28.6 Restriction on Guarantor's Claims**

The Guarantor may not, without the prior written consent of the Lessor:

- (a) raise a set-off or counterclaim against the Lessee in reduction of the Guarantor's liability under this clause 28;
- (b) prove or claim in any bankruptcy, liquidation, composition, arrangement or assignment of, or in relation to, the Lessee until the Lessor has received 100 cents in the dollar in respect of the money owing by the Lessee under this Lease; and the Guarantor holds in trust for the Lessor any proof or claim and any dividend received by it; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any other Security Interest held by the Lessor in connection with this Lease.

**28.7 Lessor's Rights**

If a claim that a payment to the Lessor in connection with this Lease is void or voidable under Laws relating to insolvency or protection of creditors is upheld, conceded or compromised, the Lessor is immediately entitled as against the Guarantor to the rights to which it would have been entitled under this clause if all or part of the payment had not been made.

**28.8 Costs and Expenses**

The Guarantor agrees to pay to the Lessor on demand the Lessor's costs and expenses, including legal costs and expenses relating to any action in connection with this guarantee and indemnity, including its enforcement.

**28.9 Assignment of benefit of Lease**

If the benefit of this Lease is transferred or assigned by the Lessor to any person, the benefit of this guarantee and indemnity extends to, and is to be taken to be assigned to, the transferee or assignee.

**29. ASBESTOS**

- (a) The Lessee shall at all times throughout the Term, ensure that it complies with all relevant Australian standards and legal requirements which apply in relation to the treatment, management and removal of asbestos (if any) at or from the Leased Area at the Lessee's cost.
- (b) The Lessor represents and warrants to the Lessee that as at the Commencement Date the Leased Area is free from asbestos.

**30. PPSA**

**30.1 Interpretation**

For the purposes of this clause 30:

- (a) **"Lessor's Personal Property"** means all personal property the subject of a security interest granted to or held by the Lessor under this Lease; and
- (b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

**30.2 Further assurance**

If the Lessor determines that this Lease (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 without limitation 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 so that the Lessor has the priority required by it; and/or
- c) enabling the Lessor to exercise rights in connection with the security interest.

**30.3 No requirement for PPSA notices**

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

**30.4 Priority of the Lessor's interest**

Nothing in this Lease shall be taken or construed as an agreement or consent by the Lessor to:

- (b) subordinate the Lessor's interest in the Lessor's Personal Property (or any part thereof) to any other encumbrance or interest affecting the Lessor's Personal Property at any time; or
- (c) delay the time when a security interest created or provided for under this Lease attaches to the relevant collateral.

**30.5 Enforcement**

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Lessor of any security interest in the Lessor's Personal Property, the Lessee and the Lessor agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

**(enforcement methods)** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);

**(notices)** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and

**(rights to remedy)** sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

**30.6 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 under this Lease);
- (b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Lessor's Personal Property;
- (c) give possession of the Lessor's Personal Property to another person other than the Lessor or where the Lessor expressly authorises it to do so;
- (d) permit any of the Lessor's Personal Property to become an accession to or commingled with any asset;
- (e) change its name without first notifying the Lessor of the new name not less than 21 days before the change takes effect;



- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any of the Lessor's Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of the Lessor's Personal Property at any time.

**30.7 The Lessor's interest remains unaffected**

The Lessor's interest in the Lessor's Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Lessor's Personal Property at any time.

**30.8 Notices to the Lessor**

Without limiting clause 0, the Lessee must notify the Lessor as soon as the Lessee becomes aware of any of the following:

- a) if any personal property which does not form part of the Lessor's Personal Property becomes an accession to the Lessor's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- b) if any of the Lessor's Personal Property is transported, located or situated outside Australia; and
- c) upon request by the Lessor, of the present location or situation of any of the Lessor's Personal Property.

## ANNEXURE A

### Additional Terms

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#### 31. REDECORATION, REFIT AND REFURBISHMENT

The Lessee must redecorate (including painting, papering and varnishing) the in a good and workmanlike manner with good quality materials as shall first be approved by the Lessor (which approval must not be unreasonably withheld):

at least once every nine years during the Term;

as and when the need arises (as determined by the Lessor; and

at the termination of this Lease.

(a) During each ninth year of the Term, the Lessee must in accordance with any directions of the Lessor refurbish and refit the Leased Area, including:

- (i) the removal, repair and replacement (as appropriate) of corroded, worn or weathered building fabric, materials and surfaces, including structural fabric and materials;
- (ii) the removal and repairs of electrical wiring and electrical fixtures and fittings;
- (iii) repainting or the replacement of signs and refurbishing of the fixtures and fittings within the Leased Area;
- (iv) the replacement of floor coverings and window treatments, furniture, furnishings, and
- (v) the painting, colouring, varnishing and papering all parts which have previously been painted, coloured, varnished or papered,

to ensure that the Leased Area, including the ceilings, walls, floors, fixtures, fittings and signage, maintain a high standard of presentation, appearance and design.

#### 32. DEVELOPMENT OF THE LEASED AREA

##### 32.1 Definitions

In this clause 32, the following additional terms have the following meanings:

**Lessee's Works** means the construction of all proposed or future buildings, alterations to buildings, improvements, installations and structures to be constructed and carried out, together with site works, waste storage, roads/access routes, landscaping, the supply and installation of all fixtures, fittings, plant and equipment that the Lessee must undertake as part of its development obligations and the connection of the Lessee's Works to Service within the Leased Area in accordance with the Master Plan, the Permitted Use, good design principles taking into account the location of the Leased Area.

**Lessor's Consultants** means any person, firm or corporation that the Lessor consults with in relation to the carrying out of the Lessee's Works.

**Management Plans** means any plans the Lessor may direct the Lessee to prepare and provide to it for its approval in accordance with clause 32.5.

**Master Plan** means the Lessee's written proposal approved by the Lessor for the development and operation of the Leased Area and annexed to this Lease at Annexure C, as amended from time to time by agreement between the parties.

**Plans and Specifications** means the detailed plans, specifications and working drawings of the Lessee's Works clearly identifying the location and elevations of all improvements, a list of all building materials and products to be used in the Lessee's Works, the exterior colours and finishes, the connections of all Services, compliance with heritage considerations and sustainability guidelines (as may be required by the Lessor) and a schedule of timeframes for the carrying out of the Lessee's Works.

### **32.2 Application**

- (a) This clause 32 applies from the Commencement Date (except when clause 32.2(b) applies, in which case from the date the amendments to the Master Plan are agreed by the Lessor) until the Lessee's Works are completed as determined by the Lessor in accordance with clause 32.12 of this Lease, with the exception of clause 32.13 which survives the expiry or termination of this Lease and clause 32.7 which applies for the Term.
- (b) If, at any time during the Term, the Lessee requests amendments to the Master Plan in respect of further development on the Leased Area, and the Lessor agrees to the amendments, the Lessee may construct and carry out the agreed amendments to the Master Plan in accordance with this clause 32 where:
  - (i) the agreed amendments to the Master Plan become the "Lessee's Works" for the purposes of this clause 32;
  - (ii) references to the "Commencement Date" in this clause 32 are replaced by the date the amendments to the Master Plan are agreed by the Lessor under clause 32.2(b); and
  - (iii) the parties will agree the date by which the Lessee's Works must be completed for the purposes of clause 32.12(c).
- (c) The Lessee's Works, and all obligations of the Lessee under this Lease in respect of the Lessee's Works, must be constructed, installed and undertaken entirely at the Lessee's cost.
- (d) The Lessee's obligation to pay Rent and all other monies payable in full by the due date for payment is in no way affected by any approved staging or delay of the Lessee's Work.

### **32.3 Plans and Specifications**

- (a) The Lessee must provide to the Lessor on or before 30 Business Days from the Commencement Date or such later date as may be agreed to in writing by the Lessor for the Lessor's approval two copies of the Plans and Specifications for the Lessee's Works, which Plans and Specifications are to clearly show any proposed staging of the Lessee's Works. The Lessee acknowledges all structures, plant and equipment must be designed to provide a consistent visual theme throughout the Leased Area consistent with the ecological, environmental and conservation values of the Land.
- (b) The Lessor must, promptly but no later than 40 Business Days after receipt of the Plans and Specifications, give notice in writing to the Lessee stating either that it approves the Plans and Specifications or in what respects it does not approve the Plans and Specifications provided that any changes requested by the Lessor must be reasonable and not inconsistent with any relevant Authority's planning

requirements. The Lessee may amend any Plans and Specifications which are not approved by the Lessor and resubmit those amended Plans and Specifications to the Lessor for approval. The Lessor's approval may be subject to conditions which the Lessee must comply with.

- (c) The Lessee acknowledges the Lessor's approval of its Plans and Specifications does not constitute an acknowledgment or admission that such Plans and Specifications are correct in detail as to measurement, dimensions, materials or in any other particular, the responsibility for which remains with the Lessee.
- (d) The Lessee must not commence any part of the Lessee's Works until the Plans and Specifications supplied to the Lessor under clause 32.3(a) have been approved by the Lessor under clause 32.3(c) and all other applicable requirements of this Lease have been met.

#### **32.4 Authorisations for Lessee's Works**

- (a) Subject to clause 32.4(b), and in addition to its obligations at clause 12 of this Lease, the Lessee must as soon as reasonably practicable and without delay apply for and do all things necessary to facilitate the issue of all Authorisations in respect of each part of the Lessee's Works.
- (b) Where the Plans and Specifications are required by an Authority before an application for an Authorisation will be accepted by the Authority, the Lessee must apply for any such Authorisation as soon as the Plans and Specifications have been approved by the Lessor in accordance with clause 32.3(b).
- (c) The Lessee must notify the Lessor of any alteration to the Lessee's Works required by a relevant Authority, where:
  - (i) the Lessor may not unreasonably withhold its approval in the case of any alteration required by a relevant Authority; and
  - (ii) the Lessee must pay to the Lessor within 30 days of the Lessor's written demand any increased costs, including any fees of the Lessor's Consultants, incurred by the Lessor by reason of the alterations to the Lessee's Works. The Lessor must give the Lessee prior notice of any proposed costs before they are incurred.
- (d) When the Plans and Specifications have been approved by all relevant Authorities, no further material amendment may be made without the prior written consent of the Lessor, which consent may be refused, but must not be inconsistent with any relevant Authority's building requirements.
- (e) The Lessee must not start each respective part of the Lessee's Works until each and every Authorisation for that part has been issued and all other applicable requirements of this Lease have been met.

#### **32.5 Management Plans**

- (a) Before starting the Lessee's Works (or otherwise as and when requested by the Lessor), the Lessee must prepare and provide to the Lessor for its approval each and every Management Plan required by the Lessor in respect of the Lessee's Works.
- (b) If the Lessor does not approve a Management Plan (acting reasonably), then:
  - (i) the Lessor must provide reasons for its refusal to approve the Management Plan;

- (ii) the Lessee must amend the Management Plan in such a way as to address the Lessor's reasons for refusal and resubmit the amended Management Plan to the Lessor for its approval; and
- (iii) the Lessor must (acting reasonably):
  - (A) approve the amended Management Plan if it addresses to the Lessor's reasonable satisfaction its reasons for refusal; or
  - (B) provide further reasons as to why it refuses to approve the amended Management Plan, in which case clauses 32.5(b)(ii) and 32.5(b)(iii) apply.
- (c) The Lessor may require, and the Lessee may request for approval by the Lessor, amendments to a Management Plan to ensure the purposes of the Master Plan and Permitted Use are more appropriately met or to align with any requirements of an Authorisation. Any amendments to a Management Plan must be approved in writing by the Lessor.

### **32.6 Lessee's development obligations**

As soon as the relevant Authorisations have been obtained and the Plans and Specifications approved by the Lessor in accordance with this clause 32, the Lessee must at its own cost, diligently and using all due skill, care and attention, carry out and construct the Lessee's Works:

- (a) strictly in accordance with the Master Plan, the Plans and Specifications as approved by the Lessor and the Authorisations;
- (b) in accordance with all Management Plans as approved by the Lessor;
- (c) using the highest quality and (unless otherwise approved by the Lessor) new materials that comply with the applicable Standards Australia standards;
- (d) in a proper and workmanlike manner and without delay;
- (e) in accordance with good design principles giving due consideration to the natural location of the Leased Area and those parts of the Land surrounding the Leased Area and the environmental conditions present;
- (f) complying with any heritage considerations and conservation principles, as may be notified by the Lessor/that apply to the Land from time to time;
- (g) so that the existing natural and constructed landscaping within and around the Leased Area is protected, with any damage to that landscaping being remediated to the Lessor's satisfaction;
- (h) in accordance with all applicable Law and this Lease; and
- (i) to the Lessor's complete satisfaction.

### **32.7 Lessee's general obligations**

The Lessee:

- (a) must securely fence and signpost the site of the Lessee's Works and prevent entry to the public;

- (b) must ensure the health and safety of Lessee's Visitors (including the Lessor and Lessor's Consultants who enter the Leased Area);
- (c) must maintain the Lessee's Works in good order and condition and take all reasonable measures for the protection, safety and security of the Lessee's Works;
- (d) must not deposit or cause to be deposited within the Leased Area any materials or building plant or equipment that are not immediately required for the carrying out of the Lessee's Works;
- (e) may only keep materials and building plant and equipment on the Leased Area which are required for the Lessee's Works and must be stored within a securely fenced area; and
- (f) must not remove any earth, clay, sand, gravel or other material from the Leased Area except as required for the Lessee's Works and subject to all applicable Authorisations and Law.

**32.8 Lessee must re-execute works if required**

The Lessee must at the Lessee's cost promptly dismantle, re-execute, re-construct or alter as directed by the Lessor those parts of the Lessee's Works which are not carried out in accordance with this Lease.

**32.9 Keep Lessor informed**

The Lessee must, as and when requested by the Lessor or the Lessor's Consultant, advise the Lessor or the Lessor's Consultant of the progress of the Lessee's Works and must comply with all reasonable instructions and directions from the Lessor or the Lessor's Consultant in relation to the carrying out of the Lessee's Works.

**32.10 Lessor's right of entry**

The Lessor's right to enter the Leased Area under clause 15.2 of this Lease applies to the Lessor and Lessor's Consultants from the date of commencement until the date of completion of the Lessee's Works to inspect and supervise the Lessee's Works.

**32.11 No assignment etc until Lessee's Works completed**

Notwithstanding clause 16 of this Lease, the Lessee must not assign or dispose of or purport to assign or dispose of the Lessee's leasehold interest in the Leased Area, or sublet or licence the Leased Area, until all the Lessee's Works have been properly completed in accordance with this clause 32, and then only in accordance with clause 16 of this Lease.

**32.12 Completion of Works**

- (a) The Lessee must notify the Lessor upon completion of the Lessee's Works in accordance with this Lease, which notice must be accompanied by all such evidence and documentation as may be required by the Lessor to demonstrate completion.
- (b) Upon completing the Lessee's Works, the Lessee must clean up the site of the Lessee's Works and all surrounding areas and remove any plant, equipment and materials no longer required by the Lessee to undertake the Permitted Use.
- (c) Failure of the Lessee to complete to the Lessor's satisfaction the Lessee's Works by six (6) months from the commencement date of the lease or such later time as agreed by the Lessor constitutes an Event of Default under clause 18.2 of this Lease.

**32.13 Indemnify Lessor in relation to carrying out the Lessee's Works**

The Lessee indemnifies and must keep indemnified the Lessor and the State from and against any and all Claims and Loss incurred or suffered that is caused by, contributed to or arises out of or in connection with (whether directly or indirectly) the carrying out of the Lessee's Works, except to the extent that such Claims or Losses are caused by the gross negligence of the Lessor.

**32.14 Property in Lessee's Works**

- (a) All of the Lessee's Works become the absolute property of the Lessee upon the date of completion of the Lessee's Works in accordance with clause 32.12 until the expiry or earlier termination of the Lease.
- (b) Upon the expiry or earlier termination of the Lease, the Lessee's Works which the Lessor requires, by notice to the Lessee, not to remove in accordance with clause 19.2 will become the absolute property of the Lessor (**Retained Lessee's Works**).
- (c) Without limiting clause **Error! Reference source not found.**, if the Lessee fails to remove the Lessee's Works (other than the Retained Lessee's Works) in accordance with clause 19.1 (**Residual Lessee's Works**), the Residual Lessee's Works shall at the option of the Lessor become the property of the Lessor (without any entitlement by the Lessee to compensation in respect thereof).
- (d) If the Lessor does not assume ownership of any of the Residual Lessee's Works, the Lessor may remove those Residual Lessee's Works from the Leased Area at the cost of the Lessee and either store it at the risk and cost of the Lessee or treat those Residual Lessee's Works as abandoned and deal with it in any manner the Lessor chooses at the Lessee's cost.

## **ANNEXURE B**

### **Sustainability Performance Assessment and Audit Schedule**

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#### **SUSTAINABILITY PERFORMANCE AND AUDIT**

##### **DEFINITIONS**

In this Annexure, unless the context otherwise requires:

**Act** means the *Conservation and Land Management Act 1984*.

**BEC** means Build Environment Criteria.

**DBCA** means the Department of Biodiversity, Conservation and Attractions

**Lessor** means any senior employee of DBCA.

**NEC** means Natural Environment Criteria.

**Park** means Gloucester National Park

**Regulations** means the Conservation and Land Management Regulations 2002.

**SEC** means Social Environment Criteria.

**Visitor** means guest or customer of the Lessee staying at the Leased Premises.

#### **LESSEE SPECIFIC SUSTAINABILITY PERFORMANCE**

##### **SITE DESIGN AND LAYOUT (BEC)**

1. The Lessee will ensure the Works in any approved development plan and any improvements, additions, modifications, alterations or changes to the Works on the area:
  - i. comply with and are maintained according to these Lease conditions; and
  - ii. comply with and are maintained to the Shire of Manjimup's health standards and receive the approval of the Shire of Manjimup.

##### **MAINTENANCE OF NATURAL ECOLOGY (NEC)**

2. Within the first year of the Commencement Date and for the duration of the Term, the Lessee will develop and implement a weed management program for the Leased Area to include:
  - i. introduction of and monitoring compliance with protocols for the prevention of the introduction of non-native plant species (including inspection of vehicles, inspection of supplies at delivery and storage phases) to be included in a training manual;
  - ii. education of employees, agents and contractors in the inspection for and disposal of weed seeds;
  - iii. annual weed monitoring (including formal assessment of weed status) of area; and
  - iv. weed eradication using the Lessor's approved methods.
3. The Lessee will for the Leased Area:
  - i. develop and implement protocols for the prevention of the introduction of non-native plant and animal species;
  - ii. develop and implement protocols to minimise damage to native vegetation, soil loss and compaction during any construction;



- iii. plant only native vegetation in the Leased Area after consultation and approval of the Lessor's District Operations Coordinator prior to planting any vegetation;
- iv. in consultation with the Lessor's District Operations Coordinator, rehabilitate the Leased Area and revegetate areas not utilised for structures, services and facilities or access areas;
- v. assist the Lessor in its programs of weed eradication, land rehabilitation of the Leased Area (planting and maintenance of native species) and pest animal management at the request of the Lessor's District Operations Coordinator, acting reasonably;
- vi. not allow its own pets or those of its employees, agents, contractors or guests into the Leased Area and include this on verbal and written promotional material;
- vii. not feed or allow any employee, agent, contractor or guests to feed animals in the Leased Area; and
- viii. will encourage the disposal of rubbish and food scraps in sealed bins.

#### **EROSION, SOIL LOSS, COMPACTION AND VEGETATION DAMAGE (NEC)**

- 4. The Lessee will ensure that the buildings and facilities component of the Lease is limited to the footprint only and that no disturbance to vegetation or landforms outside the designated area occurs through the provision of sensitive design, education or signage. The Lessee will control grass growth within the area to the satisfaction of the Lessor's District Operations Coordinator.
- 5. The Lessee will monitor and manage (including to take actions to prevent, limit and remedy) soil loss, compaction and erosion in the Leased Area. The Lessee will ensure that:
  - i. all structures have concrete or raised foundations as approved by the Lessor;
  - ii. there is no soil movement around the area after any construction;
  - iii. minimal loss and clearing of vegetation occurs and that rehabilitation of the site occurs in consultation with the Lessor's District Operations Coordinator;
  - iv. all pedestrian paths and vehicle areas are defined with stable materials approved by the Lessor; and
  - v. in the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the Lessor's District Operations Coordinator.

#### **WATER USE (NEC) & WASTE WATER (BEC)**

- 6. The Lessee will:
  - i. acknowledge that the Lessor does not guarantee the quality and supply of water from within the Leased Area;
  - ii. ensure effluent and waste water is treated to best possible standards in accordance with the Shire of Manjimup, Department of Water and Water Corporation requirements and approvals;
  - iii. only use environmentally sensitive detergents and soaps in the Leased Area and ensure their use is minimised; and
  - iv. implement water saving methods.
- 7. Within the first year of the Commencement Date and for the duration of the Term, the Lessee will:
  - i. develop and implement a water conservation policy to identify and implement opportunities for reducing waste water and water use, and maximising waste water treatment and reuse (for example through new technology) where possible;
  - ii. install and use only low water use shower heads and spring-loaded automatic shut-off taps in any ablution blocks;
  - iii. install and use low water use appliances. Such appliances are to be the most highly rated commercially available appliances at the time of purchase; and
  - iv. install signage at water points to indicate potable/non-potable water to the Lessor's standard and to the satisfaction of the Lessor's District Operations Coordinator.

#### **SOLID WASTE (NEC) & WASTE STORAGE AND DISPOSAL (BEC)**

- 8. The Lessee will:
  - i. within the first year of the Term and for the duration of the Lease, develop and implement a policy to minimise solid waste production by preferential purchase (where possible) of:
    - a. bulk goods;

- b. dry goods;
- c. goods with soft packaging and aluminium rather than glass packaging; and
- d. recycled goods;
- ii. within the first 12 months of the Term (if required) to fit grease traps to any kitchen facilities in accordance with Shire of Manjimup and Health Department requirements;
- iii. within the first year of the Term, establish a collection point for the depositing of recyclable materials;
- iv. monitor, record and annually reduce the volume of organic, non-organic, wet and dry waste, and total waste generated by the Operations;
- v. separate wastes, and sort and crush recyclable containers and cans;
- vi. store and transport waste in a manner that prevents vermin, odour and spillage; and
- vii. ensure that all (human and non-human) organic waste is composted and that the compost and all composted organic and inorganic solid waste is transported out of the Leased Area as required or as directed by the Lessor's District Operations Coordinator; and
- viii. ensure waste is disposed of at a licensed facility and where possible at a recycling facility.

#### **TOILET FACILITY STANDARDS (BEC)**

9. The Lessee will be responsible for cleaning and maintaining any toilets and associated equipment in good working order within the Leased Area.

#### **ENERGY CONSUMPTION (NEC) & METHOD OF ENERGY CONSUMPTION (BEC)**

10. The Lessee will:
- i. within the first year of the Term and for the duration of the Lease, develop and implement a policy to minimise and annually reduce non-renewable energy consumption, maximise use of renewable energy sources;
  - ii. ensure any new building design minimises energy requirements (solar passive where possible);
  - iii. only use energy efficient appliances and lighting equipment and minimise the use of high energy use appliances where possible.

#### **ENVIRONMENTAL STEWARDSHIP (NEC)**

11. The Lessee will:
- i. minimise, manage and monitor the Operation's environmental impact;
  - ii. keep records and supply information to the Lessor on any environmental matter it requests;
  - iii. report incidence of damage or risk within the Leased Area;
  - iv. pay fees and charges promptly; and
  - v. support the Lessor in emergency situations at the request of the Lessor's District Operations Coordinator; and
  - vi. support and assist the Lessor with the rehabilitation and repair of roads and parking infrastructure within the Leased Area, emergency response and other park operations as reasonably requested.

#### **REDUCE VEHICLE USE**

12. The Lessee will, where applicable and where reasonably appropriate:
- i. minimise use of vehicles in the national park by using group transport; and
  - ii. supervise visits to environmentally and culturally sensitive areas and ensure guests are educated on appropriate behaviours in such places.

#### **CHEMICAL/FUEL STORAGE AND HANDLING (BEC)**

13. The Lessee will, within the Leased Area:
- i. display a commitment to using environmentally sensitive products wherever possible;
  - ii. at all times, store chemicals in a designated locked structure and store fuel in a designated signed location in the service area;
  - iii. maintain a register of chemicals and fuels on site (quantity, use and storage), management requirements and any spill events;

- iv. ensure signage and storage complies with Australian Standards and the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992* and the Worksafe Guidance Note;
- v. at all times, ensure all designated chemical and fuel storage structures have impermeable bund;
- vi. at all times, have spill response equipment and spillage recovery equipment in place in accord with the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992*;
- vii. not conduct vehicle maintenance within the Leased Area, except in emergency situations and with the approval of the Lessor's District Operations Coordinator; and
- viii. dispose of chemicals outside the Leased Area in an environmentally appropriate manner and as required by law; and
- ix. monitor soils, ground and surface water.

#### **LEVEL OF ABORIGINAL COMMUNITY INVOLVEMENT (SEC)**

14. The Lessee will develop a close working relationship with the local Aboriginal community through ongoing engagement and consultation with the community.

#### **CULTURALLY SENSITIVE BEHAVIOUR (SEC)**

15. The Lessee will:
- i. acknowledge the importance of Aboriginal people, culture and heritage to the leased Area in all verbal and written interpretive and promotional material;
  - ii. endeavour to engage with or involve the Traditional Owners for the Land in the development of any verbal or written communications to the Lessee's Visitors through consultation, endorsement and/ or presentation;
  - iii. ensure that appropriate permission is sought from Traditional Owners for the Land for use of images and other cultural material used in the Lease Area;
  - iv. adhere to sacred site restrictions and obtain the appropriate permission from the local Aboriginal community; and
  - v. cooperate with DBCA in the development of culture and heritage management and conservation strategies.

#### **SAFETY EQUIPMENT AND PROCEDURES (SEC)**

16. The Lessee will have, at all times:
- i. fully functioning emergency communication equipment;
  - ii. basic search and rescue, incident and emergency protocols, contingency plans for emergency situations and a management plan for high-risk activities;
  - iii. a written operations strategy for dealing with disruptive or violent visitors;
  - iv. an employee on duty with first aid training;
  - v. first aid equipment on site;
  - vi. a copy of the Lessor's Emergency Response Plan on site; and
  - vii. visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.
17. The Lessee will:
- i. ensure that at all times there is on duty a minimum of one staff member who holds a current Level 2 Senior First Aid Certificate; and
  - ii. provide training to staff on the Lessor's Emergency Response Plan.
18. The Lessee will ensure it meets relevant health, hygiene and emergency response requirements, which may include:
- i. provision of induction and training to employees on emergency response;
  - ii. development of health and hygiene protocols required to be adhered to by all employees, contractors and agents;
  - iii. development and implementation of occupational health and safety procedures.

#### **PROVISION OF INTERPRETIVE MATERIALS (NEC, BEC & SEC)**

19. Where appropriate or required by DBCA, make educational and interpretation materials available to the Lessee's employees, agents, contractors and visitors on the following matters (including on-site verbal and written communications and signs):
- i. major environmental issues at the Leased Area and those affecting the park (erosion, soil loss, compaction and vegetation damage);
  - ii. local ecological conditions, Aboriginal culture and low impact nature-based tourism principles developed in consultation with local Indigenous people;
  - iii. general information on the park and sustainability principles;
  - iv. any risks in the park and all safety rules;
  - v. appropriate behaviour in the environment, including but not limited to littering, toilets and protection of vegetation, soils and rocks;
  - vi. minimising the introduction and spread of weed seeds;
  - vii. prohibiting the feeding of animals;
  - viii. waste management, minimising packaging in the Leased Area and solid waste reduction issues, principles and methods;
  - ix. water conservation principles such as cleaning, washing, food preparation, toilet use, personal laundry and shower time limits;
  - x. energy conservation principles and methods;
  - xi. noise and light minimisation;
  - xii. first aid and emergency responses; and
  - xiii. fuel and chemical risk management behaviour and handling, storage and emergency response training in accord with Australian Standards and the *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007* and the Worksafe Guidance Note.

#### **VISITOR FEEDBACK (SEC)**

20. The Lessee will:
- i. within the first year of the Lease and for the duration of the Lease, develop and implement a policy to maximise visitor satisfaction and continual improvement through obtaining guest feedback;
  - ii. survey guests to assess visitor satisfaction in at least the areas of perceived value for money, standard of cleanliness, level of cleanliness, level of comfort, staff competency and manner, accuracy of marketing, natural focus of operation, provision of conservation initiatives (group transport, renewable energy, water conservation, recycling etc), level of educational opportunities and level of cultural sensitivity and provide an annual report;
  - iii. internally audit services and facilities through quality management tools; and
  - iv. endeavour to achieve and maintain customer satisfaction rating of at least 90 per cent.

#### **EXPENDITURE FROM LOCAL BUSINESS (SEC)**

21. The Lessee will develop and implement a policy to commit to local expenditure wherever possible and demonstrate support of local wholesale outlets and service providers.

#### **ACCREDITATION AND MEMBERSHIP OF LOCAL ASSOCIATIONS**

22. The Lessee will achieve and maintain accreditation with an accreditation program recognised by the Lessor.
23. The Lessee will, throughout the Lease period, maintain membership with the local regional tourism organisation and the local visitor centre or similar.





Executed by the parties as a Deed on the day, month and year set out above.

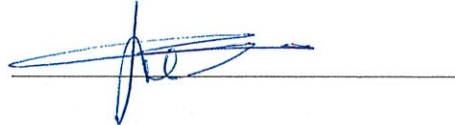
Signed on behalf of the **CONSERVATION** )  
**AND LAND MANAGEMENT EXECUTIVE BODY** )  
by its authorised officer: )



Deputy Director General  
**CEO Delegate**

in the presence of:

**Witness:**      Signature



Name (Please print)

Vesna Mills

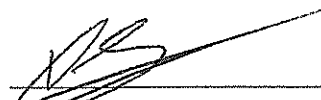
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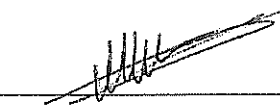
Executive officer

Address (Please print)

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\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary

Adrien Stephane Georges Leclerc  
Full Name of Director

Cecile Helene Claire Leclerc  
Full Name of Director/Secretary

