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LAWYERS

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Lease Part Edward Millen Precinct 15 Hill View Terrace East Victoria Park, Western Australia

DRAFT CURRENT AT 15.05.2023

NB Subject to Council Approval

between

TOWN OF VICTORIA PARK
ABN 77 284 859 739
(Landlord)

and

BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD
ABN 42 651 448 583
(Tenant)

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DRAFT

between **TOWN OF VICTORIA PARK (ABN 77 284 859 739)** of 99 Shepperton Road, Victoria Park, Western Australia, 6100 (**Landlord**)

And **BLACKOAK CAPITAL – ELIZABETH BAILLIE PTY LTD (ACN 651 448 583)** of 179 St Georges Terrace, Perth, Western Australia, 6000 (**Tenant**)

Recitals

- A The Landlord is the registered proprietor of the Land, of which the Premises forms a part, subject to section 75 of the *Land Administration Act 1995*.
- B The Tenant has redeveloped the Premises under an agreement to lease the Premises, pursuant to which this Lease is to be entered into.
- C The Tenant has requested the Landlord to lease the Premises to the Tenant.
- D The Landlord has agreed to lease and the Tenant has agreed to take a lease of the Premises for the Term on the terms and conditions contained in this Lease.

The parties covenant and agree as follows:

1 Interpretation

1.1 Definitions

In this Lease, unless stated otherwise:

Agreement for Lease means the agreement for lease between the Landlord and the Tenant dated **[insert]**;

Annexure means each annexure to this Lease (if any);

Asset Maintenance Plan means the asset maintenance plan approved from time to time by the Minister under clause 2.1(e) of the Deed of Agreement and being, at the Commencement Date, the asset maintenance plan attached as Annexure "B";

Bank Guarantee means an unconditional and irrevocable undertaking by a bank (on terms which are acceptable to the Landlord, acting reasonably) to pay on demand the amount specified in Item 11, and includes any replacement or addition to it;

Building means the building and any improvement on the Land;

Business Day means a day on which banks are open for business in Western Australia but does not include a Saturday, a Sunday or a public holiday in Western Australia;

Claim includes a claim, demand, action, proceeding, or suit;

Commencement Date means the date of commencement of this Lease specified in Item 4;

Conditional Tenure Conditions means the conditions concerning the use of the Land contained in Transfer O548293;

Contaminated and **Contamination** means being materially and adversely affected or degraded (in the opinion of the Landlord) by any chemical or hazardous substance, Dangerous Good or Pollutant;

Corporation has the meaning given to that term by the Corporations Act;

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

Costs means costs, charges and expenses including those incurred in connection with advisors;

Dangerous Good means all hazardous chemicals and substances classified as dangerous goods under the Australian Dangerous Goods Code;

Deed of Agreement means the Deed of Agreement between The State of Western Australia acting through the Minister and the Landlord dated 8 September 2020 a copy of which is annexed at Annexure C as amended, assigned or replaced from time to time;

Default Notice has the meaning given in clause 13.4(a);

Energy Certificate means a certificate in respect of the Building made under the *Building Energy Efficiency Disclosure Act 2010* (Cth);

Essential Term means each of the terms and conditions specified in clause 13.1(a);

Event of Default means an event of default described in clause 13.2;

Expiry Date means the date of expiry of this Lease specified in Item 5;

Facilities mean the drainage, sewerage and plumbing facilities, and the gas and electrical fittings or appliances in or on the Land or the Premises;

Further Term means each further term (if any) specified in Item 9;

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

GST, tax invoice and taxable supply have the meanings given to those terms in the GST Act;

Heritage Agreement means the Heritage Agreement between the Heritage Council and the then State Housing Commission made on 30 August 2005 and certified under section 32(1) of the former *Heritage of Western Australia Act 1990* (WA) and which is attached to Memorial J439754;

Insolvency Event means one of the following occurs to the Tenant

- (a) it is unable to pay its debts as and when they fall due for payment;
- (b) it fails to comply with a statutory demand under section 459F of the Corporations Act;
- (c) a meeting is convened to place it in voluntary liquidation or to appoint an administrator;
- (d) an application is made for it to be wound up;
- (e) it becomes an insolvent under administration or a controller under section 9 of the Corporations Act is appointed to any of its assets;
- (f) it proposes to enter into or enters into any form of arrangement of understanding with any of its creditors; or
- (g) the Tenant is an individual and one or more of them:
 - (i) commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth) or becomes a bankrupt; or
 - (ii) dies or becomes permanently incapacitated and the Tenant cannot secure an alternative form of security satisfactory to the Landlord within 30 days of death or permanent incapacity;

Item means an item of Schedule 1;

Land means the land specified in Item 1;

Landgate means the authority established under section 5 of the *Western Australian Land Information Authority Act 2006* (WA);

Law includes all Acts and statutes (State or Federal) for the time being enacted and all regulations, town planning schemes, ordinances, local laws, by-laws, requisitions, orders, rules, regulations or statutory instruments made under any Act or statute from time to time by any Authority;

Landlord includes the Landlord's successors, employees, and agents;

Landlord's Covenants means the covenants, terms, and conditions of this Lease expressed to be observed and performed by the Landlord;

Landlord's Equipment means all plant and equipment from time to time located in or on the Premises and owned by the Landlord or installed and fixed on any improvement on the Premises by the Landlord including, without limitation, the plant and equipment listed in Item 12 (if any);

Lease means this document, the Annexures and Schedule and includes any equitable lease in respect of the Premises that arises because of any one or more of the following:

- (a) the Tenant enters into possession of the Premises before this document is signed;
- (b) this document is not registered on the certificate of title for the Land; or
- (c) the Tenant remaining in possession of the Premises after the Lease evidenced by this document ends;

Lease Year means the period between 1 July and 30 June each year, and where applicable includes:

- (a) the period commencing on the Commencement Date and ending on the next following 30 June; and
- (b) the period commencing on 1 July immediately prior to the Expiry Date and ending on the Expiry Date;

Liability includes, without limitation:

- (a) a legal or equitable obligation to pay money or to give anything of value to any person;
- (b) loss or damage of any kind;
- (c) legal costs payable on a full indemnity basis; and
- (d) any cost, charge, or expense of any kind,

however arising and **Liabilities** has a corresponding meaning;

Local Government Law includes:

- (a) *Building Act 2011* (WA);
- (b) *Environmental Protection Act 1986* (WA);
- (c) *Food Act 2008* (WA);
- (d) *Health (Miscellaneous Provisions) Act 1911* (WA)
- (e) *Health Services Act 2016* (WA);
- (f) *Heritage Act 2018* (WA);

- (g) *Liquor Control Act 1988 (WA)*;
- (a) *Local Government Act 1995 (WA)*;
- (b) *Local Government (Miscellaneous Provisions) Act 1960 (WA)*;
- (c) *Planning and Development Act 2005 (WA)*; and
- (d) the Town of Victoria Park Town Planning Scheme No 1;

Loss means all damages, loss, liability, Claim, Cost and expense (including legal costs and expenses) of whatsoever nature or description, but excluding any consequential losses (other than consequential losses comprising payments or Costs the Landlord is required to make or pay to third parties), economic losses or loss of profits;

Major Sublease means any sublease that is not a Minor Sublease;

Minister means the Minister for Lands and includes any Minister responsible for the administration of the *Land Administration Act 1997 (WA)* from time to time;

Minor Offences means any offence under the *Liquor Control Act 1988 (WA)* for which:

- (a) the prescribed penalty as at 30 June 2021 is a fine of \$10,000 or less; or
- (b) an infringement notice is issued for a modified penalty of \$10,000 or less;

Minor Sublease means any sublease or licence for a term not exceeding one year approved by the Department of Planning, Lands and Heritage;

Mortgagee means the chargee or mortgagee in a Mortgagee Side Deed;

Mortgagee Side Deed means the deed referred to in clause 12.7(b);

Outgoings means each and every cost the Landlord reasonably incurs in respect of the ownership, administration, security, insurance, management, operation, maintenance, refurbishment, repair and/or use of the Premises, including but not limited to the Rates and Taxes;

Party means a party to this Lease;

Permitted Security means:

- (a) the Security Interest granted in favour of the Landlord under clause 24;
- (b) a Security Interest in any stock or other goods granted in favour of a supplier who delivers that stock or other goods; or
- (c) any Security Interest advised to the Landlord by notice from the Tenant before entering into this Lease and agreed to by the Landlord in writing,

but does not include any Security Interest in or over this Lease or the Premises;

Permitted Use means the use specified in Item 8;

Persistent Minor Offences means a Minor Offence that occurs on 3 or more occasions in any consecutive 12 month period in respect of the Premises. A series of Minor Offences which occur in any consecutive 24 hour period shall be deemed to be one occurrence;

Pollutant means a pollutant, contaminant, petroleum or petroleum product, dangerous or toxic substance, hazardous substance, chemical, solid, gas, special liquid or industrial or other waste that's use, storage or disposal is regulated in Western Australia in connection with the protection of the environment or health and safety;

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

PPS Register has the meaning given to 'register' in the PPSA;

Precinct Management Practice means any management practice developed by the Landlord in consultation with the Tenant and other stakeholders as to the overall management of the Land, including interactions between the Premises and the balance of the Land and activities thereon, as amended from time to time;

Premises means the premises specified in Item 2;

Prescribed Rate means the rate of interest specified in Item 10;

Rates and Taxes means local government rates and charges, water, sewerage and drainage charges, and land tax and metropolitan region improvement tax imposed in relation to the Premises or the Land which includes the Premises;

Relevant Authority includes each government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, statutory or public authority, tribunal, agency or entity, whether local, state, federal or otherwise;

Rent means the rent specified in Item 6 as reviewed and varied pursuant to the provisions of this Lease;

Rent Review Dates means each of the dates specified in Item 7;

Requirement means any requirement, notice, order or direction received from or given by any statutory, public or other competent Relevant Authority, present or future;

Schedule means each schedule to this Lease;

Second Default Notice has the meaning given in clause 13.4(c)(ii);

Security Agreement has the meaning given to it in the PPSA;

Security Interest means any or all of:

- (a) a charge, mortgage, lien, pledge or other similar interest; or
- (b) a 'security interest' as that term is defined in the PPSA;

Services means water, sewer, gas, fuel, electricity, lighting, sanitary, hot water, security systems, telecommunications systems, fire detection and alarm systems, aerials, whether or not now installed and serving the Premises, and includes all wires, cables, pipes, ducts, conduits, tanks, cisterns, electrical and mechanical plant, and all other ancillary or incidental parts and accessories and includes waste storage, removal and collection services;

Special Conditions means the special conditions of this Lease, if any, set out in Item 13;

Specified Encumbrances means each of the following:

- (a) T370/1953 Easement to State Energy Commission of Western Australia for Electricity Purposes. See Deposited Plan 41207. Registered 11/3/1953;
- (b) F409312 Memorial. Heritage of Western Australia Act 1990. Lodged 24/12/1993;
- (c) Easement Burden created under section 27A of the Town Planning and Development Act – See Deposited Plan 41207;
- (d) J439754 Memorial. Heritage of Western Australia Act 1990. Lodged 20/9/2005;
- (e) O542893 Conditional Tenure Land. Land subject to conditions pursuant to s75LAA Minister's consent required to transfer or encumber land. See instrument O542893. Registered 9/11/2020;
- (f) P153666 Memorial. Land Administration Act 1997. Section 16. Registered 23/5/2022;

(g) Statutory Encumbrances;

Statutory Encumbrances has the meaning given in the Special Condition in Item 8(5) of the Schedule to the Agreement for Lease;

Subtenant means a subtenant of the Tenant in respect of a sublease of premises in the Building or on the Premises approved under clause 12;

Tenant's Covenants means the covenants, terms, and conditions of this Lease, expressed or implied to be observed and performed by the Tenant;

Tenant's Employees or Visitors means every employee, agent, customer, client, visitor, invitee, licensee, and contractor, of the Tenant at any time upon the Premises with or without the authorisation of the Tenant;

Tenant's Equipment means any freehold or leasehold plant, equipment, fixtures or fittings or stock of the Tenant on or in the Premises from time to time;

Tenant's Proportion means:

- (a) in respect of Outgoings, the proportion which the lettable area of the Premises bears to the lettable area of the Land that is the subject of the relevant item of Outgoings; and
- (b) in respect of any other cost, charge or expense, the proportion which the lettable area bears to the lettable area of the Land which enjoys or shares the benefit resulting from the expenditure;

Term means the term of this Lease which commences on the Commencement Date and expires on the Expiry Date and includes each Further Term granted;

Valuer means an independent valuer who:

- (a) is a fellow or an associate, of not less than 10 years' standing, of the Australian Property Institute and is practising and licenced under the *Land Valuers Licencing Act 1978 (WA)* at the time of appointment; and
- (b) has had not less than 5 years practical experience in Western Australia in the valuation of ground leases of premises of the same general classification as the Premises; and

WAPC means the authority established under section 7 of the *Planning and Development Act 2005 (WA)*.

1.2 Interpretation

In this Lease unless stated otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a reference to the Tenant includes, if a natural person, his or her executors administrators and assigns and if a Corporation, its successors and assigns and in either case, the Tenant's Employees or Visitors;
- (c) a reference to a statute, ordinance, code, or other law, includes all regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements, of any of them;
- (d) a reference to a section, clause, recital, schedule, appendix, or annexure, is to a section, clause, recital, schedule, appendix, or annexure, in this Lease;
- (e) a reference to a paragraph in a clause is a reference to a paragraph in that clause;

- (f) the word person includes a firm, a body corporate, an unincorporated association, an authority, or other entity;
- (g) a reference to a person includes a body recognised at law whether or not incorporated and is a reference to the person's executors, administrators, successors and assigns;
- (h) an agreement, representation, or warranty, in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation, or warranty, on the part of two or more persons binds them jointly and severally and may be enforced against any one or any two or more of them;
- (i) if the word 'including' or 'includes' is used, the words 'without limitation' are deemed to follow immediately;
- (j) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day;
- (k) when the reference to a 'day' in this Lease is not a reference to a 'Business Day' in computing time, days which are not Business Days are to be included in that computation;
- (l) references to money or '\$' is a reference to Australian dollars;
- (m) a provision of this Lease shall not be construed against a Party merely because that Party was responsible for drafting this Lease or for the inclusion of that provision;
- (n) headings do not affect the interpretation of this Lease;
- (o) a reference to a statutory, professional or industry body includes a reference to a successor or substitute for that body;
- (p) unless repugnant to the context, a covenant by the Tenant to do or omit to do anything includes a covenant by each Tenant's Employee or Visitor to do or omit to do that thing, and the Tenant is liable for all acts or omissions of each Tenant's Employee or Visitor;
- (q) a general description of any matter or thing whatever shall not be read down if followed by any specific examples of that matter or thing; and
- (r) a reference to a 'month' means a calendar month.

2 Grant of lease

2.1 Lease

The Landlord leases to and the Tenant takes a lease of the Premises for the Term subject to the Specified Encumbrances, the payment of Rent and to the terms and conditions of this Lease.

2.2 Reservations

Without limiting any of the Landlord's rights set out elsewhere in this Lease, the Landlord reserves to itself the rights set out in this clause 2.2.

- (a) **Power to enter**
 - (i) The Tenant must permit the Landlord to enter the Premises at all reasonable times on the giving of reasonable notice by the Landlord to the Tenant, or immediately in the case of emergency, to comply with any requirement or order of any Relevant Authority, except that the Landlord must use the Landlord's reasonable endeavours not to cause any undue interference with the conduct of the Tenant's business.

- (ii) The Landlord may enter the Premises at any time for the purpose of doing anything which the Tenant should have done under this Lease but which has not been done by the Tenant or which has not been done properly.
 - (iii) The Landlord's right of entry under this clause 2.2(a) allows the Landlord to enter in the Premises with or without workmen or other interested persons and, in the case of works that are required to be undertaken, with all necessary plant, equipment and materials to effect those works.
- (b) Rules and regulations
- (i) The Landlord may at any time make, amend, cancel, add to or suspend rules and regulations relating to the management and control of the Land and the Building by giving notice of the making, amendment, cancellation, addition or suspension to the Tenant, and the rules and regulations shall bind the Tenant as if they are set out in this Lease, and to the extent of any inconsistency between the rules and regulations and this Lease, the terms of this Lease shall prevail.
 - (ii) Notwithstanding any provision of this Lease:
 - (A) the Tenant's hours of operation shall be governed by Law;
 - (B) the Landlord may not make any make any rules and regulations that:
 - (I) limit reasonable access to the Premises by the Tenant and its invitees; or
 - (II) derogate from the quiet enjoyment of the Tenant's rights by the Tenant.
- (c) Grant of easements etc.

The Landlord may grant easements of support over any part of the Land or dedicate or transfer any part of the Land in favour of another person for any reason whatsoever except that the Landlord shall not without the Tenant's prior consent do anything which will substantially and permanently derogate from the quiet enjoyment of the Tenant's rights by the Tenant.

3 Holding over

If the Tenant continues to occupy the Premises after the Expiry Date with the consent of the Landlord, the Tenant will be a monthly tenant at a monthly rent equal to 1/12th of the Rent payable immediately prior to the Expiry Date increased by 2.5%, together with the monthly payment on account of all Outgoings for that period and otherwise on the same terms and conditions as this Lease insofar as they apply or would apply to a monthly tenant.

4 Option of renewal and early termination

- (a) If at the date of the expiration of the Term or the relevant Further Term:
- (i) the Tenant has not failed to remedy an Event of Default as to which it has been given a Default Notice; and
 - (ii) the Tenant has not given at least 9 months' notice to the Landlord that the Term is not be extended,
- then:
- (iii) Tenant's the option of extending this Lease for the relevant Further Term shall be deemed to have been exercised on the same terms and conditions as

those in this Lease, and at a Rent from the commencement date of the relevant Further Term calculated and determined in accordance with the provisions of this Lease, except for this clause where there are no additional Further Terms; and

- (iv) the Tenant must within 14 days of receipt of a new 'Deed of Lease' or a 'Deed of Extension of Lease' (or similar document) prepared by the Landlord's solicitors, duly execute and return the same to the Landlord's solicitors together with payment of the reasonable legal costs for the preparation, negotiation and execution of that document and any duty payable thereon.
- (b) Where the option of extending this Lease is deemed to have occurred under paragraph (a) and the Tenant has not executed a new 'Deed of Lease' or a 'Deed of Extension of Lease' (or similar document) for the relevant Further Term, the Tenant may, within 6 months of the commencement date of the relevant Further Term, give to the Landlord a notice terminating this Lease on no less than 9 months' notice.

5 Rent

5.1 Payment of Rent

- (a) The Rent shall be paid by the Tenant in annual instalments in advance free of deductions or set-offs to the Landlord at the times, in the manner, and at the address, referred to in Item 6 or as the Landlord otherwise directs in writing.
- (b) If Rent is payable for only part of a month, it is to be calculated as 1/365th of the Rent multiplied by the number of days in that part of the month which the Tenant occupies the Premises.

5.2 Rent review

The Rent is to be reviewed in accordance with the provisions in Schedule 2 of this Lease.

6 Outgoings

6.1 Tenant to pay Outgoings

- (a) The Tenant shall duly and punctually pay, on demand within 7 days:
 - (i) the Outgoings that are attributable solely in respect of the Premises; and
 - (ii) the Tenant's Proportion of any Outgoings that are not attributable solely in respect of the Premises.
- (b) The Landlord may in its absolute discretion elect to charge the Tenant the Tenant's Proportion of some or all of each item of Outgoings in accordance with the Landlord's estimate of Outgoings, by calendar monthly instalments in advance payable at the same time and in the same manner as the Rent or the amount paid or payable by the Landlord in respect of that item of Outgoings, on demand.
- (c) If the Landlord elects to charge and receive money from the Tenant based on the Landlord's estimate of Outgoings, the Landlord will give the Tenant:
 - (i) a notice setting out an estimation of the Tenant's Proportion of Outgoings on or before the commencement of a Lease Year; and
 - (ii) a statement of the actual Outgoings (**Statement**) identifying the Tenant's Proportion of Outgoings for the relevant Lease Year as soon as practicable after the end of the relevant Lease Year and if the Statement discloses an underpayment or overpayment of Outgoings by the Tenant, then:

- (A) the Tenant will pay the Landlord the amount of any underpayment; or
 - (B) the Landlord will pay the Tenant the amount of any overpayment,
within 7 days of receipt of the Statement by the Tenant.
- (d) The Landlord may at any time during or after the Term recover any underpayment of Outgoings by the Tenant if the Tenant's Proportion was incorrectly calculated from time to time or any Relevant Authority delayed in issuing or rendering accounts for any Service which is or would have been properly payable by the Tenant.
 - (e) The Tenant may at any time during or after the Term recover any overpayment of Outgoings by the Tenant if the Tenant's Proportion was incorrectly calculated from time to time or any Relevant Authority delayed in issuing or rendering accounts for any Service which is or would have been properly payable by the Tenant.
 - (f) For the avoidance of doubt, the Landlord may elect for some items of Outgoings to be paid by the Tenant within 7 days of demand, and other items of Outgoings to be paid by the Tenant based on the Landlord's estimate of Outgoings in advance payable at the same time and in the same manner as the Rent

6.2 Tenant to pay for Services

- (a) The Tenant shall duly and punctually pay to the Landlord or to the supplier or Relevant Authority if the supplier or Relevant Authority invoices the Tenant direct, all charges, costs and expenses for Services or for the provision of those Services (for example meter rental and installation), supplied to the Premises or consumed by the Tenant.
- (b) For the purposes of paragraph (a), the Tenant agrees:
 - (i) to install any meters required to separately measure Services supplied to or consumed by the Tenant on the Premises and to arrange their own account directly for such Services directly with the supplier or Relevant Authority, subject to the approval of the supplier or Relevant Authority; and
 - (ii) that in the absence of a separate meter for such Services, to provide monthly meter readings to the Landlord in the manner directed from time to time by the Town acting reasonably.
- (c) Notwithstanding paragraph (b)(ii):
 - (i) the Landlord may take meter readings from time to time, and in the event of any inconsistency between the readings supplied by the Tenant and those obtained by the Landlord, the latter shall prevail;
 - (ii) the Landlord may make reasonable estimates of the charges, costs and expenses for such Services which shall be final and binding; and
 - (iii) the Tenant agrees to cooperate and act reasonably with regards to the charging, recovery and payment of these charges, costs and expenses.
- (d) Where any Services are supplied by the Landlord to the Tenant, the Tenant is required to pay the Landlord the amount which the supplier or Relevant Authority of that Service would have charged to supply that Service directly to the Tenant.

7 Use of the Premises

7.1 Permitted Use

- (a) The Tenant must only use the Premises for the Permitted Use, in accordance with the Conditional Tenure Conditions, and must carry on its business in a proper and efficient manner.

- (b) If the Premises do not constitute the whole of the Land, the Tenant acknowledges and agrees that the Permitted Use is not exclusive to the Tenant and that the Landlord may, in its absolute discretion, lease other parts of the Land for the same or a similar use as the Permitted Use.

7.2 No warranty as to use

- (a) The Landlord:
- (i) gives no warranty:
 - (A) as to the use to which the Premises may be put;
 - (B) that any improvements on the Premises are structurally sound or comply with all laws and regulations; or
 - (C) that the Premises are now or will remain suitable or adequate for the purpose of the Permitted Use; and
 - (ii) makes no representation about the suitability of the Premises for the use by the Tenant.
- (b) The Tenant acknowledges and agrees that it has not relied on any representation made by any person in respect of the Premises and the use to which the Premises may be put and by entering into this Lease is relying solely on its own enquiries in relation to the Premises and the use of and any restrictions applying to the Tenant's use of the Premises.

7.3 General restrictions on use

Without limiting any other provision on this Lease, the Tenant must not:

- (a) carry on, or permit any illegal, immoral, noxious, noisy or offensive trade, business, occupation or activity at or on the Premises;
- (b) do or permit anything to be done which is or may be a nuisance or damage or disrupt the Landlord or any other lessee of the Landlord or owner or occupier of any land in the vicinity of the Premises;
- (c) display, place or affix (or permit to be displayed, placed or affixed) any permanent sign, awning, canopy, antenna, mast or other apparatus at or on the Premises (including on any Building) without first obtaining the written consent of the Landlord and, where applicable, any Relevant Authority;
- (d) keep on, or permit any animal or pet to be on, or at the Premises or any part of the Land without first obtaining the written consent of the Landlord, save for an assistance animal (as defined in the *Disability Discrimination Act 1992* (Cth)) or where the animal is part of an activity on the Premises;
- (e) do, or permit anything to be done, which may or does overload the floor loading of the Premises or any part of the Premises;
- (f) lodge an absolute caveat on the title to the Land or the Premises;
- (g) use any facility or any of the Services or Facilities for any improper use or otherwise not in accordance with the use to which that facility or those Services or Facilities are intended to be put, including by overloading;
- (h) use any car parking bay other than to temporarily park vehicles;
- (i) cause or contribute to any damage to or on the Premises;
- (j) do or permit to be done anything in breach of a town planning scheme or zoning or whereby the present zoning or permitted use of the Premises under any statute,

regulation, by-law, order, or scheme, relating to town planning could be prejudiced or altered;

- (k) do anything which does or may adversely affect any insurance policy held by the Landlord;
- (l) deposit or permit the escape of trade effluent or other noxious substances into any sewers or drains in or on the Premises, the Land or the adjoining land;
- (m) keep or store any chemical or inflammable substance in or on the Premises (other than in the ordinary course of the Tenant or relevant Subtenant's business (as the case may be) and consistent with the relevant Permitted Use; and
- (n) without the prior written consent of the Landlord (which is not to be unreasonably withheld) park on or set down any containers or other structures on the Land or Premises.

7.4 Event Management - consultation

- (a) Where the Tenant or an occupier of the Premises proposes to hold an event on the Premises that may result in traffic congestion on or around the Land, parking of vehicles that cannot be accommodated on the Premises or noise that may disturb or disrupt owners or occupiers in the vicinity of the Premises, the Tenant must consult with the Landlord as to the management of the event, including as to traffic and parking management and noise and ensure that an event management plan is implemented to the reasonable satisfaction of the Landlord.
- (b) The Parties acknowledge the existence of the Precinct Management Practice that applies to the Land and agree to observe the provisions of that Practice, save that in the case of any inconsistency between the Practice and this Lease, the provisions of this Lease will prevail to the extent of the inconsistency.

7.5 Keep Premises clean and tidy

- (a) The Tenant must, at the Tenant's cost:
 - (i) keep the Premises (including all internal and external windows and shop fronts (if any) and any car parking bays forming part of the Premises or being used by the Tenant from time to time) clean and tidy, free of pests, rodents, vermin, insects and birds and clear of rubbish and debris;
 - (ii) regularly dispose of and arrange collection of rubbish in an appropriate manner;
 - (iii) arrange for and obtain, within one month of the Commencement Date and at least once during each Lease Year, a termite inspection report from a suitably qualified pest controller or inspector to be prepared in respect of the Premises and to provide that report to the Landlord within 7 days of receiving the same; and
 - (iv) comply with the Landlord's reasonable directions and any directions of any Relevant Authority in connection with cleaning the Premises and disposing of rubbish.
- (b) Without prejudice to any other rights of the Landlord under this Lease, if the Tenant fails to comply with the obligations set out in clause 7.5(a), the Landlord at the Tenant's cost in all respects, may, but is not obliged to, do all things necessary (including entering upon the Premises) to carry out the works required from time to time without further notice to the Tenant.

7.6 Cost of operating the Premises

Without limiting any other provision of this Lease, the Tenant must pay for all costs incurred in or associated with the carrying on of the Permitted Use from the Premises.

7.7 Contamination

The Tenant will and will ensure that the Tenant's Employees or Visitors:

- (a) use best endeavours to not cause or permit to occur (whether by an act, omission or negligence) any material Contamination to the Premises;
- (b) comply with the Requirements or any guidelines issued by a Relevant Authority or other authority or body for the storage, handling, disposal and clean-up of Dangerous Good and the responsibilities of persons handling Dangerous Good; and
- (c) ensure that on the Expiry Date or earlier determination of this Lease, any Contamination caused or contributed to by the Tenant or the Tenant's Employees or Visitors, is remediated so that the Premises are not Contaminated as a result of any act, omission or negligence of the Tenant or the Tenant's Employees or Visitors.

7.8 Comply with laws and obtain approvals etc

- (a) The Tenant must, at the Tenant's cost:
 - (i) comply with all statutes, ordinances, codes or other laws or regulations which apply to or affect the Tenant's use or occupation of the Premises or the conduct of the Tenant's business; and
 - (ii) obtain and maintain any consents, licences, registrations, approvals or permits required to be obtained and maintained by the Tenant for the Tenant to conduct the Tenant's business from the Premises for the Permitted Use or otherwise.
- (b) Without limiting clause 7.8(a), the Tenant must, at the Tenant's cost:
 - (i) conduct routine checks at least once every 3 months on all residual current devices, emergency lights and exit sign lights installed in the Premises; and
 - (ii) without limiting clause 7.10, report any defects, failures or malfunctions in any residual current devices, emergency lights and exit sign lights to the Landlord and promptly do all things necessary to repair any defects, failures or malfunctions.

7.9 Liquor Licence

Without limiting clause 7.8, where an occupier of the Premises has been granted a licence under the *Liquor Control Act 1988* (WA) in relation to the whole or any part of the Premises, the Tenant must take all reasonable steps to ensure that consumers of liquor under the licence do not cause any nuisance to the owners or occupiers of land in the vicinity of the Premises, including but not limited to imposing contractual obligations on such occupiers of the Premises to comply with the provisions of that licence.

7.10 Report to Landlord

The Tenant shall promptly report to the Landlord, in writing, (except for an emergency in which case, verbally) any:

- (a) significant damage to or defect or malfunction in the Premises, Services, Facilities or the Landlord's Equipment of which the Tenant becomes aware of or ought to be aware of;
- (b) event or circumstances which may give rise to a Claim by any person against the Landlord;
- (c) matter, act or thing which has or may cause Contamination or pollution to the Premises or the Land;
- (d) vandalism of the Premises; and

- (e) matter, act or thing which is or may be a danger or cause a danger to the Premises or the Land or any person in or on the Premises or the Land.

7.11 Give notices

The Tenant shall promptly:

- (a) give to the Landlord copies of each notice or Claim made or issued by any person (including any Court, Relevant Authority or owner or occupier of any neighbouring land) in relation to the Premises or the Tenant's use or occupation of the Premises; and
- (b) upon a person being seriously injured or dying in the Premises or upon any serious accident occurring on the Premises, give to the Landlord written notice with all particulars known to the Tenant.

7.12 Paint and varnish

- (a) Unless the Landlord has agreed in writing to waive or vary any part of this clause at the request of the Tenant made at least one (1) month before the relevant due date, the Tenant must apply in a professional, proper and workmanlike manner to the satisfaction of the Landlord (acting reasonably):
 - (i) at least two coats of paint that is of a good quality to those parts of the Premises painted at the Commencement Date or usually painted;
 - (ii) varnish or other suitable treatment to those parts of the Premises varnished or treated at the Commencement Date or usually varnished or otherwise treated; and
 - (iii) wallpaper to those parts of the Premises wallpapered at the Commencement Date or usually wallpapered,

in the colour, pattern, material and design approved in writing by the Landlord every ten (10) years during the Term or the Further Term (as relevant) and within one (1) month before the Expiry Date of the Term or Further Term (as relevant).
- (b) If the Lease is terminated before the Expiry Date, or before the end of any Further Term, then the Landlord may perform the work referred to in clause 7.12(a) at the Tenant's expense, provided that such work is undertaken within a period of 2 months after that termination date.
- (c) Without limiting any other provision of this Lease, the Tenant acknowledges and agrees that if the Tenant or the Tenant's Employees or Visitors damage or cause or permit damage to the external finishes of any Building (including any part rendered or textured) the Tenant will, as required by the Landlord (acting reasonably), but at least within one (1) month before the Expiry Date of the Term or Further Term (as relevant) repair that damage to the reasonable satisfaction of the Landlord.

7.13 Obey rules and directions

Without limiting any other provision of this Lease, the Tenant must obey all rules, regulations and directions of each Relevant Authority and all reasonable rules and directions of the Landlord from time to time.

7.14 Permit Landlord to enter and inspect

Notwithstanding any other provision of this Lease, the Landlord:

- (a) may by itself, with or by any person authorised by the Landlord enter the Premises at any reasonable time upon giving reasonable prior notice to view the state of repair and condition of the Premises and the Landlord's Equipment and to make reasonable investigations to ascertain whether or not a breach of any of the Tenant's Covenants

exists and to serve upon the Tenant a notice in writing of any default found requiring the Tenant to remedy the default; and

- (b) in exercising its rights of entry under this clause, must cause as least disruption as possible to the occupation, use and enjoyment of the Premises by the Tenant.

7.15 **Permit prospective tenants/purchasers to inspect**

The Tenant shall:

- (a) at all reasonable times and upon receiving reasonable prior notice during the period of 3 months immediately prior to the expiry or sooner determination of the Term or Further Term (as the case may be), permit the Landlord to enter the Premises to show the Premises to prospective tenants and the Tenant shall permit the Landlord to affix and display where the Landlord thinks fit a notice or sign for reletting the Premises;
- (b) at any time during the Term or Further Term (as the case may be) but always after reasonable notice, allow the Landlord to enter the Premises with and show the same to prospective purchasers and the Tenant shall permit the Landlord to affix and display where the Landlord thinks fit a notice or sign for selling the Premises; and
- (c) not without obtaining the Landlord's prior written consent, remove, move, deface, or obscure, any notice or sign nor permit the same to be removed, moved, defaced, or obscured.

8 Maintenance and repair

8.1 **Tenant to repair and maintain**

The Tenant must, at the Tenant's cost, keep and maintain:

- (a) the Premises;
- (b) the Building;
- (c) the Services and Facilities;
- (d) the Landlord's Equipment; and
- (e) the Tenant's Equipment,

including but not limited to any roller or garage doors, air-conditioning equipment, gutters, downpipes, fire equipment (at regular intervals and as requested by any Relevant Authority), cool rooms, gantry cranes, plumbing, hot water systems, electrical wiring and installations, windows and doors and locks and latches which are located on or in the Premises in good condition and order and replacement and repair consistent with their condition as at the Commencement Date, irrespective of whether they were installed by the Landlord or the Tenant.

8.2 **Maintenance of landscaping**

- (a) The Tenant must, at the Tenant's cost, keep and maintain all landscaped areas in a condition:
 - (i) at least consistent with that of the landscaped areas on that part of the Land which excludes the Premises; and
 - (ii) to the reasonable satisfaction of the Landlord.
- (b) Without limiting paragraph (a), the Tenant must:
 - (i) properly and regularly:

- (A) cut, water and maintain all lawns; and
 - (B) water and maintain any gardens, trees or plants; and
 - (ii) replace any lawn, tree or plant which dies; and
 - (iii) must maintain all paved areas located within the landscaped areas in a good and clean condition.
- (c) The Tenant and the Landlord may agree for the Landlord to assume the obligations of the Tenant in this clause 8.2 for a fee to be agreed by the Parties.

8.3 Preventative and general maintenance

Without limiting any other provision in this Lease, the Tenant agrees to:

- (a) maintain and service any air conditioning, heating and air circulation equipment, roller doors, lifts, elevators and the like on the Premises regularly and in accordance with the manufacturer's recommendations or that in any Australian Standard;
- (b) regularly clean and maintain any grease traps; and
- (c) maintain the car park surface, including line markings and landscaping.

8.4 Structural repairs

- (a) The Tenant's obligations under clause 8.1 extend to any work of a structural or capital nature required to maintain and repair the Premises, the Services, the Facilities, the Landlord's Equipment and the Tenant's Equipment.
- (b) Where the Services or the Facilities require upgrading during the Term to carry on the Permitted Use, the Tenant agrees that any upgrade is to be at its cost.

8.5 Asset Maintenance Plan

- (a) In this clause:
Tenant's Works has the meaning given to it in the Agreement for Lease.
- (b) The Tenant acknowledges that the Asset Maintenance Plan as annexed to this Lease, was prepared by the Landlord prior to the Commencement Date and the completion of the Tenant's Works under the Agreement for Lease.
- (c) The Tenant must amend the Asset Maintenance Plan as annexed to this Lease so as to include a maintenance plan for the Tenant's Works and provide that to the Landlord within one month of the Commencement Date (**Revised Asset Maintenance Plan**).
- (d) The Landlord, acting reasonably, may request amendments to the Revised Asset Maintenance Plan and the Tenant must make those amendments and provide the further Revised Asset Maintenance Plan to the Landlord within one month of that request.
- (e) The Parties agree that the process in paragraph (d) will be repeated for so long as the Landlord wishes to request amendments to the Revised Asset Maintenance Plan, and until the Minister approves the Revised Asset Maintenance Plan under the Deed of Agreement.
- (f) At the request of the Landlord from time to time, the Tenant agrees to revise and amend the Asset Maintenance Plan as it applies to the Premises so that it is current and appropriate for the Premises.
- (g) Unless there have been substantial alterations to the Premises in the meantime, the Landlord may not make a request under paragraph (f) more than once in every 5 years.

- (h) Where a request is made under paragraph (f), the Parties agree that the process in paragraphs (d) and (e) will apply *mutatis mutandis* to the amended Asset Maintenance Plan.
- (i) The Landlord must promptly provide to the Tenant any amended Asset Maintenance Plan as approved by the Minister under the Deed of Agreement.
- (j) The Tenant must at its cost comply with the Asset Maintenance Plan as it applies to the Premises from time to time.
- (k) The Tenant acknowledges that the Deed of Agreement requires the Landlord to use its best endeavours to use Western Australian materials, equipment and services and local suppliers in the implementation of the Asset Maintenance Plan and the Tenant agrees to do the same.
- (l) The Tenant acknowledges that under the Deed of Agreement, the Minister can request, not more than once annually, the Landlord to have an independent auditor carry out an audit of the Landlord's compliance with the Asset Maintenance Plan and provide a copy of the auditor's report to the Minister within 4 months of that request.
- (m) For the purposes of paragraph (l), the Tenant agrees to:
 - (i) maintain records of its compliance with the Asset Maintenance Plan in such form as the Landlord or auditor may require from time to time;
 - (ii) provide those records to the Landlord or auditor, and such other information as they may reasonably require in connection with the audit, within 10 Business Days of request; and
 - (iii) provide the Landlord and the auditor with access to the Premises as required on reasonable notice in connection with the audit.

8.6 **Make good damage**

Without limiting clause 8.1, the Tenant will immediately repair and replace, to the satisfaction of the Landlord, any damage to the Premises or the Landlord's Equipment caused or contributed by the Tenant or the Tenant's Employees or Visitors including by the use or occupation of the Premises.

8.7 **Carpet**

If there is carpet in the Premises, the Tenant must keep the carpet clean and promptly repair any damage to it. If the carpet (or part of it) becomes worn out or is damaged irreparably, the Tenant must replace it when requested by the Landlord. The new carpet must be of a type and quality comparable with the existing carpet as approved by the Landlord.

8.8 **Failure of Tenant to repair or replace**

If the Landlord:

- (a) notifies the Tenant of a repair or replacement required to any defect or item and the Tenant fails to repair or replace that defect or item within the time allowed by the Landlord for doing so (acting reasonably), the Landlord may without further notice to the Tenant (without prejudice to any other rights under this Lease) enter upon the Premises (with or without workmen) to carry out those repairs or replacements at the cost of the Tenant in all respects; or
- (b) acting reasonably, is of the opinion that repairs for which the Tenant is liable must be carried out as emergency repairs, the Landlord with or without workmen, may upon giving 24 hours prior notice (or if the urgency of the repairs demands immediate rectification, no notice) enter and expeditiously carry out those repairs and the Tenant shall pay on demand to the Landlord the cost and expense incurred in making those repairs.

8.9 Appearance of Premises

The Parties acknowledge and agree that it is in the interest of all Parties that the state, condition and repair of the Premises (including the exterior appearance) be kept to a high standard at all times during the Term and any Further Term.

8.10 No alterations or additions

- (a) The Tenant shall not without obtaining the prior written approval of the Landlord (which is not to be unreasonably withheld) and any Relevant Authority and any approval required under the Heritage Agreement, make or permit to be made any structural alteration or addition to the Premises.
- (b) Any works approved in writing by the Landlord and any Relevant Authority and under the Heritage Agreement must be carried out:
 - (i) in accordance with plans, specifications, and schedules of works, materials, and finishes, and by the contractors approved in writing by the Landlord and where applicable the Relevant Authorities and under the Heritage Agreement before any of the works are commenced; and
 - (ii) at the Tenant's cost in all respects including the costs of architects, builders, and other qualified persons, consulted by the Landlord in considering proposals and in examining the progress and completion of the works and all costs in relation to the relocation or alteration of or adjustment to major plumbing, electrical, emergency, or other, installations and services affected by those works.

9 Comply with laws and Heritage Agreement

The Tenant shall at the Tenant's cost, comply with and observe:

- (a) all present and future laws, whether State or Federal, ordinances, orders, regulations, and by-laws, and all orders, Requirements, and notices from or by any Relevant Authority which relate or apply to the Tenant's particular use of the Premises or the Tenant's occupation of the Premises; and
- (b) the Heritage Agreement as it applies to the Premises as if it was the 'Owner' referred to in the Heritage Agreement.

10 Community access and museum

- (a) The Tenant must at the Tenant's cost incorporate a museum space inside the Edward Millen Rotunda building reflecting on the history of the Buildings on the Premises and the local area, and the Tenant must ensure that the museum space is open and accessible to the public free of entry charges.
- (b) The Tenant must:
 - (i) set aside space inside the Buildings suitable for use by not for profit community groups, to be available at least 2 days per week including once on a weekend at no charge;
 - (ii) save where required for security purposes, ensure that the majority of the grounds within the Premises remain open to the public during business hours on weekdays, evenings and weekends;
 - (iii) permit members of the public who have not booked use of function spaces within the Premises to take photographs for such events as weddings or the like, within the publicly accessible areas of the Premises at no charge; and

- (iv) set aside space within the 'farmers' market area' and other parts of the grounds within the Premises for community groups to use for the purpose of hosting stands or small events or performances at no charge.

11 Insurance and indemnities

11.1 Tenant's obligation to insure

- (a) The Tenant must, in the name of the Tenant and either also in the name of the Landlord or noting the interest of the Landlord, at the Tenant's cost, effect and maintain a policy or policies of insurance for:
 - (i) any Building on the Premises for its full replacement value against loss, damage, or destruction by fire, rain, storm, explosion, aircraft or other aerial devices, strikes, riots, civil commotion, malicious damage, break in, burglary, graffiti, flood, impact, damage, earthquake, water damage and fusion and on the terms and conditions as the Landlord, acting reasonably may require, and otherwise as the Tenant sees fit (which may include a worker's compensation policy for any works which the Tenant's contractors, employees and agents do in or to the Premises from time to time);
 - (ii) the Landlord's Equipment and Tenant's Equipment (including any stock) (to full replacement value) against loss, damage, or destruction by fire, rain, storm, explosion, aircraft or other aerial devices, strikes, riots, civil commotion, malicious damage, break in, burglary, graffiti, flood, impact, damage, earthquake, water damage and fusion;
 - (iii) loss, damage, destruction of all plate and other glass in or about the Premises to full replacement value; and
 - (iv) any other policies of insurance required by law or which a responsible and prudent Tenant would take out.
- (b) The Tenant must, at the Tenant's cost, effect and maintain to the reasonable satisfaction of the Landlord:
 - (i) a loss of profits insurance policy; and
 - (ii) a worker's compensation insurance policy in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA) for any employees of the Tenant from time to time.
- (c) The Tenant must in the name of the Tenant and either also in the name of the Landlord or noting the interest of the Landlord, at the Tenant's cost, effect and keep valid a public liability policy of insurance with respect to any liability to any person in respect of the Premises in an amount reasonably required by the Landlord but in any event of not less than \$20,000,000 (or such higher amount as reasonably required by the Landlord) for any one occurrence but unlimited in the aggregate.
- (d) Each policy of insurance required to be effected and maintained by the Tenant under this clause must be taken out with a reputable and solvent insurance company as approved by the Landlord, complied with at all times by the Tenant and must not be altered without the prior written consent of the Landlord.
- (e) The Tenant must provide to the Landlord a copy of each policy of insurance and certificate of currency for each policy of insurance required to be taken out and maintained by the Tenant:
 - (i) on or before the Commencement Date;
 - (ii) when that policy of insurance is effected and within 7 days of each renewal date; and

- (iii) on demand by the Landlord.

11.2 Tenant not to invalidate insurance

- (a) The Tenant must not and must not permit anything to be done or omitted to be done which may or does:
 - (i) invalidate or void a policy of insurance required under this clause; or
 - (ii) increase any premium payable.
- (b) Without limiting any other provision of this Lease or any other rights of the Landlord, if the Tenant does or omits to do some act which results in the increase of any insurance premiums, the Tenant must immediately on demand pay those increased premiums.

11.3 Excess payment

Unless a claim is the result of an act or omission of the Landlord, the Tenant is liable for and must pay for as and when required any and all excesses on each insurance claim whether made by the Landlord or the Tenant.

11.4 Handling claims and application of proceeds

- (a) The Tenant must not enforce, conduct, settle or compromise claims under any insurance policy effected pursuant to this clause (save for any workers compensation policy) without the Landlord's prior consent (which must not be unreasonably withheld or delayed).
- (b) Proceeds from any claim under a policy of insurance effected under this clause shall be applied either in whole or part to the replacement or re-instatement of the relevant insured item(s) if so required, but if not so required, used to settle any claims in connection with the event insured against and any surplus shared between the Tenant and Landlord having regard to the effect on each Party or their respective interests in the insured item(s).

11.5 Tenant's indemnity

- (a) Notwithstanding the existence of any insurance policy, the Tenant shall indemnify and keep indemnified the Landlord from and against all Claims and Liabilities for which the Landlord becomes liable, whether in respect of:
 - (i) loss or damage to the Premises, the Landlord's Equipment and the Tenant's Equipment or property generally; and
 - (ii) death or personal injury to persons,
of any nature or kind and howsoever and wheresoever caused or sustained, to the extent that the loss, damage, death or injury:
 - (iii) is caused or contributed to by (whether in breach of this Lease or otherwise) the use or occupation of the Premises or the conduct of the Tenant in the Tenant's business at, on or about the Premises; or
 - (iv) results from an act or omission of the Tenant or any of the Tenant's Employees or Visitors.
- (b) Each indemnity given by the Tenant in this Lease is a continuing obligation that shall survive the termination or expiry of this Lease.

12 Assignment and subletting

12.1 Landlord's acknowledgment

The Landlord acknowledges that the Tenant proposes to undertake a leasing enterprise on the Premises which will comprise the grant of Minor Subleases and Major Subleases in accordance with the requirements of this clause 12.

12.2 No assignment without consent

Subject to clause 12.8, The Tenant must not, without the prior written and express consent of the Landlord and the Minister, which may be given subject to conditions, assign, sub-let, licence, mortgage, charge, grant any right of occupancy or otherwise part with possession of or encumber the Premises or the Tenant's leasehold estate in the Premises.

12.3 No statutory right to assign

Sections 80 and 82 of the *Property Law Act 1969 (WA)* are excluded from and do not apply to this Lease.

12.4 Deemed assignment in certain circumstances

If the Tenant is a corporation whose shares are not listed on any stock exchange in Australia, any change in 50% or more of the beneficial ownership of the Tenant will be deemed to be an assignment of this Lease for the purposes of this clause.

12.5 Consent to Assignment

- (a) If the Tenant wishes to assign its leasehold estate in the Premises the Landlord will not unreasonably withhold its consent provided that:
 - (i) the Tenant satisfies the Landlord that:
 - (A) the proposed assignee is respectable and solvent and has the requisite business experience and skills equal to or greater than the Tenant; and
 - (B) the proposed assignee (and any guarantor if applicable) have adequate financial and other resources to meet their respective obligations under this Lease;
 - (ii) subject to the consent of the Minister, the proposed assignee (and any guarantor if applicable), enters into, with the Tenant and Landlord, a deed of assignment of this Lease to be in a form acceptable to the Landlord and to be prepared by the Landlord's solicitors which will provide that (amongst other things) the:
 - (A) assignee assumes responsibility of all of the Tenant's Covenants under this Lease on and from the date of assignment;
 - (B) assignee covenants with the Landlord to pay the Rent and comply with the Tenant's Covenants under this Lease;
 - (C) the Landlord releases the Tenant from the observance and performance of the Tenant's Covenants, save for any breach or default occurring prior to the date of assignment; and
 - (D) assignee's guarantors (if applicable) give the Landlord a guarantee and indemnity in respect of the assignee's covenants in a form reasonably required by the Landlord;

- (iii) the proposed assignee provides the Landlord with a bank guarantee in an amount at least equal to the Bank Guarantee (or a higher amount required by the Landlord acting reasonably) and on the same terms as in this Lease;
 - (iv) the Tenant has not failed to remedy an Event of Default as to which it has been given a Default Notice; and
 - (v) the Tenant pays to the Landlord all of the Landlord's proper and reasonable costs, expenses and charges incurred by the Landlord in preparing, negotiating and executing the deed of assignment and in making enquiries (either itself or through its agents) as to the matters set out in this paragraph (a).
- (b) For the avoidance of doubt, the Tenant acknowledges and agrees that the costs, expenses and charges referred to in clause 12.5(a)(v) above are payable regardless of whether the proposed assignment proceeds or not.

12.6 Consent to a Major Sublease

- (a) If the Tenant wishes to sub-let or otherwise part with possession of the whole or any part of the Premises by entering into a Major Sublease, the Landlord will not unreasonably withhold its consent provided that:
- (i) the Tenant satisfies the Landlord that:
 - (A) the proposed subtenant of the Major Sublease is respectable and solvent and has the requisite business experience and skills equal to or greater than the Tenant;
 - (B) the proposed subtenant of the Major Sublease will not use the Premises (or that part of the Premises to be sublet) for any use which is not a Permitted Use; and
 - (C) the proposed subtenant and each of its guarantors (if applicable) have adequate financial and other resources to meet their respective obligations under the sublease of this Lease;
 - (ii) subject to the consent of the Minister to the Major Sublease, the proposed subtenant and each of its guarantors (if applicable) enter into, with the Tenant and Landlord, a sublease to be in a form acceptable to the Landlord which contains terms consistent in all respects with this Lease;
 - (iii) the Tenant has not failed to remedy an Event of Default as to which it has been given a Default Notice;
 - (iv) the Tenant pays to the Landlord all of the Landlord's proper and reasonable costs, expenses and charges incurred by the Landlord in preparing, negotiating and executing the Major Sublease and in making enquiries (either itself or through its agents) as to the matters set out in clause 12.6(a)(i); and
- (b) Where the Services supplied to the subleased premises are not separately metered, and the Tenant or the proposed subtenant requires those Services to be separately metered, the Tenant agrees that the installation of any required meters is to be at its cost and the Tenant agrees to comply with clause 8.10 should the installation require any structural alterations.
- (c) For the avoidance of doubt, the Tenant acknowledges and agrees that the costs, expense and charges referred to in clause 12.6(a)(iv) are payable regardless of whether the proposed Major Sublease proceeds or not.
- (d) The Tenant agrees that the covenants of the Subtenant are independent of the covenants of the Tenant in this Lease and will not release or relieve the Tenant from the Tenant's Covenants and the Tenant acknowledges that the Tenant will continue to be fully responsible for the Tenant's Covenants notwithstanding the sublease of the

Lease to the proposed subtenant, particularly on the occurrence of a default by the Subtenant or any other party of the terms of this Lease.

12.7 Landlord may consent to charge

- (a) The Tenant will not be in breach of the covenant in clause 12.2 in respect of a charge or mortgage if the Tenant obtains the Landlord's and the Minister's consent to that charge or mortgage.
- (b) The Landlord may not unreasonably refuse to give its consent to, a charge or mortgage where the chargee or mortgagee enters into a deed of covenant on terms to the satisfaction of the Landlord acting reasonably.

12.8 No consent required for Minor Sublease

The Tenant may enter into a Minor Sublease without the consent of the Landlord.

13 Default

13.1 Essential Terms

- (a) The Parties acknowledge and agree that the Tenant's Covenants contained in:
 - (i) clause 5 (**Rent**);
 - (ii) clause 6 (**Outgoings**);
 - (iii) clause 7.1 (**Permitted Use**);
 - (iv) clause 7.4 (**Event Management - Consultation**);
 - (v) clause 8.1 (**Tenant to repair and maintain**);
 - (vi) clause 8.2 (**Maintenance of landscaping**);
 - (vii) clause 8.3 (**Preventative and general maintenance**);
 - (viii) clause 8.4 (**Structural repairs**);
 - (ix) clause 8.5 (**Asset Maintenance Plan**);
 - (x) clause 8.10 (**No alterations or additions**);
 - (xi) clause 9 (**Comply with laws and Heritage Agreement**);
 - (xii) clause 10 (**Community access and museum**);
 - (xiii) clause 11.1 (**Tenant's obligations to insure**);
 - (xiv) clause 12 (**Assignment and subletting**);
 - (xv) clause 21 (**GST**);
 - (xvi) clause 22 (**Trust warranties**); and
 - (xvii) clause 23 (**Additional security**),

together with any other obligation of the Tenant to pay money, not to do something without consent, relating to damage to, or to the state, condition or repair of, the Premises or anything set-out in the Special Conditions are essential terms of this Lease.

- (b) Subject to the limitations in clause 13.3, if the Tenant breaches an Essential Term and the Landlord terminates this Lease, the Landlord may, subject to the Landlord's

obligation to mitigate the Landlord's loss, demand payment of all Rent and Outgoings which the Tenant would have been liable to pay under this Lease up to the Expiry Date together with the costs, expenses and damages incurred or suffered by the Landlord as a result of the termination and exercise any other rights which the Landlord has under this Lease.

13.2 Events of Default

The following occurrences are each an event of default:

- (a) the Tenant breaches an Essential Term and the Tenant has failed to remedy that breach within 14 days (or such other period of time as may be reasonable having regard to the nature and extent of the breach) of receiving a notice from the Landlord specifying the breach and requiring it to be remedied;
- (b) the Tenant repudiates this Lease;
- (c) the Rent or any other moneys payable by the Tenant to the Landlord (or, where applicable to any Relevant Authority) is unpaid for 7 days after it is due to be paid and the Tenant has failed to pay the Rent or other moneys within 7 days of receiving a notice from the Landlord demanding payment;
- (d) the Tenant abandons the Premises;
- (e) the Tenant ceases or threatens to cease carrying on business from the Premises;
- (f) an Insolvency Event occurs.

13.3 Termination for default

- (a) If an Event of Default occurs and the Landlord wishes to terminate this Lease, the Landlord must do so in accordance with the procedures set out in clause 13.4 and the termination will only be valid if the Landlord does so in accordance with clause 13.4.
- (b) Nothing in this Lease limits the Landlord's right to claim damages in respect of any breach or repudiation of this Lease by the Tenant where the Landlord does not terminate this Lease.

13.4 Termination procedure

- (a) If an Event of Default occurs, the Landlord may give a notice (**Default Notice**) to the Tenant setting out the material details of the Event of Default and requiring the Tenant to either:
 - (i) remedy the Event of Default; or
 - (ii) pay the Landlord reasonable compensation for the Loss the Landlord has suffered as a result of the Event of Default.
- (b) The Default Notice must specify:
 - (i) details of what the Landlord considers needs to be undertaken such that the Event of Default can be considered remedied; or
 - (ii) the compensation reasonably determined by the Landlord as being payable for the Loss the Landlord has suffered as a result of the Event of Default.
- (c) If the Tenant fails to:
 - (i) remedy the Event of Default; or
 - (ii) pay reasonable compensation to the Landlord,

within 1 month of receiving the Default Notice (or such longer period of time as may be specified in the Default Notice), the Landlord may give the Tenant a second written notice (**Second Default Notice**) specifying:

- (A) the material details of the Event of Default;
 - (B) that the Event of Default has not been remedied in accordance with the Default Notice; and
 - (C) that the Landlord intends to terminate this Lease if the Event of Default is not remedied or reasonable compensation is not paid to the Landlord for the Loss the Landlord has suffered as a result of the Event of Default.
- (d) If the Tenant fails to:
- (i) remedy the Event of Default; or
 - (ii) pay reasonable compensation to the Landlord,
- within 2 months of receiving the Second Default Notice (or such longer period of time as may be specified in the Second Default Notice) (and subject to any rights of the Mortgagee under the Mortgagee Side Deed), the Landlord may terminate this Lease.
- (e) The Landlord may exercise the Landlord's rights under clause 13.4(d) to terminate this Lease and re-enter the Premises by:
- (i) taking possession of all or any part of the Premises;
 - (ii) issuing and serving proceedings against the Tenant for possession; or
 - (iii) giving a notice to the Tenant terminating this Lease.

13.5 Meaning of 'remedy'

For the purposes of clause 13.4, 'remedy' means in relation to the following Events of Default:

- (a) in the case of one or more of the parties comprising the Tenant, suffering an Insolvency Event, one of the following:
 - (i) that Insolvency Event ceases;
 - (ii) the Party is replaced as a tenant by assignment to another party with the approval of the Landlord and the Minister in accordance with clause 12; or
 - (iii) the Mortgagee gives an undertaking to the Landlord to be, jointly with the party that has suffered the Insolvency Event, responsible for the obligations of the party for the period during which it is a tenant under this Lease and that Insolvency Event continues;
- (b) without affecting the operation of the *Land Administration Act 1997* (WA), where the Tenant assigns or purports to assign this Lease or creates any encumbrance other than with the prior consent of the Landlord and the Minister, either:
 - (i) the Tenant re-acquires this Lease or discharges the encumbrance; or
 - (ii) the Tenant procures that this Lease is further assigned to another party with the approval of the Landlord and the Minister in accordance with clause 12;
- (c) in the case of an Event of Default attributable to a Subtenant, the sub-tenancy has been terminated or legal proceedings in relation to the termination of the relevant sublease have been commenced and the Tenant is diligently taking all reasonable steps to pursue the conclusion of those proceedings;

- (d) in the case of the Tenant or the Subtenant conducting any illegal or unlawful activity on the Premises (excluding Minor Offences):
 - (i) where the illegal or unlawful activity is conducted by the Tenant or the Subtenant, the Tenant or the Subtenant (as the case may be) has ceased to conduct that illegal or unlawful activity; or
 - (ii) where the illegal or unlawful activity is conducted by an agent, employee, contractor or licensee of the Tenant or the Subtenant, the relevant agent, employee, contractor or licensee has ceased to have any role in the operation of the subleased premises;
- (e) in the case of Persistent Minor Offences by the Tenant or Subtenant (including by any agent, employee, contractor or licensee of the Tenant or Subtenant), complying (at the Tenant's or Subtenant's cost) with any recommendations relating to:
 - (i) training of agents, employees, contractors or licensees of the Tenant or Subtenant in relation to compliance with the *Liquor Control Act 1988 (WA)*; or
 - (ii) modifying the Tenant's or Subtenant's operations,

which are made by an independent hotel consultant with at least 10 years' experience who is to be jointly appointed by the Parties (or if the Parties cannot agree within 5 Business Days after the date of the Default Notice, appointed by the President of the Australian Hotels Association); or
- (f) in all cases, the Event of Default has been remedied if:
 - (i) it is remedied in accordance with the requirements set out in the Default Notice or is otherwise remedied and no longer exists; or
 - (ii) compensation has been paid in accordance with the requirements of the Default Notice.

13.6 Rights on re-entry

If the Landlord has the right to re-enter the Premises, without limiting any other provision of this Lease or rights of the Landlord, the Landlord may (but is not obliged to):

- (a) permit the Tenant an opportunity to adequately and properly vacate the Premises and remove the Tenant's Equipment from the Premises; and
- (b) engage, at the cost of the Tenant, which will be payable upfront and on demand, personnel to supervise the vacation of the Premises and removal of the Tenant's Equipment.

13.7 Landlord may remedy

If any of clauses 13.2(a) or 13.2(c) apply, then the Landlord may without further notice elect to remedy that default, and any costs incurred by the Landlord in doing so will be payable by the Tenant on demand.

13.8 Right to damages

The Landlord's right to recover losses or damages from the Tenant is not affected if the Landlord accepts the Tenant's repudiation of this Lease, elects to re-enter the Premises or terminate this Lease, or if the Tenant abandons the Premises or if the Landlord remedies the default.

13.9 Interest on overdue money

The Tenant must pay interest at the Prescribed Rate calculated on a daily basis until paid on any money (including but not limited to Rent and any Outgoings) which is not paid within 7 days of the due date for payment.

14 Termination

14.1 Yield up

On or before the expiry or sooner determination of the Term or Further Term (as the case may be) the Tenant shall, at the Tenant's cost:

- (a) remove all of the Tenant's Equipment;
- (b) deliver up possession of the Premises to the Landlord in good and substantial repair, order, condition, and state of cleanliness and decoration, consistent with the performance of the Tenant's Covenants and in no less state, order, repair and condition as the Premises was in at the Commencement Date fair wear and tear excepted;
- (c) surrender all keys, cards, switching equipment, combinations, identification cards, security access devices and other devices whether or not provided by the Landlord which are in the control or possession of the Tenant, for or enabling the Tenant or others to gain access to the Premises or the Land or any Building or improvement on the Premises or the Land;
- (d) remove each sign, notice, awning, canopy, decoration, lettering, advertising, antenna, mast or other apparatus installed by the Tenant at or on the Premises (including on any Building) and shall make good all damage or disfigurement caused whether or not by that removal;
- (e) if required by the Landlord, where the Tenant has made any alterations or additions to the Premises, reinstate the Premises so that the Premises are returned to the condition they were in at the Commencement Date;
- (f) make good the Premises as required by the Landlord including any and all damage to the Premises;
- (g) remediate any Contamination on or to the Premises or the Land; and
- (h) withdraw any caveat registered or entered by the Tenant over the Premises or the Land.

14.2 Repair damage caused by vacating

Without limiting the generality of clause 14.1, the Tenant must repair any damage to the Premises or any of the Landlord's Equipment caused or contributed to by vacating the Premises or removing any of the Tenant's Equipment.

14.3 Abandonment of Tenant's property

If the Tenant fails to remove any of the Tenant's Equipment at the expiry or sooner determination of the Term or Further Term (as the case may be), the Tenant acknowledges and agrees that:

- (a) the Tenant's Equipment remaining in the Premises will, at the Landlord's option (which may be exercised in writing to the Tenant), become the property of the Landlord to be kept or stored at the Tenant's risk and cost, leased, sold or otherwise disposed of by the Landlord in the Landlord's absolute discretion; and
- (b) any costs incurred by the Landlord in exercising the Landlord's rights pursuant to clause 14.3(a), will be borne by the Tenant and the Landlord is not liable for any loss suffered or incurred by the Tenant.

14.4 Failure to remove equipment and make good Premises

If the Tenant fails to make good the Premises when vacating in accordance with this clause and to the reasonable satisfaction of the Landlord, the Tenant will remain liable to pay Rent and Outgoings as if the Tenant were holding over under this Lease until such time as the

Landlord can make good the Premises to a tenantable condition, and the Tenant must pay on demand any costs incurred by the Landlord in doing so.

15 Limitation of Landlord's liability

15.1 Limitation of liability

- (a) The Landlord will not be liable for any loss arising from termination of the Lease unless attributable to the fault of the Landlord.
- (b) The Landlord is only liable for:
 - (i) any loss or damage suffered by any person;
 - (ii) the injury or death of any person; or
 - (iii) the loss or damage of any property,
 that occurs in or about the Premises or the Land however occurring to the extent caused or contributed to by:
 - (iv) a negligent act or omission of the Landlord; or
 - (v) a breach of this Lease by the Landlord.
- (c) The Landlord is only liable for breaches of the Landlord's Covenants occurring while that person is the registered proprietor of the Land.

15.2 Tenant's Equipment and condition of Premises

The Tenant acknowledges and agrees that:

- (a) all the Tenant's Equipment in or on the Premises shall be at the sole risk of the Tenant during the Term and the Landlord shall not be liable for any Claim or Liability that the Tenant may suffer as a result of:
 - (i) any fault in the construction or state of repair of any Building on the Land, the Premises or the Landlord's Equipment;
 - (ii) any defect in any of the Landlord's Equipment or the Services or the Facilities;
 - (iii) any flow, overflow, leakage or breakdown of any water, air-conditioning, gas, power or other source of energy whether from the roof, walls, gutter or other parts of any Building on the Land or the Premises; and
- (b) the Tenant's occupation of the Premises is conclusive evidence of the Tenant's acceptance of the Premises as being in good order, repair and condition at the Commencement Date.

15.3 No Limit on Liability where Landlord causes Minister's decision to forfeit

Notwithstanding any provision of this Lease and without limiting any remedies available to the Tenant at Law:

- (a) nothing prevents the Tenant making any Claim against the Landlord, for loss and damage the Tenant may suffer; and
- (b) there is no limit on a Claim against the Landlord for loss or damage the Tenant may suffer,

(including without limitation loss of rent and loss of the value of the Tenant's leasing enterprise and any claims against the Tenant by the subtenant of any Major Sublease) arising from a decision of the Minister to forfeit the freehold in the Land under section 35(1)(b) of the *Land*

Administration Act 1997 as a result of the Landlord's breach of the Conditional Tenure Conditions.

16 Costs and expenses

The Tenant must pay the Landlord's reasonable costs, charges and expenses, including legal costs, incurred of and incidental to:

- (a) the preparation, negotiation and execution of this Lease;
- (b) any default of the Tenant in observing or performing any of the Tenant's Covenants (including costs incurred in respect of any notice or correspondence to the Tenant); and
- (c) any reports/inspections required from time to time.

17 Landlord's covenants regarding the Land and the Premises

- (a) The Landlord must:
 - (i) use the Land in accordance with the Conditional Tenure Conditions; and
 - (ii) not breach the Conditional Tenure Conditions.
- (b) This clause excludes any use of the Land by the Tenant, any Subtenant or the Tenant's Employees or Visitors.
- (c) If reasonably requested by the Tenant, the Landlord must assist and cooperate with the Tenant to:
 - (i) protect, secure and perfect the Tenant's leasehold interest in the Premises; and
 - (ii) seek compensation from third parties (as applicable) for any loss or diminution of its leasehold interest in the Premises for any reason (other than by reason of Tenant default),and the Tenant must pay the Landlord's reasonable costs, charges and expenses, including legal costs, of so doing.
- (d) The Landlord must not obstruct or interfere with the Tenant's endeavours to:
 - (i) protect, secure and perfect its leasehold interest in the Premises; and
 - (ii) seek compensation from third parties (as applicable) for any loss or diminution of its leasehold interest in the Premises for any reason (other than by reason of Tenant default).

18 Landlord's covenant regarding quiet possession

The Landlord covenants with the Tenant that, subject to the Tenant paying the Rent and other moneys payable under this Lease and observing and performing the other Tenant's Covenants, the Tenant may peaceably and quietly hold and enjoy the Premises during the Term without any interruption by the Landlord or any person claiming through, under, or in trust for, the Landlord except as permitted by this Lease.

19 Survival of Tenant's covenants

Without limiting any other provision of this Lease, the Landlord and the Tenant respectively acknowledge and agree that the Tenant's obligation to observe and perform the Tenant's Covenants will survive the expiry or earlier termination of the Term and if the Tenant has not observed or performed any of them, the Landlord may in addition to any other right, at its option, do all things necessary for the observance or performance and may recover from the Tenant as a liquidated debt payable on demand all costs and expenses together with interest at the Prescribed Rate on the amount from time to time remaining owing from the date of the expenditure to the date of repayment.

20 Damage or destruction

20.1 Damage or destruction of Premises

- (a) If the whole or any part of the Premises is destroyed or damaged to such an extent that the Premises are unfit for the occupation and use of the Tenant then:
- (i) the Rent and any other moneys payable by the Tenant to the Landlord pursuant to this Lease will be abated in proportion to the loss of benefit suffered by the Tenant (agreed by the Landlord and Tenant, both acting reasonably, or if the Parties cannot agree within 30 days from the date of damage or destruction, the proportion determined by a Valuer the costs of the same to be shared equally between the Parties) from the date on which the destruction or damage occurred until the date on which the Premises are made fit for use;
 - (ii) until an agreement is reached with respect to the amount of abatement, the Tenant must continue to pay to the Landlord the Rent and all other payments in the amounts and on the dates as required in this Lease;
 - (iii) the Tenant must rebuild or reinstate the Premises as soon as reasonably practicable; and
 - (iv) the Tenant must apply to the cost of that rebuilding all of the money which may be received by the Tenant from a claim under any policies of insurance held by it that may respond to a claim for damage or destruction (which claim the Tenant must make and pursue).
- (b) If the Tenant does not rebuild or reinstate the Premises so that they are fit for use by the Tenant within a reasonable time having regard to the nature and extent of the destruction or damage and the requirement to obtain any approvals or permits from any Relevant Authority:
- (i) the Landlord may give the Tenant a notice of its intention to terminate the Lease if the Tenant does not reinstate the Premises so that they are fit for use by the Tenant within the period of one (1) month after the date the Landlord gives notice to the Tenant; and
 - (ii) if the Tenant does not or is not willing to make good the destruction or damage so that the Premises are fit for use by the Tenant, the Landlord may by further notice, terminate this Lease.
- (c) The Tenant's right to abate any payment to the Landlord does not apply if the destruction or damage:
- (i) would otherwise be covered under an insurance policy required to be effected by the Tenant under this Lease but is either not effected or no money is payable because of an act or omission of the Tenant or the Tenant's Employees or Visitors; or

- (ii) is caused or contributed to by a breach of the Tenant's Covenants contained in this Lease.
- (d) Nothing in this clause or this Lease requires the Landlord to reinstate or make good the Premises on any destruction or damage to the Premises.

21 GST

- (a) The Tenant must pay the Landlord the amount of any GST the Landlord pays or is liable to pay on a taxable supply made in respect of or in connection with this Lease.
- (b) The Tenant must pay to the Landlord 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 the taxable supply.
- (c) The Landlord must issue a tax invoice to the Tenant in respect of a taxable supply no later than 7 days following payment of the GST inclusive consideration for that taxable supply.
- (d) If GST is payable on any supply by the Landlord under this Lease, the Rent, Outgoings and any other amount payable by the Tenant for that taxable supply is to be increased by the amount of GST payable on or in respect of that Rent, Outgoings or other amount.
- (e) A written statement given to the Tenant of the amount of GST that the Landlord has paid or is liable to pay is conclusive as between the Parties except in the case of an obvious error or omission.
- (f) The Tenant must do everything reasonably requested by the Landlord to ensure this Lease is treated as taxable for the purposes of the GST.
- (g) Where the liability of the Tenant under this clause cannot be separately determined, the Tenant must pay to the Landlord on demand an amount which is equal to the Tenant's Proportion of the relevant GST.
- (h) The provisions of this clause prevail over any conflicting provisions elsewhere in this Lease.

22 Trust warranties

- (a) If the Tenant enters into this Lease as the trustee of a trust, the Tenant is bound both personally and as trustee of the trust.
- (b) In respect of any trust of which the Tenant (solely or jointly) is acting or in the future acts as trustee of (**Trust**) the Tenant covenants and warrants that:
 - (i) the Tenant has full power and authority pursuant to its Constitution (if any) and the deed of trust (**Trust Deed**) to act when entering into this Lease and the Tenant has obtained the consents and approvals of all persons necessary to bind the property of the Trust;
 - (ii) the Trust is lawfully and validly constituted and the Trust Deed has been properly executed;
 - (iii) the Trust and the Trust Deed will not be revoked or varied other than with the prior written consent of the Landlord which may not be unreasonably withheld or delayed;
 - (iv) the assets of the Trust and the assets of the Tenant will at all times be and remain available to satisfy the Tenant's Covenants;

- (v) no action has been taken or proposed to remove it as trustee of the Trust or alter the powers it has as trustee of the Trust; and
- (vi) no action has been taken or threatened to wind up or terminate the Trust.

23 Additional security

23.1 Bank Guarantee

- (a) If Item 11 provides that the Tenant is to provide a Bank Guarantee, the Tenant must, on or before the Commencement Date, provide the Landlord with the original Bank Guarantee which must:
 - (i) be irrevocable;
 - (ii) have an expiry date that is at least 6 months after the date of expiry of the Further Term;
 - (iii) be issued by an Australian bank approved by the Landlord;
 - (iv) otherwise be on terms acceptable to the Landlord; and
 - (v) be maintained and in place until the Landlord confirms in writing to the Tenant that the Tenant has discharged all of the Tenant's Covenants.
- (b) If Item 11 provides that the Tenant is to provide a Bank Guarantee and the Tenant has not, on or before the Commencement Date, provided that Bank Guarantee to the Landlord, the Tenant acknowledges and agrees that it is indebted to the Landlord for an amount equal to the amount of the Bank Guarantee from the Commencement Date until the Tenant provides that Bank Guarantee or a security deposit to an amount equal to the Bank Guarantee.
- (c) Nothing in clause 23.1(b) obliges the Landlord to accept a security deposit or other payment or deposit in lieu of the Bank Guarantee.
- (d) The Tenant must increase the Bank Guarantee at the same time and in the same proportion as the Rent is increased from time to time in accordance with this Lease. The Tenant must provide the Landlord with the increased Bank Guarantee within 7 days of the relevant increase in the Rent whether or not requested by the Landlord.
- (e) The Landlord may, without notice to the Tenant, call on the Bank Guarantee (or part thereof) if the Tenant breaches any one or more of the Tenant's Covenants contained or implied in this Lease.
- (f) If the Landlord calls on the Bank Guarantee, the Tenant must within 10 days of a request by the Landlord, provide the Landlord with a replacement bank guarantee (or replace that amount called on) in the same amount as the Bank Guarantee immediately before it was called on.
- (g) The Bank Guarantee is for the benefit of the Landlord and the Landlord's successors and assigns and the Tenant agrees to do all things necessary to provide the Landlord's successor(s) in title with the benefit of the Bank Guarantee.
- (h) If the Tenant is not in default of the Tenant's Covenants and the Tenant has delivered vacant possession of the Premises to the Landlord, the Landlord must return the Bank Guarantee to the Tenant within 6 months of the later of the Expiry Date or the end of any holding over of the lease of the Premises.

24 PPSA

24.1 Security Agreement

- (a) All terms used in this clause will, unless otherwise provided, have the same meaning as given to those terms in the PPSA.
- (b) Each of the Tenant and Guarantor acknowledge and agree that the terms of this Lease constitute a Security Agreement for the purposes of the PPSA.
- (c) The Landlord may (in its absolute discretion) register a Security Interest in the following on the PPS Register:
 - (i) the Landlord's Equipment (if any); and
 - (ii) all after acquired plant, equipment or goods supplied by the Landlord to the Tenant for the use by the Tenant in the Premises and any abandoned Tenant's Equipment pursuant to clause 14.3.
- (d) The Tenant agrees to do anything reasonably required by the Landlord to ensure that a continuously perfected security interest over each of the items of property referred in clause 24.1(c) is maintained at all times, including but not limited to providing any further information (which information the Tenant warrants to be complete and accurate in all respects) which the Landlord may reasonably require to enable registration of a financing statement or financing change statement on the PPS Register.
- (e) The Tenant agrees to reimburse the Landlord for:
 - (i) all costs (including but not limited to legal costs on a solicitor/client basis, expenses and disbursements) reasonably incurred by the Landlord in registering and maintaining a financing statement (including registering a financing change statement) on the PPS Register; and
 - (ii) all costs reasonably incurred by the Landlord in enforcing or attempting to enforce the Security Interest created by this Lease.
- (f) Pursuant to Section 157 of the PPSA, unless otherwise agreed in writing by the Landlord, the Tenant waives the right to receive a verification statement in respect of any financing statement or financing change statement relating to the Security Interest.
- (g) To the maximum extent permitted by law, the Tenant waives its rights and, with the Landlord's agreement, contracts out of its rights under Sections 95, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
- (h) The Tenant and Guarantor acknowledge and agree that they must not do anything which would affect the Landlord's ability to enforce or exercise any of its legal rights in relation to a Security Interest.

24.2 Securities and Security Interests

- (a) The Tenant must not without the Landlord's written approval, create or allow to exist a Security Interest over the Tenant's Equipment which is not a Permitted Security.
- (b) The Landlord may impose conditions if the Landlord gives consent. The Landlord will not be required to sign any Landlord's waiver in favour of the Tenant's financier.

25 No Fettering

Nothing in or arising out of this Lease in any way:

- (a) diminishes the Landlord's rights and powers; or
 - (b) fetters any discretion that the Landlord has,
- under a Local Government Law.

26 Miscellaneous

26.1 Transfer of Land Act

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

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

26.2 Notices

- (a) A notice, consent, information or request that must or may be given or made to a Party under this Lease is only given or made if it is signed by or on behalf of the Party giving or making it and is delivered, posted or emailed to the party to whom it is directed at the address stated in Item 15 or at such other address as may have been notified by that Party to each other Party, from time to time.
- (b) A notice, consent, information or request is to be treated as given or made in accordance with the following rules:
 - (i) if it is delivered, upon delivery if before 5pm on a Business Day or otherwise 9am on the first Business Day following delivery; and
 - (ii) if it is sent by post, 3 Business Days after being posted; and
 - (iii) in the case of email transmission, at the time sent by the sender if sent before 5pm on a Business Day or otherwise at 9am on the first Business Day following transmission, unless the sender's email account receives notification that the recipient did not receive the relevant email.
- (c) A notice, consent, information or request it is to be treated as having been given or made at 9am the next Business Day where it is delivered after the normal business hours of the Party to whom it is delivered or sent.

26.3 Western Australian Planning Commission

If the grant of this Lease requires the consent or approval of the WAPC, then:

- (a) this Lease is subject to and conditional upon the WAPC consent or approval being obtained; and
- (b) the Tenant shall, at its cost, as soon as reasonably practicable, apply for the WAPC consent or approval, and the Landlord will provide all reasonable assistance (at the Tenant's cost) to obtain such consent.

26.4 Building Energy Efficiency Disclosure Act

If the Landlord is required to give an Energy Certificate to the Tenant, then the details concerning the Energy Certificate will be specified in Item 14.

26.5 Consent or approval

Unless otherwise specified, the Landlord must not unreasonably withhold or unreasonably delay its consent or approval and must act reasonably in giving a conditional or unconditional consent or approval to any matter in this Lease.

26.6 Further assurance

Each Party must promptly at its own cost do all things necessary or desirable to give full effect to this Lease.

26.7 Registration of Lease

The Tenant shall bear the Landlord's costs of registering this Lease at Landgate and of seeking any required consents.

26.8 Effect of execution

Save and except for the Landlord, this Lease shall bind each person who has executed it notwithstanding:

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

26.9 Counterparts

Any Party to this Lease may sign a counterpart copy and all counterparts of this Lease, when taken together, shall constitute the one and the same instrument.

26.10 Severance

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

26.11 Variation

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

26.12 Waiver

No consent or waiver, express or implied, by the Landlord to or of any breach of any Tenant's Covenants in this Lease shall be construed as a consent or waiver to or of any other breach of the same or any other Tenant's Covenant contained or implied in this Lease. The Landlord shall not be deemed to have waived any breach of any Tenant's Covenants unless such waiver is in writing, signed by the Landlord and no such waiver shall operate as a general waiver unless it is specified as such.

26.13 Entire agreement

The terms set out in this Lease contain the entire agreement between the Parties notwithstanding any other agreement, representation, negotiation or discussion prior to their execution of this Lease.

26.14 Governing law

- (a) The laws of Western Australia and where applicable, the Commonwealth of Australia apply to this Lease.
- (b) The Parties each unconditionally submit to the exclusive jurisdiction of the Courts of Western Australia, and where applicable, the Commonwealth of Australia, sitting in Perth, Western Australia.
- (c) The Parties each waive any right that they may have to object to an action being brought in those Courts on any grounds whatsoever, including a claim that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.

26.15 Landlord and Tenant may act by agent

All acts and things which the Landlord or the Tenant are required or empowered to do under this Lease may be done personally or by their respective solicitor, agent, contractor, or employee.

26.16 Retail Shops Act

- (a) The parties acknowledge and agree that the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA) does not apply to this Lease.
- (b) If the Tenant sublets or licences part of the Premises for retail purposes or in a manner which brings the sublease or licence within the ambit of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA), the Tenant must comply with that Act and indemnifies the Landlord in respect of any breach of that Act for which the Landlord may become liable.

26.17 Payments

The Tenant must pay money payable to the Landlord under this Lease:

- (a) on or before the date that the payment is due or, if this Lease does not specify a particular date for payment, within 5 Business Days of demand;
- (b) without set-off, counterclaim, withholding or deduction unless required by law;
- (c) to the Landlord or as the Landlord directs; and
- (d) if the Landlord requires, by direct credit to the Landlord's nominated bank account.

26.18 Special Conditions

This Lease incorporates the Special Conditions. In the event of any inconsistency between the Special Conditions and any other term of this Lease, the Special Conditions shall prevail to the extent of that inconsistency.

Schedule 1

Item 1	<p>Land</p> <p>Lot 9000 on Deposited Plan 41207 being the whole of the land in Certificate of Title Volume 2992 Folio 139, more commonly known as 15 Hill View Terrace, East Victoria Park, Western Australia.</p>
Item 2	<p>Premises</p> <p>That portion of the Land having an approximate area of [] square metres and being the area the boundaries of which are outlined in a solid black line on the plan which is Annexure "A" to this Lease and includes all Buildings and the Landlord's Equipment.</p>
Item 3	<p>Term</p> <p>Twenty (20) years.</p>
Item 4	<p>Commencement Date</p> <p>[As per the AFL]</p>
Item 5	<p>Expiry Date</p> <p>The date that is immediately prior to the 20th anniversary of the Commencement Date.</p>
Item 6	<p>Rent</p> <p>(a) During the initial Term no Rent is payable.</p> <p>(b) On and from the commencement of the First Further Term, Rent in the amount determined under paragraph (c) of this Item per annum plus GST is payable yearly in advance.</p> <p>(c) \$122,500.00 as at the Commencement Date reviewed in accordance with clause 2 of Schedule 2 on each anniversary of the Commencement Date to the date of commencement of the First Further Term.</p> <p>(d) Address for payment: 99 Shepperton Road, Victoria Park, Western Australia, 6100</p> <p>(e) Manner of payment: By electronic funds transfer (EFT) to the account nominated by the Landlord from time to time</p>
Item 7	<p>Rent Review Dates</p> <p>CPI Review Dates:</p> <p>Each anniversary of the Commencement Date during any Further Term and the date of commencement of each Further Term.</p>
Item 8	<p>Permitted Use</p> <p>Community, Recreational, Civic, Entertainment, Education, Cultural and Creative Industry, Heritage and Small Scale Production and any other use agreed to and approved by the Landlord in writing which accords with the conditions endorsed on Transfer O548293, where the capitalised terms have the following meanings:</p> <p>Community means any premises or land uses which can be used by community groups or individuals and not for profit organisations servicing the community;</p> <p>Entertainment and Recreational means any premises or land uses which provide public entertainment or opportunities for social interaction by members of the public. This includes, but is not limited to; tavern, function centre, restaurant, café, cinema (indoor or outdoor), small scale retail, public and community events, kiosk, markets, temporary installations, events, pop up retail, live music, or similar uses (but shall exclude the provision of accommodation);</p>

Civic means premises used by the local or state government for administrative, recreational, or other purposes;

Education means a Kindergarten, child care centre, academy, cooking classes or other educational activities where it is a component of, but not the predominant use of the site. (However, it shall be deemed to exclude a primary or secondary school, college, university or technical institute.);

Cultural and Creative Industry means any premises or land uses which have their origin in individual creativity, skill and talent that contribute to the cultural richness of the area. This includes, but is not limited to; media production, artist studio, gallery, creative industry headquarters and performance venue or event space;

Heritage means any premises or land uses which promote the heritage value of the site, including but not limited to museum, local history collection, interpretive centre, guided tours or similar; and

Small Scale Production means any premises or land uses which involve the small scale production of goods where they are ancillary to the main use, low impact in nature and are associated with a use as listed above. This includes, but is not limited to; boutique brewery or distillery, coffee roasting, food production, small scale furniture manufacturing, arts and crafts production, informative workshops, and market gardens.

Item 9

Further Term

(a) First Further Term

Ten (10) years.

(b) Second Further Term

Ten (10) years.

(c) Third Further Term

Ten (10) years.

(d) Fourth Further Term

Ten (10) years.

(e) Fifth Further Term

Ten (10) years.

Item 10

Prescribed Rate

The rate of interest charged by the Commonwealth Bank of Australia from time to time on overdraft facilities in excess of \$100,000 plus 3%.

Item 11

Bank Guarantee

(a) During the Initial Term, \$61,500.

(b) During any Further Term, an amount equal to 6 months of Rent.

Item 12

Landlord's Equipment

Not Applicable.

Item 13

Special Conditions

(1) *[Placeholder in case Western Power and Water Corporation encumbrances in respect of the Statutory Works referred to in the AFL have not been registered before the*

Lease is signed and registered. If not, tenant is to consent to them and their registration noting that WC has indicated it will rely on its statutory powers and won't register an easement]

(2) [If WC doesn't register an easement:

The Tenant acknowledges the existence of the Water Corporation sewer as depicted on the plan attached at Annexure D and agrees to allow the Water Corporation to access the Premises to maintain the Sewer.]

Item 14 Building Energy Certificate

Not Applicable.

Item 15 Addresses for Notices

Landlord	
Delivery address	99 Shepperton Road, Victoria Park, WA 6100
Postal address	99 Shepperton Road, Victoria Park, WA 6100
Email address	[TBA]
Tenant	
Delivery address	179 St Georges Terrace, Perth, WA 6000
Postal address	PO Box 7170 Cloisters Square PO Box WA 6850
Email address	admin@blackoak capital.com.au

Schedule 2 - Rent review provisions

1 Definitions

In this Schedule 2:

Consumer Price Index means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital City) (All Groups Index Numbers) or if that index is suspended or discontinued, the index substituted for it;

CPI Review Date means each date specified in Item 7 of Schedule 1;

Current CPI means in respect of a CPI Review Date the Consumer Price Index number last published prior to that CPI Review Date;

Previous CPI means in respect of a CPI Review Date the Consumer Price Index number last published before the date which is 12 months prior to that CPI Review Date;

2 CPI Rent Review

On each CPI Review Date, the Rent, with effect from that date, will be reviewed so that it is the greater of:

- (a) the Rent for the immediately preceding 12 months increased by 1%; or
- (b) the Rent for the previous 12 months multiplied by the Current CPI and divided by the Previous CPI capped at a 2.5% increase.

3 Effect of failure to notify review of Rent

The Tenant's obligation to pay the reviewed Rent will not be waived or modified because of any delay or laches on the part of the Landlord in reviewing the Rent under this Schedule 2.

Executed as a deed

The COMMON SEAL of **TOWN OF VICTORIA**)
PARK was hereunto affixed in the presence)
of:)
)

Signature of Mayor

Signature of Chief Executive Officer

Print name of Mayor

Print name of Chief Executive Officer

Date

Executed as a deed by **BLACKOAK CAPITAL**
– ELIZABETH BAILLIE PTY LTD (ACN 651
448 583) in accordance with section 127 of the
Corporations Act 2001 (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Date

Annexure A- Premises Plan

[insert plan from 10.11.2021]

DRAFT

Annexure B - Asset Maintenance Plan

DRAFT

Annexure C - Deed of Agreement

DRAFT

Annexure D - Water Corporation Wastewater Reticulation Plan

DRAFT

Annexure E - Consent to Lease of Minister for Lands

DRAFT