

**CORRIDOR LAND
GROUND LEASE
L[insert no] – [insert location]**

PARTIES

**PUBLIC TRANSPORT AUTHORITY
OF WESTERN AUSTRALIA**
(Landlord)

[Insert name of tenant]
(Tenant)

tottlepartners

LAWYERS

Level 40, 108 St Georges Terrace
Perth WA 6000

Tel: (08) 9217 6700 Fax: (08) 9217 6710

Ref: GCT:ASD:

21/09/2021

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SCHEDULE

1. **Landlord:** **PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA** (ABN 61 850 109 576) of PO Box 8125, Perth Business Centre, Perth, Western Australia, 6849
(PTA)

2. **Tenant:** **[Name of Tenant]**
of
(Tenant)

3. **Grant of Lease:**

The Land is part of corridor land (as that term is defined by section 3 of the *Rail Freight System Act 2000*) **(RFS Act)**.

By section 42 of the RFS Act, the PTA has power to dispose of interests in and otherwise deal with corridor land.

The Land is not required for freight business.

The Tenant wishes to use the Land, and the PTA leases to the Tenant and the Tenant takes a lease of the Land on the terms set out in this Lease.

4. **Guarantor:** **[Name of Guarantor]**
of
(Guarantor)

5. **Land:**

The Land the subject of this Lease is located at **[address]** as identified on plan number **[number]**.

The Land is shown **[hachured/coloured (insert colour)]** on the plan attached to this Lease.

The lettable area of the Land is approximately **[measurement]** square metres.

6. **Term:**
 - (a) Term: **[insert]** years.
 - (b) Commencing on: **[insert date]**
 - (c) Expiring on: **[insert date]**

subject to earlier termination in accordance with clause **[insert]** of the Additional Terms.

7. **Option to Renew:** PTA grants to the Tenant an option to renew the Term for the period of:
- (a) Option Term: **[number]** years.
 - (b) Commencing on: **[date]**
 - (c) Expiring on: **[date]**
- subject to earlier termination in accordance with clause **[insert]** of the Additional Terms
- or
- Not applicable*** (delete whichever does not apply)
8. **Rent:** The Rent payable by the Tenant under this Lease is **[\$amount]** per annum (plus GST) plus a management fee of 7% of Gross Collections.
- The Rent is payable in advance by equal quarterly instalments. The first instalment is payable on the Commencement Date. Subsequent instalments are payable on the Payment Dates.
9. **Payment Dates:** The dates for payments under this Lease, are the Commencement Date and thereafter each Payment Date.
10. **Review:** The Rent is subject to review on the following dates:
- Market Review Dates**
- [dates]**
- CPI Variation Dates**
- [dates]**
- Fixed Increase Variation Dates**
- [dates]**
- Fixed Increase Rate: **[percentage]**%
11. **Permitted Use:** The Land may only be used for **[description]** subject to the Tenant obtaining all relevant written approvals from all Authorities for the use of the Land for this purpose.
12. **Bond** **[\$amount]**

- 21. Structures, Improvements and Installations** Without limiting any other provision of this Lease (and subject to clause 16.2 of the PTA General Lease Terms) the Tenant acknowledges:
- (a) the Tenant is responsible for the maintenance and repair of all buildings, improvements, other fixtures, and any plant or equipment including but not limited to fittings, furniture, fencing, underground pipes and cables and furnishings erected on or fixed to the Land; and
 - (b) on the termination of this Lease the Tenant is responsible for removal of all buildings, improvements, other fixtures, and any plant or equipment including but not limited to fittings, furniture, fencing, underground pipes and cables and furnishings erected on or fixed to the Land.
- 22. Environmental Obligations:** *Without limiting any other provision of this Lease the Tenant must no later than two (2) months before the expiry of the Term (and any extension of the Term) provide to the PTA a report from an Environmental Expert nominated or approved by the PTA and paid for by the Tenant which identifies the nature and extent of any Contamination, Pollution or Environmental Harm on the Land or the Surrounding Land.*
- The definitions contained in clause 13 of the Additional Terms apply to this Item 22.(Note: use when high environmental use)*
- OR
- As stated in clause 13 of the Additional Terms to this Lease (Note: use when low environmental use)*
- [DELETE WHICHEVER IS NOT APPLICABLE]*
- 23. Inconsistencies:** If an inconsistency arises between the provisions of the Additional Terms and the PTA General Lease Terms, the provisions of the Additional Terms will prevail.
- If an inconsistency arises between the provisions of this Schedule, the Additional Terms and the PTA General Lease Terms, the provisions of this Schedule will prevail.
- 24. Consent of Brookfield Rail Pty Ltd:** A copy of Brookfield Rail Pty Ltd ACN 094 721 301 letter confirming the terms on which Brookfield Rail Pty Ltd ACN 094 721 301 has no objection to this Lease is attached as Annexure A

to this Lease.

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ANNEXURE A

BROOKFIELD RAIL PTY LTD - CONSENT

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ADDITIONAL TERMS

1. Lights

The Tenant is to ensure that there is not at any time any light (white or coloured) on the Land in a position where it can affect any person on a train or other railway vehicle.

2. Trees

The Tenant is not to plant or allow any other person to plant a tree or shrub on the Land without the prior written consent of the PTA.

3. Machinery

The Tenant is to ensure that at all times all items of Tenant's Property which are visible to the public from outside the Land are:

- (1) kept in a good state of repair and well maintained;
- (2) properly painted or treated; and
- (3) otherwise kept in a presentable and tidy condition.

4. Obstruction of Views

For safety reasons, the Tenant is to ensure that at all times there is no property on the Land that may obstruct the view from any railcar, locomotive or bus.

5. Stock

The Tenant is to ensure that at all times no stock or other animals stray on to the Land or through the Land on to other property owned by PTA.

6. No building or stacking

The Tenant is to ensure that at all times:

- (1) no building or other structure is constructed or allowed to remain; and
- (2) no property is stacked or otherwise stored;

on any part of the Land without the prior written consent of the PTA.

7. Buffer Rail

If required by PTA, as soon as reasonably possible after the Commencement Date the Tenant is to erect a buffer rail on the railway line boundary of the Land to prevent vehicles going on to the railway line. The Tenant is to construct the buffer rail in accordance with the design and specifications stipulated by PTA. The cost of the buffer rail, including the cost of complying with PTA's reasonable directions, is to be paid by the Tenant. The buffer rail is included as part of the Tenant's Property. The

Tenant is to properly maintain the buffer rail after it is erected and if it is damaged the Tenant is to repair the damage as soon as reasonably possible.

8. Drainage System

If required by PTA, as soon as reasonably possible after the Commencement Date the Tenant is to construct a drainage system on the Land to prevent water damage to the railway line running through or near the Land. The Tenant is to construct the drainage system in accordance with the design and specifications stipulated by PTA. The cost of the drainage system, including the cost of complying with PTA's reasonable directions, is to be paid by the Tenant. The Tenant is to properly maintain the drainage system after it is constructed and if it is damaged the Tenant is to repair the damage as soon as reasonably possible.

9. Firebreaks

The Tenant is to provide firebreaks to comply with the requirements of any Authority and all laws, including by-laws and regulations.

10. Telephone Pole

The Tenant is to do everything reasonably possible to prevent damage occurring to any telephone pole and associated equipment including aerial lines belonging to PTA and located on or near the Land.

11. Telecommunications Cable

The Tenant is not to interfere with or disturb the telecommunications cable on the Land and is to prevent any other person interfering with or disturbing the telecommunications cable.

12. Fences

If required by PTA, the Tenant is to erect and maintain fences on the Land to the satisfaction of PTA.

13. Environmental Obligations

13.1 Definitions

In this clause:

- (1) **Authorisation** includes a consent, declaration, authorisation, registration, agreement, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency, including any renewal or amendment.
- (2) **Baseline Audit** means an environmental audit of the Land which identifies any Contamination, Pollution and Environmental Harm existing on the Land at a specified date and its extent and concentration.
- (3) **Contamination** means the presence of a substance in, on or under water or land at a concentration above the concentration at which the substance is normally present in the same locality, being a concentration that presents, or

has the potential to present, a risk of harm to human health, the Environment or any Environmental Aspect.

- (4) **Environment** has the same meaning as that term is defined in the *Environmental Protection Act 1986 (Western Australia)* (as amended).
- (5) **Environmental Aspect** means in respect of any area:
 - (a) each interaction of any activity on the area or of the area itself within the Environment;
 - (b) each of the following aspects of that area;
 - (i) heritage items on the land within the area or heritage values or significance of the area or anything on it;
 - (ii) the flora and fauna in the area including threatened species, populations or ecological communities or their habitats in the area;
 - (iii) critical habitat in the area;
 - (iv) the propensity of the area to be affected by natural disasters such as bushfires, flooding or geotechnical characteristics of the area or any structures on it; and
 - (c) the zoning or permissible uses of the area.
- (6) **Environmental Expert** means a reputable person who is suitably qualified and experienced in identifying and remediating Contamination, Pollution and Environmental Harm.
- (7) **Environmental Harm** means any serious or material harm, damage or detriment to the Environment or an Environmental Aspect which is not Pollution or Contamination.
- (8) **Environmental Law** means any law relating to any aspect of the Environment or health or having as its objective the protection or enhancement of the Environment or any Environmental Aspect.
- (9) **Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Government Agency, whether written, oral or otherwise and in connection with any Environmental Law.
- (10) **Government Agency** means:
 - (a) a government or government department or other government body;
 - (b) governmental, semi-governmental, or judicial person, entity or authority; or

- (c) a person (whether autonomous or not) who is charged with the administration of any law.
- (11) **Pollution** means any unauthorised alteration of the Environment or an Environmental Aspect to its detriment or degradation which involves the release of any substance, the discharge of waste, an emission of noise, odour or electromagnetic radiation or the transmission of electromagnetic radiation.
- (12) **Preliminary Site Investigation Report** means a report prepared in accordance with clause 13.2(8).
- (13) **Relevant Land** means the Land and the Surrounding Land.
- (14) **Remediation Date** means:
 - (a) the earlier of:
 - (i) the date on which the Tenant assigns this Lease;
 - (ii) the date on which the Term of this Lease expires;
 - (iii) 60 days after this Lease is terminated; or
 - (b) any other date agreed by the parties in writing.
- (15) **Remedial Work** means any work to restore land affected by Contamination, Pollution or Environmental Harm, to at least the condition the land was in at the Commencement Date having regard to the Permitted Use, including to:
 - (a) remove, destroy or reduce;
 - (b) dispose of or disperse;
 - (c) contain or encapsulate;
 - (d) treat;
 - (e) manage (including restrict or prohibit access to or use of the affected land); or
 - (f) abate or control, any Contamination, Pollution or Environmental Harm and to remove or minimise any risk or potential risk it presents to human health, the Environment or any Environmental Aspect;
- (16) **Surrounding Land** means any land adjacent to or in the vicinity of the Land.

13.2 Tenant's obligations

The Tenant must:

- (1) obtain any Authorisation required for any conduct, activity or use undertaken by the Tenant on the Land, including the Permitted Use, before that conduct, activity or use is undertaken and to keep all such Authorisations in full force and effect throughout the Term;

- (2) use the Land in a manner which complies with each Environmental Law and each Authorisation held by the Tenant in accordance with clause 13.2(1) and any other Authorisation provided to the Tenant by the PTA;
- (3) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of:
 - (a) an Authorisation relating to:
 - (i) the Land; or
 - (ii) any conduct or activity relating to the use of the Land, including the Permitted Use, or
 - (b) any Authorisation from time to time relating to the Relevant Land when a copy of such Authorisation is provided by the PTA to the Tenant;
- (4) not cause or allow Pollution, Contamination, or Environmental Harm to occur in, on or under the Relevant Land and if any of those do occur the Tenant must minimise and remediate any resultant damage and harm to the reasonable satisfaction of the PTA.
- (5) notify the PTA immediately on becoming aware of:
 - (a) the existence of any Contamination affecting the Relevant Land;
 - (b) any Pollution affecting the Relevant Land;
 - (c) the making of a complaint to any person, including but not limited to, the Tenant or the commencement of proceedings against the Tenant relating to an alleged failure by the Tenant to comply with an obligation under an Environmental Law or Authorisation; or
 - (d) an Environmental Notice being served on the Tenant or any other person which relates to or arises from the Tenant's use of the Land;
- (6) at the Tenant's cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Tenant's use of the Land, whether the notice is served on the PTA or the Tenant;
- (7) provide to the PTA on demand, copies of all Authorisations relating to the Tenant's use of the Land; and
- (8) if the PTA believes on reasonable grounds that there may be any Contamination, Pollution or Environmental Harm:
 - (a) on the Land; or
 - (b) on the Surrounding Land which was caused or contributed to by the Tenant or a person authorised by the Tenant to use the Land,

within 60 days after receiving a request by the PTA, provide to the PTA a preliminary site investigation report from an Environmental Expert nominated

or approved by the PTA and paid for by the Tenant which identifies the nature and extent of any such Contamination, Pollution or Environmental Harm and is otherwise prepared in accordance with the Department of Environment Regulation's guidelines on contaminated site reporting in existence from time to time, which are current at the date of preparation of the preliminary site investigation report, being at the date of this Lease the guidelines contained in the "Contaminated Sites Management Series: Reporting on Site Assessments, Department of Environmental Protection, December 2001".

- (9) if the Preliminary Site Investigation Report reveals any Contamination, Pollution or Environmental Harm on the Land, or the Surrounding Land:
- (a) provide PTA a copy of the Preliminary Site Investigation Report within 10 days of that report being received by the Tenant;
 - (b) as soon as is reasonably practicable, and no later than 5 days after receipt of the Preliminary Site Investigation Report, provide written notice, in accordance with the Contaminated Sites Act 2003 as amended from time to time, to the Department of Environment Regulation and the PTA that the Land or the Surrounding Land is contaminated or potentially contaminated; and
 - (c) within a reasonable time (but no later than the Remediation Date), and at the Tenant's cost, perform any Remedial Work in respect of the Land and Surrounding Land to the satisfaction of the PTA and the Department of Environment Regulation.

The Tenant is not required to perform any Remedial Work in accordance with clause 13.2(9) if the Tenant can establish, to the satisfaction of the PTA, that the Pollution, Contamination or Environmental Harm was caused by the PTA or a person authorised by the PTA to use the Land or Surrounding Land.

13.3 No representation or warranty in respect of Contamination, Pollution or Environmental Harm

The PTA makes no warranties or representations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm on the Relevant Land. The Tenant relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm on the Relevant Land.

13.4 Tenant may be required to undertake Baseline Audit

- (1) Subject to clause 13.4(2):
- (a) If requested by the PTA the Tenant must engage an Environmental Expert to carry out, at the Tenant's expense, a Baseline Audit of the Land to the reasonable satisfaction of the PTA, within 2 months after the Commencement Date.
 - (b) The Tenant must provide to the PTA a copy of any Baseline Audit it obtains within 10 days after receipt;

- (c) If the Baseline Audit reveals any Pollution, Contamination or Environmental Harm on the Land, the Tenant must, within one month of receipt of the Baseline Audit, notify the PTA that the Tenant elects to:
 - (i) surrender this Lease;
 - (ii) remediate the Land at the Tenant's cost to a state that, in the opinion of the Tenant, is suitable; or
 - (iii) continue in possession of the Land in accordance with the terms of this Lease at its own risk.
 - (d) If the Tenant does not notify the PTA in accordance with paragraph 13.4(1)(c), the Tenant is deemed to have elected paragraph 13.4(1)(c)(iii); and
 - (e) If the Tenant elects to surrender this lease in accordance with paragraph 13.4(1)(c)(i), the Tenant shall have no further claims against the PTA whatsoever, including, without limitation, any relocation or associated costs.
- (2) If the Tenant assigns this Lease, the certificate provided to the PTA under clause 13.5(3) when read with the Baseline Audit obtained by the Tenant under clause 13.4(1) shall be the Baseline Audit for the purposes of clauses 13.2(8), 13.5 and 13.7.

13.5 Tenant to Remediate at end of Term

- (1) If the Tenant obtained a Baseline Audit in accordance with clause 13.4, the Tenant must, at its cost, perform the Remedial Work by the Remediation Date:
- (a) in respect of the Land, to restore the Land to the condition described in the Baseline Audit, to the satisfaction of the PTA; and
 - (b) in respect of the Surrounding Land, to the satisfaction of the PTA, to the extent that the Pollution, Contamination or Environmental Harm was caused by the Tenant or a person authorised to use the Land by the Tenant.
- (2) If the Tenant did not obtain a Baseline Audit, the Tenant must, at its cost, perform the Remedial Work by the Remediation Date:
- (a) in respect of the Land, to the satisfaction of the PTA unless the Tenant can prove, to the reasonable satisfaction of the PTA, that the Pollution, Contamination or Environmental Harm was caused by the PTA or a person authorised by the PTA to use the Land; and
 - (b) in respect of the Surrounding Land, to the satisfaction of the PTA, to the extent that the Pollution, Contamination or Environmental Harm was caused by the Tenant or a person authorised to use the Land by the Tenant.

- (3) The PTA may direct the Tenant to, at the Tenant's expense, engage an Environmental Expert to certify that the Tenant has completed the Remedial Work in accordance with 13.5(1) or 13.5(2) and provide the PTA with a copy of the written certification from the Environmental Expert by the Remediation Date.
- (4) If the PTA terminates this Lease, or the Tenant fails to comply with this clause 13.5, the PTA may engage an Environmental Expert to do those things outlined in this clause 13.5 at the Tenant's expense and the Tenant indemnifies the PTA under clause 13.8.
- (5) The Tenant's obligations in this clause 13.5 survive termination of this Lease.
- (6) To the extent that the Tenant's obligation under this Agreement is to perform Remedial Work that the PTA or another person would otherwise be responsible for remediating under any Environmental Law, the Tenant must do everything necessary to transfer that responsibility from the PTA or that other person to the Tenant in accordance with any Environmental Law.

13.6 Disclosure

- (1) Except to the extent that disclosure is required by law or to comply with the provisions of this Lease, the Tenant must keep confidential any information provided to the Tenant by the PTA concerning the environmental condition of the Relevant Land.
- (2) If the Tenant is required by law to disclose information concerning the environmental condition of the Relevant Land, the Tenant must notify the PTA before disclosing the information.

13.7 Environmental Release

The Tenant releases the PTA from all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Relevant Land at any time throughout the Term whether or not identified in a Baseline Audit undertaken by the Tenant in accordance with clause 13.4.

13.8 Environmental Indemnity

Without limiting clause 9 of the PTA General Lease Terms, the Tenant indemnifies the PTA in respect of all claims, judgments, orders, costs (including legal costs on a full indemnity basis), losses, expenses and any obligation, duty or liability for which the PTA is or may become liable, including claims by third parties, in respect of or arising from (directly or indirectly):

- (1) the Tenant's breach of this clause 13;
- (2) any Pollution, Contamination or Environmental Harm in, on or under the Land during the Term; or

to the extent caused by the Tenant or a person authorised by the Tenant to use the Land, any Pollution, Contamination or Environmental Harm in, on or under the Surrounding Land during the Term.

14. Termination by PTA before end of Term

14.1 Notice of Termination

Notwithstanding any other provision of this Lease if PTA wants to terminate this Lease before the end of the Term for any reason, PTA may terminate this Lease by giving the Tenant written notice. The termination is to take effect on the date specified in the notice. That date must be at least 6 months after the notice is given to the Tenant. If no date is specified in the notice, the termination is to take effect 6 months after the notice is given.

14.2 On termination

On the termination date, this Lease will terminate and the Tenant, and any sub-tenant or occupier of the Land, is to give up vacant possession of the Land to PTA.

14.3 Liability for payment and obligations

The Tenant remains liable for the payment of Rent and to comply with its other obligations under this Lease until the termination date, and in the case of obligations which are expressed to survive the termination of this Lease, until they have been met.

14.4 Non-Liability

PTA will not, in any circumstances, be liable for any loss, injury or damage (whether in the nature of economic loss or loss of profits or otherwise) sustained by the Tenant or any person claiming under or through the Tenant as a result of or arising directly or indirectly in any way from the termination of this Lease under this clause except in relation to any liability for misrepresentation or fraud.

15. Increase in Rent on Change in Use

If at any time the Tenant requests the PTA to allow the Tenant to change the Permitted Use, the PTA may, as a condition of agreeing to that request, require that the Rent be increased from a date (after the Tenant's request) stipulated by the PTA.

16. Bond

16.1 Meaning of Bond

In this clause, Bond means the amount specified in Item 12 of the Schedule together with any further amount paid under clause 16.2(2).

16.2 Terms of Bond

The Tenant is to pay the Bond to PTA before the Tenant takes possession of the Land. The following terms apply with respect to the Bond:

- (1) if the Tenant does not comply with any of its obligations under this Lease, PTA may apply the Bond towards satisfying PTA's claim against the Tenant without notice to the Tenant;
- (2) if PTA applies the Bond towards satisfying a claim against the Tenant, the Tenant is to pay to PTA no later than 7 days after PTA requests payment, an amount equal to the amount applied by PTA;
- (3) PTA is to return to the Tenant any part of the Bond that has not been applied under this clause when this Lease terminates.

17. Bank Guarantee

17.1 Meaning of Bank Guarantee

In this clause Bank Guarantee means a bank guarantee from an Australian trading bank in a form satisfactory to PTA, and without a specified expiry date, for an amount not less than the amount specified in Item 13 of the Schedule.

17.2 Terms of Bank Guarantee

The Tenant is to provide the Bank Guarantee to PTA before the Tenant takes possession of the Land. The following terms apply with respect to the Bank Guarantee:

- (1) if the Tenant does not comply with any of its obligations under this Lease, PTA may call on the Bank Guarantee and apply the money received towards satisfying PTA's claim against the Tenant without notice to the Tenant;
- (2) if PTA applies money received under the Bank Guarantee towards satisfying a claim against the Tenant, the Tenant is to arrange for a replacement Bank Guarantee for an amount equal to the amount applied by PTA, no later than 7 days after PTA requests the replacement Bank Guarantee;
- (3) PTA is to return the Bank Guarantee to the Tenant (if not called on) as soon as reasonably practicable after termination or expiry of the Lease.

18. Access

18.1 Access Location

The Tenant may use that part of the land owned by PTA and adjoining the Land as is shown coloured [**colour**] on the plan attached to this Lease for the purpose of access to and from the Land. The Tenant may not use that land for any other purpose. The Tenant is to ensure that no vehicles are parked on that land and that it is not obstructed in any way by the Tenant's Employees, Agents and Visitors.

18.2 Compliance with directions

The Tenant is to promptly comply with directions given by PTA concerning the use of the land referred to in this clause for access purposes.

18.3 Application of indemnity

Every indemnity given by the Tenant in this Lease and the provisions of this Lease imposing obligations on the Tenant to maintain insurance apply to the land used by the Tenant for access purposes as if that land forms part of the Land.

18.4 Non-Liability

PTA is not liable to the Tenant in any way if the Tenant is not able to use the land referred to in this clause for access purposes, except if the Tenant is prevented from using the land without lawful reason by PTA or by an employee or agent or other person under the control of PTA.

19. Access to Services

The Tenant is to allow any Authority (including its employees, contractors, agents, consultants or other authorised representatives) access to any Services on the Land for any purpose lawfully required by the Authority.

20. Electrical Work

20.1 PTA's consent

The Tenant must not carry out any electrical work in or upon the Land without the prior written consent of the PTA, such consent not to be unreasonably withheld.

20.2 Licensed Electrical contractor

The Tenant must ensure that any electrical work carried out in or upon the Land:

- (1) is performed by an electrical contractor who is duly qualified and licensed as required by any statute (State or Federal), regulations and by-laws; and
- (2) complies with all requirements of any statute (State or Federal) regulation or by-law relating to the work and is carried out in accordance with best industry practice.

20.3 Separate Supply

The Tenant must, at the Tenant's cost, install and maintain a separate electricity supply and/or meter for all electricity connected to and consumed in respect of the Land.

21. Holding over

If the Tenant continues to occupy the Land after the end of the Term with the consent of PTA, the Tenant is a monthly tenant of the Land and:

- (1) the Rent payable from the commencement of the monthly tenancy is the Rent payable immediately before the end of the Term subject to review of that amount in accordance with clause 2 of the PTA General Lease Terms on the basis that the commencement date of the monthly tenancy is a Market Review Date (as defined in this Lease);

- (2) the Rent is to be reviewed in accordance with clause 2 of the PTA General Lease Terms on each anniversary of the Commencement Date on the basis that each anniversary of the Commencement Date is a Market Review Date (as defined in this Lease);
- (3) the Rent will be payable quarterly in advance on each Payment Date pursuant to the terms of this Lease and the management fee will be payable annually in advance;
- (4) any payment to be made to the Tenant pursuant to clause 21(3) will be made within 14 days of the termination of the monthly tenancy;
- (5) the 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
- (6) all the other provisions of this Lease continue to apply except any option to extend this Lease.

22. Graffiti

The Tenant must remove all graffiti appearing on the Land after the Tenant becomes aware of it, or is made aware of it by the PTA, within the following periods:

- (1) in the case of offensive or obscene graffiti – 1 hour;
- (2) in the case of other graffiti – 24 hours.

PTA GENERAL LEASE TERMS

They may be referred to as the PTA General Lease Terms. That expression refers to all the terms set out in this form.

Words which are defined at the end of these PTA General Lease Terms have an initial capital letter.

1. Rent

The Tenant is to pay the Rent to PTA by equal quarterly payments as stated in this Lease. The first payment is due on the Commencement Date and later payments are due on the Payment Date in every month during the Term. When Rent is payable for only part of a 3 month period, it is to be calculated as 1/365th of the Rent multiplied by the number of days in that part of the 3 month period.

2. Variation of Rent

2.1 Definitions

In this clause:

- (1) **Consumer Price Index** means the consumer price index (all groups) for Perth, Western Australia, published by the Australian Bureau of Statistics.
- (2) **CPI Variation Date** means each date specified in Item 10 of the Schedule as a CPI Variation Date.
- (3) **Current CPI** means for a CPI Variation Date:
 - (a) the Perth Consumer Price Index number last published before the relevant CPI Variation Date; or
 - (b) if PTA appoints an actuary under this Lease to determine an index that reflects the prevailing levels of prices, the number certified by that actuary.
- (4) **Fixed Increase Rate** means the rate (expressed as a percentage) specified Item 10 of the Schedule as the Fixed Increase Rate or any other percentage agreed in writing by the parties.
- (5) **Fixed Increase Variation Date** means each date specified in specified Item 10 of the Schedule as a Fixed Increase Variation Date.
- (6) **Market Review Date** means each date specified in Item 10 of the Schedule as a Market Review Date.
- (7) **Previous CPI** means for a CPI Variation Date:
 - (a) the Consumer Price Index number last published before:

- (i) the immediately preceding Rent Variation Date; or
 - (ii) if there is no preceding Rent Variation Date, the date of commencement of the Term; or
- (b) if PTA appoints an actuary under this Lease to determine an index that reflects the prevailing levels of prices, the number certified by that actuary.
- (8) **Rent Notice** means a written notice given under this Lease by the PTA nominating the rent payable from the Rent Variation Date.
- (9) **Rent Variation Date** means each date specified in Item 10 of the Schedule.
- (10) **Valuer** means a person who:
- (a) is licensed under the Land Valuers Licensing Act (WA);
 - (b) is a fellow or associate of the Australian Property Institute (Inc.) (WA Division) of not less than 5 years standing; and
 - (c) has had not less than 5 years practical experience in Western Australia in the valuation of properties of the same general classification as the Land.

2.2 The PTA may nominate amount of varied Rent

- (1) PTA may give a Rent Notice to the Tenant nominating the amount which the PTA proposes as the Rent with effect from a Market Review Date.
- (2) PTA may give that Rent Notice during the period commencing 6 months prior to that Market Review Date and anytime thereafter.

2.3 Rent nominated is the varied Rent if accepted

- (1) The Rent from and including that Market Review Date is the amount nominated in the Rent Notice if the Tenant gives notice to the PTA accepting that nomination within 15 Business Days after the PTA gives the Rent Notice.
- (2) If the Tenant does not give a notice to PTA disputing the rent nominated in the Rent Notice within 15 Business Days after the PTA gives the Rent Notice, the rent from that Market Review Date will be the Rent nominated in the Rent Notice.

2.4 Reviewed Rent if nomination is disputed

- (1) If the Tenant gives a notice to PTA disputing the Rent nominated in the Rent Notice, within 15 Business Days after the PTA gives the Rent Notice, the Rent from that Market Review Date will be the current annual market rent determined under clauses 2.5 to 2.12 (inclusive).
- (2) If the amount of the Rent payable for the quarter immediately preceding that Market Review Date exceeds the current annual market rent determined

under clauses 2.5 to 2.12 (inclusive), then the Rent from that Market Review Date will be the Rent payable for the quarter immediately preceding that Market Review Date multiplied by 4.

2.5 Determination of current annual market rent by Valuers

If PTA and the Tenant do not agree on the current annual market rent of the Land to apply from the relevant Market Review Date within 15 Business Days after the PTA gives the Rent Notice, then the current annual market rent will be determined by the Valuers appointed by the Tenant and the PTA in accordance with clause 2.6.

2.6 Each Party to nominate Valuer

- (1) PTA and the Tenant must each give a notice to the other nominating the Valuer appointed by them.
- (2) If a Party has not given written notice of their Valuer to the other Party within 30 Business Days after the PTA gives the Rent Notice, that other Party must give notice to the President requesting the President to nominate a Valuer to be the Valuer of the Party that has failed to give the notice.
- (3) The Party that has failed to give a notice nominating a Valuer is taken to have appointed the nominee of the President as that Party's Valuer and must pay the costs of that Valuer.

2.7 Manner of determination of current annual market rent

- (1) PTA and the Tenant must each instruct their Valuer to determine the current annual market rent on the assumption that:
 - (a) the Parties have complied with each term of this Lease;
 - (b) the Tenant occupies the Land on the terms of this Lease;
 - (c) the Land is not damaged or destroyed;
 - (d) the only value that attaches to each item of the Tenant's Property is the value, if any, contributed by PTA;
 - (e) no value attaches to any licence or permit for the business carried on by the Tenant at the Land, other than a liquor licence;
 - (f) the period of the Term remaining is the same period as the Term; and
 - (g) there is no temporary disturbance of the Tenant's enjoyment of the Land resulting from maintenance of PTA's property;
 - (h) taking into account and giving weight to:
 - (i) new tenancies of vacant premises;
 - (ii) rent reviews during existing tenancies of premises; and

- (iii) renewals of existing tenancies of premises,
similar to the Land, including current rent values.

- (2) The PTA and the Tenant must use their reasonable endeavours to cause the Valuers to attempt to agree on the current annual market rent.

2.8 Rent determined by single Valuer upon disagreement

If the Valuers appointed by each of PTA and the Tenant do not agree on the current annual market rent within 20 business days after the appointment of the last of them, then the Parties must cause the determination of the current annual market rent to be referred to another Valuer nominated by those 2 Valuers, but if those 2 Valuers are unable to agree on that other Valuer within 5 business days, either Valuer, PTA or the Tenant may request the President to appoint a Valuer for that purpose on terms that the Valuer will:

- (1) receive written representations from PTA's Valuer and the Tenant's Valuer;
and
- (2) determine the current annual market rent on the basis set out in this clause and deliver written reasons for that determination within 1 month of the appointment.

2.9 Role of Valuers

PTA and the Tenant must instruct each Valuer appointed by them to:

- (1) give a written valuation setting out what was taken into account, what was disregarded, their respective weightings and any other adjustments within one month after being appointed; and
- (2) act as an expert and not as an arbitrator.

2.10 Alternate Valuer

If a Valuer appointed under this clause:

- (1) does not accept the appointment to act;
- (2) becomes incapacitated or dies; or
- (3) resigns,

the appointor of that Valuer may within 5 business days appoint an alternate Valuer, failing which either PTA or the Tenant may request the President to appoint an alternate Valuer.

2.11 Rent determined different from that nominated by PTA

Within 10 business days after the determination under this clause of the Rent payable from the Market Review Date:

- (1) PTA must refund to the Tenant any overpayment of Rent; and
- (2) the Tenant must pay to PTA any underpayment of Rent,

in each case, together with Interest on the amount of the underpayment or overpayment for the period of the underpayment or overpayment.

2.12 Payment of costs

- (1) If 2 Valuers are appointed, PTA and the Tenant must each pay the costs of their respective Valuer.
- (2) PTA and the Tenant must pay in equal shares the costs of a single Valuer appointed to determine the current annual market rent.

2.13 Rent CPI Variation

For each CPI Variation Date, if the Current CPI exceeds the Previous CPI, the Rent from that CPI Variation Date will be the annual Rent payable immediately preceding that Rent Variation Date multiplied by Current CPI and divided by Previous CPI.

2.14 Determination of Current or Previous CPI

If:

- (1) in determining the Current CPI:
 - (a) the Consumer Price Index number is not published; or
 - (b) in the opinion of PTA there is a material change in the basis of assessment of the Consumer Price Index; or
- (2) in determining the Previous CPI, no Consumer Price Index number was published within a period of 4 months prior to:
 - (a) the immediately preceding Rent Variation Date; or
 - (b) if there is no preceding Rent Variation Date, the date of commencement of the Term;

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

- (a) for the Current CPI, an index number which reflects the prevailing levels of prices for the Perth Metropolitan area at that CPI Variation Date; or
- (b) for the Previous CPI, an index number which reflects the prevailing levels of prices for the Perth Metropolitan area at:

- (i) the immediately preceding Rent Variation Date; or
- (ii) if there is no preceding Rent Variation Date, the date of commencement of the Term;

and

- (3) the actuary's certificate will be:
 - (a) final and binding on PTA and the Tenant; and
 - (b) used to determine the Current CPI or the Previous CPI as appropriate; and
- (4) PTA and the Tenant must pay the actuary's costs and expenses in equal shares.

2.15 Variation by fixed increase

The Rent from each Fixed Increase Variation Date will be the annual Rent payable immediately preceding that Rent Variation Date increased by the Fixed Increase Rate.

3. Rates and Taxes

3.1 Payments

The Tenant is to pay all Rates and Taxes which are assessed or imposed by any Authority in respect of the Land to the Authority before they become overdue.

3.2 Other Property - Proportion

If any Rates or Taxes are assessed or imposed in respect of other property as well and not only in respect of the Land, the Tenant is to pay a proportion of those Rates and Taxes to PTA within 14 days after PTA requests payment. The proportion is the proportion the Lettable Area of the Land bears to the Lettable Area of the property the subject of the assessment or imposition.

3.3 Non-Application

Clauses 3.1 and 3.2 do not apply to any Rates and Taxes included in the Operating Expenses.

4. Operating Expenses

4.1 Tenant's Contribution to Operating Expenses

If this Lease requires the Tenant to pay the Operating Expenses, the Tenant is to pay the Tenant's Contribution to Operating Expenses in accordance with this clause 4.

4.2 Estimated Contribution to Operating Expenses

The Tenant is to pay to PTA in advance on the Payment Date the Tenant's Proportion of the estimated Operating Expenses for the relevant 3 month period, as notified by PTA. When Operating Expenses are payable for only part of a 3 month period, they are to be calculated as $1/365^{\text{th}}$ of the estimated Operating Expenses (calculated on an annual basis) multiplied by the number of days in that part of the 3 month period.

4.3 Estimates

PTA will give notice to the Tenant of PTA's estimate of the Operating Expenses and the estimated Tenant's Contribution to Operating Expenses for each Financial Year and for each 3 month period in the relevant Financial Year. PTA may vary an estimate at any time by notice to the Tenant.

4.4 Time for Estimates

PTA is to give notice to the Tenant under clause 4.3 before the beginning of the relevant Financial Year, or if PTA does not then have enough information to make an estimate, as soon as PTA is able to obtain enough information.

4.5 Tenant may wait for Estimates

The Tenant may continue making payments of the estimated Tenant's Contribution to Operating Expenses at the rate last notified by PTA until PTA notifies the Tenant of a varied estimate.

4.6 Actual Operating Expenses and final adjustment

PTA will give notice to the Tenant of the actual Operating Expenses and the actual Tenant's Contribution to Operating Expenses for a Financial Year as soon as reasonably practicable after the end of that Financial Year. If the amount paid by the Tenant for the Financial Year:

- (1) is less than the actual amount payable, the Tenant is to pay the difference to PTA; or
- (2) is greater than the actual amount payable, PTA is to pay the difference to the Tenant,

in each case, on the next Payment Date after PTA notified the Tenant of the actual amounts. If this Lease has then terminated, the payment is to be made within 14 days after PTA's notice to the Tenant.

4.7 Variation of Area

If there is a variation of any area relevant to the calculation of the amount of the Tenant's Proportion:

- (1) the Tenant's Proportion is to be correspondingly varied from the date the variation of the area takes effect; and

- (2) PTA is to notify the Tenant of the variation of the Tenant's Proportion and the effective date of the variation as soon as reasonably practicable.

5. Service charges and management

5.1 Payment services

The Tenant is to pay all charges for Services which are imposed in respect of the Land either to the supplier before those charges become overdue or to PTA (or the PTA's agent) within 14 days after PTA requests payment.

5.2 Payment Other Costs including Management Fee

The Tenant is to pay PTA (or the PTA's agent) within 14 days after PTA requests payment the management fee specified in Item 8 of the Schedule and the cost of obtaining reports, certificates and other determinations in respect of the Land. The management fee is charged annually in advance on the anniversary of the Commencement Date.

6. Assignment and sub-letting

6.1 No interest to be created without consent

The Tenant may not give any person any right or interest in this Lease or the Land or allow any person to use or occupy the Land without PTA's consent.

6.2 Requirements

If PTA consents to a proposed assignment or sublease, then the Tenant is to, before the proposed date of change in possession:

- (1) supply to PTA evidence reasonably acceptable to PTA that the proposed assignee or sub-tenant is able to perform all the Tenant's obligations under this Lease;
- (2) deliver to PTA a deed executed by the proposed assignee or sub-tenant in a form prepared by or approved by PTA, by which:
 - (a) the proposed assignee or sub-tenant agrees to be bound by this Lease from the date that the assignment or sub-lease takes effect; and
 - (b) any guarantor requested under clause 6.6 gives PTA a guarantee and indemnity as required by that clause;
- (3) pay to PTA on demand PTA's costs and expenses including legal costs in connection with the preparation of any documents relating to the assignment or sub-lease and the duty on those documents;
- (4) in the case of an assignment, withdraw any caveat lodged in respect of the Tenant's interest in the Land;
- (5) in the case of a sublease, provide to the PTA a report from an Environmental Expert in accordance with clause 13.5(3);

- (6) in the case of an assignment, comply with clause 13.5 and provide to the PTA a report from an Environmental Expert in accordance with clause 13.5(3); and
- (7) comply with any other requirement of PTA,

and PTA's consent is taken to be conditional on the Tenant complying with the obligations in this clause.

6.3 Tenant remains liable

The obligations of any assignee or sublessee will be in addition to the Tenant's Obligations and the Tenant remains fully liable under this Lease even if the Tenant ceases to occupy the Land for any reason with or without PTA's consent.

6.4 Change in control

- (1) If the Tenant is a company, any change in control of the Tenant (or if the Tenant is a subsidiary, any change in control of its holding company) is to be treated as an assignment of the Tenant's interest in this Lease.
- (2) In this clause control means:
 - (a) the possession directly or indirectly of the power, whether or not having statutory, legal or equitable force and whether or not based on statutory, legal or equitable rights, directly or indirectly;
 - (i) to control 50% or more of the total votes which may be cast at a general meeting of the company; or
 - (ii) to control membership of the board of directors or other governing body of the company; or
 - (iii) to otherwise directly or indirectly direct or cause the direction of the management and policies of the company whether by means of trusts agreements the ownership of any interest in shares, stock, notes, bonds or otherwise.
 - (b) the deemed control of the composition of the Board of Directors of the company under section 47 of the Corporations Act 2001 (Cth).

6.5 Exclusion of statutory provisions

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

6.6 Guarantee required

If the Tenant at any time intends to assign this Lease or clause 6.4 applies, and if PTA requests, the Tenant is to obtain a guarantee of the assignee's obligations under this Lease from the directors and principal shareholders of the assignee (if a company) or any other person reasonably required by PTA. The guarantee is to be on terms reasonably acceptable to PTA.

6.7 Costs and expenses

The Tenant is to pay to PTA on demand all fees and expenses payable by PTA to any agent or consultant engaged by PTA in connection with a proposed assignment or sub-letting.

7. Use of Land

7.1 Permitted Use

The Tenant may only use the Land for the Permitted Use and the Tenant is not to use the Land for any other purpose unless PTA consents.

7.2 Tenant's own enquiries

The Tenant acknowledges that it has relied on its own enquiries as to how the Land may be used and not on any representation from PTA.

7.3 Approval for Use

- (1) If the Tenant's use of the Land is only lawful with an approval, consent or other permission issued by an Authority, the Tenant must:
 - (a) obtain that approval, consent or permission;
 - (b) provide a copy of that approval, consent or permission to the PTA as soon as is reasonably practical after the approval, consent or permission is obtained; and
 - (c) comply with any conditions or requirements applying to the issue of that approval, consent or other permission.
- (2) The Tenant must pay all licence fees and any other charges related to the right to carry on the Tenant's business imposed by an Authority.

7.4 No Warranty by PTA

PTA does not give any warranty of any kind that the Land is suitable for any purpose for which the Tenant intends to use the Land. To the extent permitted by law, any warranty in relation to the Land which is implied by law is excluded and does not apply to this Lease.

8. Insurances

8.1 Maintenance of insurance

The Tenant is to maintain with insurers approved under the Insurance Act 1973 (Cth) in the names of the Tenant and PTA for their respective rights and interests, all insurance which the Tenant is required to take out under this Lease.

8.2 Tenant's obligations

In respect of those insurances the Tenant is to:

- (1) on request by PTA, supply to PTA copies of each insurance policy;
- (2) deposit certificates of currency with PTA, prior to the Commencement Date, annually on renewal and whenever a policy is altered or changed;
- (3) pay each premium annually and before the due date and, when asked by PTA, produce receipts for the payments;
- (4) ensure that each policy conforms to the reasonable requirements from time to time of PTA of which the Tenant is given notice;
- (5) ensure that each policy contains provisions for cross liability and waiver of subrogation rights in favour of PTA;
- (6) not alter the terms or conditions of any policy without the prior written approval of PTA; and
- (7) give notice to PTA immediately if an event occurs which may give rise to a claim under any of the insurances or which could adversely affect any of them or if any insurance is cancelled.

8.3 Restrictions on Tenant's activities

Unless PTA consents, the Tenant is not to:

- (1) do or allow anything to be done which adversely affects any insurance taken out by PTA in connection with the Land or which may increase the premium on that insurance;
- (2) store or use inflammable, volatile or explosive substances on the Land except those normally used in the Tenant's business; or
- (3) settle or compromise any claim under any policy of insurance relating to the Land.

9. Indemnities and exclusions

9.1 By the Tenant

The Tenant will indemnify PTA against any cost, expense, loss or other liability resulting from:

- (1) any damage to the Land or other property; or
- (2) the death of or injury to any person,

caused by:

- (3) any act, negligence or default of the Tenant or the Tenant's Employees, Agents and Visitors; or
- (4) any danger created by the Tenant or the Tenant's Employees, Agents and Visitors.

9.2 **PTA not liable**

PTA is not liable for any cost, expense, loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in or affecting the Land unless caused by the negligence of PTA or any employee or agent of PTA.

10. **Compliance with laws and requirements**

The Tenant is to comply with all requirements of any Authority and all laws in connection with the Land, the Tenant's Property and the Tenant's business.

11. **Maintenance, repair and alteration**

11.1 **Maintenance and repair**

The Tenant is to:

- (1) maintain the Land and the Tenant's Property in good condition;
- (2) promptly repair any damage to the Land or the Tenant's Property caused by the Tenant or the Tenant's Employees, Agents and Visitors except when the damage is the result of an Insurable Event, but this exception will not apply if the insurance money is not payable by the insurer as a result of an act or omission by the Tenant or the Tenant's Employees, Agents or Visitors;
- (3) promptly replace any damaged glass (including plate glass and exterior windows) on the Land with glass of the same or similar standard applying at the Commencement Date but in any event the replacement must comply with the relevant standards of the Standards Association Australia prevailing at the time of repair.
- (4) maintain all signs in or attached to the Land in good condition;
- (5) maintain any drains and pipes on the Land in a clean and free flowing condition; and
- (6) keep the Tenant's Property in good repair and condition.

11.2 **No interference with Services**

The Tenant is not to modify or interfere with the Services serving the Land or any equipment connected to those Services.

11.3 **Notice of damage**

The Tenant is to inform PTA of damage to the Land or the defective operation of any of the Services immediately the Tenant becomes aware of it.

11.4 **Building work**

In carrying out any building work on or in making any improvements to the Land or in making any alterations or additions to improvements on the Land the Tenant is to:

- (1) before carrying out any building work, obtain PTA's approval to the plans and specifications for the work;
- (2) comply with the requirements of any Authority and all laws and standards which apply to the work; and
- (3) carry out the work in a safe and proper manner.

12. Cleaning

The Tenant is to:

- (1) keep the Land clean and free from rubbish, weeds and pests;
- (2) take all necessary steps, at the Tenant's cost, to control any weed or pest infestation on the Land; and
- (3) comply with PTA's directions for the disposal of rubbish.

13. Tenant's general obligations

13.1 Positive obligations

The Tenant is to:

- (1) conduct the Tenant's business on the Land in a safe and proper manner;
- (2) allow persons having an interest in the Land superior to or concurrent with PTA's interest to exercise PTA's or that other person's rights and perform their obligations in connection with the Land;
- (3) withdraw any 'subject to claim' caveat lodged to protect the Tenant's interest under this Lease on an assignment of this Lease or immediately the Tenant's interest in this Lease ceases to exist;
- (4) immediately deliver to PTA a copy of every notice received by the Tenant relating to the Land;
- (5) immediately notify PTA if the Tenant becomes aware of any threat to the Land and comply with PTA's directions for the purpose of protecting property or persons on the Land;
- (6) comply with fire drills and emergency procedures when requested by PTA or the relevant Authorities.

13.2 Negative obligations

In connection with the Land, the Tenant is not to, and is not to allow anyone else to:

- (1) give any person a Security Interest in the Land;
- (2) do anything which is offensive or a nuisance;

- (3) interfere with or obstruct access to the Services;
- (4) use facilities in or near the Land, including the toilets and drains, for any improper purpose;
- (5) locate any signs, notices or advertisements on the Land without PTA's consent;
- (6) hold an auction, bankrupt, fire or closing down sale;
- (7) permit any other person to carry on business on the Land;
- (8) use the Land as a residence;
- (9) vacate the Land, except as required by this Lease, or abandon the Land.

13.3 **No absolute caveat**

The Tenant is not to lodge an absolute caveat affecting the Land to protect the Tenant's interest under this Lease.

14. **PTA's general rights and Obligations**

14.1 **Quiet enjoyment**

If the Tenant complies with the Tenant's obligations under this Lease, then the Tenant may possess and use the Land during the Term without interruption by PTA, except as provided in this Lease.

14.2 **Right to enter**

PTA may after giving reasonable notice to the Tenant (or in an emergency, without notice) enter the Land with or without workmen, plant, equipment and materials to:

- (1) verify compliance with the Tenant's Obligations;
- (2) maintain, repair or alter the Services;
- (3) remove harmful substances,

without affecting the Tenant's obligations under this Lease.

14.3 **Inspection by prospective tenants or purchasers**

PTA may after giving reasonable notice to the Tenant:

- (1) enter the Land to allow prospective tenants or purchasers to inspect it; and
- (2) within 3 months before the expiration of the Term, display on the Land a sign with information indicating the availability of the Land.

14.4 PTA may rectify

PTA may do anything which should have been done by the Tenant under this Lease but which has not been done or has not been done properly and PTA may enter the Land for that purpose. The Tenant is to pay any costs incurred by PTA in taking action under this clause within 14 days after PTA requests payment.

15. Default

15.1 Essential terms

The following obligations of the Tenant are essential terms of this Lease:

- (1) any obligation to pay money; and
- (2) the obligations :
 - (a) not to give any person an interest in the Land without PTA's consent;
 - (b) to use the Land only for the Permitted Use;

This clause 15.1 does not prevent any other obligation of the Tenant under this Lease being an essential term.

15.2 Events of Default

An event of default occurs if:

- (1) the Rent is at any time unpaid for 14 days after becoming due, whether formally demanded or not;
- (2) the Tenant is in breach of the Tenant's Obligations, other than a failure to pay Rent for 14 days after notice has been given to the Tenant;
- (3) a judgment, order or an Encumbrance is enforced, or becomes enforceable against the Tenant's interest in this Lease or the Tenant's Property;
- (4) an Insolvency Event occurs in respect of the Tenant.

15.3 PTA's right to terminate

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

- (1) re-entering the Land without notice; or
- (2) notice to the Tenant,

and on re-entry or at the time specified in the notice, the Term will immediately determine but without:

- (3) affecting any of PTA's rights contained or implied in this Lease; or
- (4) releasing the Tenant or the Guarantor (if any) from liability in respect of the Tenant's Obligations.

15.4 Damages

If PTA terminates this Lease under clause 15.3, then PTA is entitled to recover from the Tenant as liquidated damages, the difference between:

- (1) T in the formula, $T = R - RB + C$

where:

R = the total of the Rent and all other amounts which would have been payable by the Tenant under this Lease if PTA had not terminated this Lease before the end of the Term, calculated at the rate payable at the date of termination;

RB = a rebate calculated at 5% on all amounts not accrued due at the date of termination to the extent that each amount is paid earlier than the due date under this Lease;

C = costs and expenses incurred by PTA as a result of the Event of Default, costs and expenses including re-letting; and

- (2) the total of the rent and other amounts which PTA could be reasonably expected to obtain by re-letting the Land until the date on which the Term would have expired if PTA had not terminated this Lease before the end of the Term, but PTA is not to be taken to be required to accept the same or similar terms as those in this Lease.

15.5 Indemnities

The Tenant is to indemnify PTA against any cost, expense, loss or other liability resulting from:

- (1) an Event of Default; or
- (2) if this Lease is terminated by PTA for any reason by:
 - (a) PTA re-entering the Land; or
 - (b) PTA not receiving the benefit of the Tenant performing the Tenant's obligations under this Lease from the date of termination until the end of the Term,

including in each case:

- (3) legal costs and expenses relating to any of those matters; and
- (4) costs and expenses of any managing agents and/or debt collection agents acting on behalf of PTA.

This indemnity is not affected by PTA accepting a repudiation of this Lease by the Tenant.

15.6 Benefit of Tenant's obligations

The benefit of the Tenant performing the Tenant's obligations referred to in clause 15.5(2)(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, Operating Expenses and other payments required by the Tenant.

15.7 Interest on overdue money

The Tenant is to pay interest on any amount payable by the Tenant under this Lease from the date the amount becomes due for payment until it is paid. The interest is to be paid on demand and is to be calculated on daily balances. The rate to be applied to each daily balance is 10% per annum.

15.8 Acceptance of rent or mitigation

The acceptance of Rent or other money under this Lease or an attempt by PTA to mitigate its loss is not a waiver of a breach by the Tenant of its obligations under this Lease or a surrender by operation of law.

16. Tenant's Obligations on termination

16.1 Tenant to vacate

The Tenant is to vacate the Land, remove any weeds or rubbish from the Land, remove the Tenant's Property and make good to the satisfaction of PTA any damage caused by that removal, immediately on the termination of this Lease except that when the termination is before the end of the Term, the Tenant is to remove the Tenant's Property and make good any such damage within 3 days after the termination.

16.2 Tenant's Property

The obligation to remove the Tenant's Property in clause 16.1 does not apply to any of the Tenant's Property which the PTA requires, by written notice to the Tenant, not to be removed.

16.3 Removal of Tenant's Property

If the Tenant does not comply with clause 16.1, PTA may, at the Tenant's cost, remove the Tenant's Property from the Land.

16.4 Tenant to Indemnify

The Tenant indemnifies the PTA against all damage caused by effecting and overseeing the removal of and the cost of removing and storing that Tenant's Property.

16.5 Property may be Sold

All Tenant's Property not removed in accordance with clause 16.1 will, at PTA's option, become the absolute property of PTA and may be disposed of by PTA as PTA thinks fit.

16.6 Risk

The Tenant's Property remains at the Tenant's risk at all times before and after the termination of this Lease, except for any property which is not removed under clause 16.1 with the PTA's consent, which is at PTA's risk after termination of this Lease.

17. Costs, expenses, duties and fees

17.1 Costs and expenses

The Tenant is to pay or reimburse PTA on demand for all PTA's costs and expenses, including legal costs and expenses and consultants and agents fees in relation to:

- (1) the instructions for and the negotiation, preparation, execution and stamping of this Lease;
- (2) the exercise or enforcement by PTA of any right under this Lease, and the preparation and service of a notice under section 81 of the *Property Law Act 1969*;
- (3) obtaining or giving any consent or approval under this Lease, or a variation or surrender of this Lease; and
- (4) any act or omission by the Tenant causing cost or expense to PTA;

including in each case, PTA's legal costs and expenses on a full indemnity basis.

17.2 Duties and fees

The Tenant is to pay or reimburse PTA on demand for all duty, Taxes and fees, (including fines and penalties in respect of any of them except if PTA caused the fine or penalty to be incurred) which may be payable in connection with this Lease.

18. Power of attorney

The Tenant for valuable consideration irrevocably appoints PTA the Tenant's attorney for the purpose of:

- (1) withdrawing any caveat which the Tenant is required to withdraw by clause 13.1(2);
- (2) doing anything else that the Tenant is obliged to do under this Lease but does not do.

19. Notices

19.1 Form and address

A notice or other communication in connection with this Lease is to be in writing and:

- (1) may be given by the relevant party or any authorised officer of that party or its solicitor or agent; and

- (2) may be given or made by:
 - (a) delivery to that person personally;
 - (b) addressing to that person and leaving it or posting it to:
 - (i) the Land;
 - (ii) the address of that person set out in this Lease;
 - (iii) that person's last known place of residence; or
 - (iv) if that person is a corporation, its registered office or principal place of business; or
 - (v) any other address previously notified to the sender;
 - (c) addressing it to that person and sending it by facsimile to the facsimile number of that person appearing in this Lease or a facsimile number previously notified to the sender.

19.2 Receipt

Unless a later time is specified in it, a notice or other communication takes effect from the time it is received. It is taken to be received:

- (1) if left at the Land, at the time it is left;
- (2) in the case of a posted letter, on the third day after posting; and
- (3) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent to the facsimile number of the recipient.

20. Goods and Services Tax

20.1 Definitions

Unless the contrary intention appears, in this clause:

- (1) **GST** means a tax levied on the value of a good or service or property supplied, including but not limited to the value represented by the Rent and the amount of Operating Expenses, Rates & Taxes, management fees or other money payable to PTA for goods or services or property.
- (2) **Supply** means a good or service or property supplied under this Lease, including but not limited to the Land, and other goods or services or property the cost of which comprises part of the Operating Expenses or Rates and Taxes.

20.2 Tenant must pay GST

The Tenant must pay to PTA the amount of any GST PTA pays or is liable to pay on a Supply.

20.3 Tenant must pay GST at same time

The Tenant must pay to PTA the amount of the GST that the Tenant is liable to pay at the same time and in the same manner as the Tenant is obliged to pay for that Supply, including in relation to Rent, Operating Expenses and Rates and Taxes, at the time the Tenant is obliged to pay those amounts.

20.4 Prices do not include GST

The price for each Supply, including Rent, fixed or determined under this Lease does not include GST on that Supply and the Tenant must pay the amount of GST in addition to the price for that Supply fixed or determined under this Lease.

20.5 Apportionment of GST

Where a Supply is not separately supplied to the Tenant, the liability of the Tenant for any amount for GST in relation to that Supply is determined on the same basis as the Tenant's Contribution to Operating Expenses is determined.

20.6 Statement of GST paid is conclusive

A written statement given to the Tenant by PTA of the amount of GST that the Supplier pays or is liable to pay is conclusive as between the parties except in the case of an obvious error.

21. Miscellaneous

21.1 Approvals and consents

Unless otherwise stated, whenever PTA's approval or consent is required under this Lease, PTA may give it conditionally or unconditionally for any reason.

21.2 Remedies cumulative

The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Lease.

21.3 Accrued rights

The termination of this Lease does not affect the rights of PTA in relation to a breach of this Lease by the Tenant before the termination.

21.4 Severance

If any provision in this Lease or the application of that provision to any person or circumstance is or becomes invalid or unenforceable, then the remaining provisions of this Lease are not affected and are valid and enforceable.

21.5 Payments

The Tenant is to make payments under this Lease without set-off or counterclaim and without any deduction. All payments by the Tenant under this Lease are to be made

to PTA or any one else nominated by PTA in a notice given to the Tenant. PTA need not make demand for payment of any amount to be paid by the Tenant unless otherwise stated.

22. Option to extend this Lease

22.1 Option

If in this Lease, PTA gives the Tenant the option to extend this Lease for any additional term specified in this Lease the option is exercisable by the Tenant giving notice to PTA not earlier than 6 months and not later than 3 months before the end of the Term.

22.2 Loss of option

The option to extend this Lease ceases to have effect and the Tenant ceases to be entitled to an extension of this Lease:

- (1) if, when the Tenant notifies PTA or, if the notice has been given, at the end of the Term, an Event of Default has occurred and it has not been remedied or waived; or
- (2) if, an Event of Default has occurred on 3 or more occasions during the Term, regardless of whether or not PTA has given notice to the Tenant of any such Event of Default.

22.3 Terms of extension

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

- (1) 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 Review Date, in which case, the Rent is subject to review on that date by the method set out in this Lease;
- (2) any option to extend this Lease included in this Lease but which has been exercised does not apply.

22.4 Documentation

The Tenant is to promptly sign a deed of extension of lease, to be prepared by PTA or its solicitors, at the cost of the Tenant when requested by PTA. Clause 17 applies in relation to that deed.

23. Trusts

23.1 Capacity

If the Tenant enters into this Lease as trustee of a trust, the Tenant does so both for itself and as trustee of the trust and in this Lease, and each reference to the Tenant has effect as a reference in each capacity.

23.2 Tenant's warranties

The Tenant warrants to PTA that:

- (1) the Tenant is the only trustee of the trust;
- (2) no action has been taken or proposed to remove the Tenant as trustee of the trust;
- (3) the copy of the trust deed and other documents relating to the trust produced to PTA disclose all the terms of the trust;
- (4) the Tenant has power under the trust deed to enter into this Lease and the Tenant has entered into this Lease for the benefit of the beneficiaries of the trust;
- (5) the Tenant has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under this Lease;
- (6) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Tenant has a right to be indemnified out of those assets;
- (7) the Tenant is not in default under the trust deed;
- (8) no action has been taken or is proposed to terminate the trust;
- (9) the Tenant has complied with the Tenant's obligations in connection with the trust; and
- (10) PTA's rights under this Lease rank in priority to the interests of the beneficiaries of the trust.

23.3 Tenant's obligations

The Tenant is to:

- (1) at PTA's request, exercise the Tenant's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under this Lease;
- (2) comply with the Tenant's obligations as trustee of the trust;
- (3) not, without the consent of PTA, do anything which:
 - (a) effects the retirement, removal or replacement of the Tenant as trustee of the trust;
 - (b) could restrict the Tenant's right of indemnity from the assets of the trust in respect of obligations incurred by the Tenant under this Lease;
 - (c) could restrict the ability of the Tenant to comply with the Tenant's obligations under this Lease;

- (d) effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

24. Guarantee and indemnity

24.1 Application

This clause 24 applies if any Guarantor is a party to this Lease.

24.2 Guarantor's obligations

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

- (1) unconditionally and irrevocably guarantees to PTA the due and punctual payment by the Tenant to PTA of all amounts payable by the Tenant under this Lease and the due compliance by the Tenant with all the Tenant's other obligations under this Lease; and
- (2) as separate undertakings:
 - (a) unconditionally and irrevocably indemnifies PTA against all loss, liability, cost or expense incurred or suffered by PTA 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 Tenant; and
 - (b) as principal debtor agrees to pay to PTA on demand a sum equal to the amount of any loss, liability, cost or expense described in clause 24.2(2)(a).

24.3 Duration and application

This guarantee and indemnity:

- (1) continues in full force and effect while the Tenant:
 - (a) occupies or is entitled to occupy the Land under this Lease or any other form of tenancy or right of occupation or as a trespasser or other unauthorised occupier; or
 - (b) holds an equitable interest in the Land under an agreement for lease or as a periodical tenant; or

until the Tenant complies with all its obligations under this Lease;

- (2) extends to all extensions of this Lease and any new lease of the Land; and
- (3) extends to claims by PTA for loss or damage arising from the repudiation of this Lease or breaches of the terms of this Lease by the Tenant, including PTA re-entering or terminating this Lease.

24.4 **Waiver**

The Guarantor waives:

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

24.5 **No prejudice to rights**

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

- (1) PTA granting time or other concession to or compromising with or partially releasing in any way the Tenant or the Guarantor;
- (2) acquiescence, delay, acts or omissions by of PTA;
- (3) a variation of this Lease or the assignment or surrender of the leasehold of the leasehold estate in the Land granted by this Lease, with or without the consent of the Guarantor;
- (4) the death, dissolution or other incapacity of the Tenant or a Guarantor;
- (5) an Insolvency Event occurs in respect of the Tenant or the Guarantor;
- (6) the fact that a Guarantor may never execute this Lease or that the execution of this Lease by a Guarantor is void or voidable;
- (7) the invalidity or unenforceability of an obligation or liability of the Tenant under this Lease;
- (8) the disclaimer of this Lease by a liquidator or trustee of the Tenant; or
- (9) PTA releasing, disposing of or dealing in any other way with any other Security Interest it may hold given by the Tenant or any other guarantor.

24.6 **Restriction on Guarantors' claims**

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

- (1) raise a set-off or counterclaim against the Tenant in reduction of the Guarantor's liability under this clause;
- (2) prove or claim in any bankruptcy, liquidation, composition, arrangement or assignment of or in relation to the Tenant until PTA has received 100¢ in the dollar in respect of the money owing by the Tenant under this Lease; and the Guarantor holds in trust for PTA any proof or claim and any dividend received by it; or

- (3) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any other security held by PTA in connection with this Lease.

24.7 **PTA's rights**

If a claim that a payment to PTA in connection with this Lease is void or voidable under laws relating to insolvency or protection of creditors is upheld, conceded or compromised, PTA 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.

24.8 **Costs and expenses**

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

24.9 **Assignment of benefit of this Lease**

If the benefit of this Lease is transferred or assigned by PTA 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.

25. **Interpretation**

25.1 **Definitions**

In these PTA General Lease Terms and in this Lease:

- (1) **Authority** means any governmental or other public body, local authority or other authority of any kind.
- (2) **Commencement Date** means the commencement date of the Term stated in this Lease.
- (3) **Event of Default** means any of the events specified in clause 15.2 of the General Lease terms .
- (4) **Financial Year** means the period:
 - (a) commencing on the Commencement Date and ending on the next 30 June;
 - (b) of each 12 months commencing on 1 July until the next 30 June during the Term;
 - (c) commencing on 1 July immediately preceding the expiration of the Term and ending at the expiration of this Lease.
- (5) **Gross Collections** means the total of the Rent, Rates, Taxes and Operating Expenses paid or payable by the Tenant in respect of the Land.

- (6) **Guarantor** means any person or persons named in this Lease as a guarantor or guarantors of the Tenant's obligations under this Lease including the successors of that person or persons.
- (7) **Insolvency Event** means the happening of any of the following events in relation to the Tenant:
- (a) the Tenant is unable to pay all the Tenant's debts as and when they become due and payable or the Tenant has failed to comply with a statutory demand as provided in section 459F of the *Corporations Act 2001*, or the Tenant is deemed to be unable to pay the Tenant's debts under section 585 of the *Corporations Act 2001* or the Tenant is otherwise presumed by law to be insolvent;
 - (b) the Tenant becomes an externally-administered body corporate (within the meaning stated in the *Corporations Act 2001*);
 - (c) an application is made to a court for the Tenant to be wound up or dissolved;
 - (d) the appointment of a controller (as defined in section 9 of the *Corporations Act 2001*) of any of the Tenant's assets;
 - (e) the Tenant proposes to enter into or enters into any form of arrangement (formal or informal) with the Tenant's creditors or any of them, including a deed of company arrangement; or
 - (f) the Tenant becomes an insolvent under administration, as defined in section 9 of the *Corporations Act 2001*; or
 - (g) anything analogous or having a similar effect to the events described happens to the Tenant, including a Tenant who is a natural person.
- (8) **Insurable Event** means fire, storm and tempest, flood, impact, malicious damage, loss of rent and any other risk against which any party under this Lease has insured.
- (9) **Land** means the land the subject of this Lease.
- (10) **Lease** means any lease or tenancy or agreement for a lease or tenancy relating to the possession or use of land or any building which incorporates the Schedule, Additional Terms and PTA General Lease Terms, as that lease, tenancy or agreement may be varied from time to time.
- (11) **Lettable Area** means the area of the Land as stated in this Lease
- (12) **Operating Expenses** means the total of any amounts paid or payable by the PTA in respect of a Financial Year for items of expenditure in connection with the operation of the Land as listed in this Lease.
- (13) **Payment Dates** means the dates stated in this Lease as the date in each month on which the Rent is due to be paid or if no date is mentioned, the first day of January, April, July and October in each year during the Term.

- (14) **Permitted Use** means the use of the Land stated in this Lease.
- (15) **President** means the President or the person acting or deputising for the President for the time being of the Australian Property Institute (Inc.) (WA Division).
- (16) **PTA** means the Public Transport Authority of Western Australia, constituted under the *Public Transport Authority Act 2003*, and its successors including an assignee of reversion.
- (17) **PTA's Obligations** means the agreements and obligations contained or implied in this Lease with which PTA must comply.
- (18) **Rates** means rates, land taxes and other charges imposed by an Authority in relation to the Land or property which includes the Land, and including any future levy in the nature of a rate which may be imposed as a result of the Tenant's use of the Land.
- (19) **Rent** means the annual rent for the Land stated in this Lease.
- (20) **Schedule** means the Schedule to this Lease.
- (21) **Security Interest** means any mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or compliance with any other obligation.
- (22) **Services** means services running through or servicing the Land including air conditioning equipment, power, water, sewerage, drainage, gas, telecommunications and fire sprinkler system.
- (23) **State** means the State of Western Australia.
- (24) **Taxes** means any taxes, charges or duties, including duty and any fines or penalties, imposed by an Authority in relation to this Lease or the Land or property which includes the Land, and including any future levy in the nature of a tax which may be imposed as a result of the Tenant's use of the Land.
- (25) **Tenant** means the person stated in this Lease as the tenant and its successors, including an assignee, a sub-tenant or any other person having a right to possess, use or occupy the Land.
- (26) **Tenant's Contribution to Operating Expenses** means the Tenant's Proportion of the Operating Expenses.
- (27) **Tenant's Employees, Agents and Visitors** means each of the Tenant's employees, agents, contractors, service suppliers, sub-lessees, licensees, customers and other visitors, and any other person who at any time is on the Land with or without the consent of the Tenant.
- (28) **Tenant's Obligations** means the agreements and obligations contained or implied in this Lease with which the Tenant must comply.

- (29) **Tenant's Property** includes any buildings, improvements, other fixtures, and any plant or equipment, fittings, furniture and furnishings erected on, under or fixed to the Land and any other property on the Land not owned by the PTA.
- (30) **Tenant's Proportion** means the proportion of the Operating Expenses payable by the Tenant as mentioned in this Lease, or if no proportion is mentioned, the proportion that the Lettable Area of the Land bears to the Lettable Area of the land owned by PTA in respect of which the Operating Expenses are incurred.
- (31) **Term** means the term for which the Land is let by PTA to the Tenant as specified in this Lease including, where the context permits, any period of holding over and any extended term.

25.2 Interpretation Rules

In these PTA General Lease Terms and this Lease, unless the contrary intention appears:

- (1) 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 date of this Lease;
- (2) the singular includes the plural and vice versa;
- (3) the word person includes a firm, a body corporate, an unincorporated association or an Authority;
- (4) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (5) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (6) each obligation of PTA or the Tenant to the other of them has effect as a covenant;
- (7) where a period of time is expressed to be calculated from or after a specified day, that day is included in the period, and
- (8) a reference to a month is to a calendar month;
- (9) where the word 'including' or 'include' is used, it is to be taken to be followed, where the context permits, by the words: 'but not limited to'; and
- (10) a reference to PTA includes any person authorised by PTA to represent PTA in connection with this Lease.

25.3 Retail Shops Act

During any time when this Lease is a lease to which the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies:

- (1) the provisions of the Lease are subject to the provisions of that Act; and
- (2) any provision of the Lease giving a right, power or remedy to PTA or imposing an obligation on the Tenant which is prohibited or made void or otherwise unenforceable by that Act does not apply to the extent only that the provision is so prohibited, made void or is otherwise unenforceable, but without prejudice to the other provisions of the Lease, which continue in full force and effect.

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