|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | *Dealing Number* | | | | | | | | | | | | |  | | | | | | |  | | |
| OFFICE USE ONLYuntitled  **Privacy Statement**  Collection of this information is authorised by legislation and is used to maintain the publicly searchable records. For more information see the Department’s website. | | | | | | | | | | | | | |  | | | | | | | | |
|  | | | **Lessor** | | | | | | | | | | | **Lodger** (Name, address, e‑mail & phone no.) | | | | | | **Lodger Code** | | |
|  | | | DIAMANTINA SHIRE COUNCIL | | | | | | | | | | | King & Company, Solicitors  GPO Box 758, Brisbane Qld 4001  E‑mail Rebecca.durrant@kingandcompany.com.au  Phone 3243 0000 | | | | | |  | | |
|  | | | **Lot on Plan Description** | | | | | | |  | | | | |  | | | | **Title Reference** | | | |
|  | | | LOT 2 ON SP 297079 | | | | | | |  | | | | |  | | | | 51197200 | | | |
|  | | | **Lessee** Given names | | | | | Surname/Company name and number | | | | | | | | | | (include tenancy if more than one) | | | | |
|  | | | ## | | | | | ## | | | | | | | | | |  | | | | |
|  | | | **Interest being leased** | | | | | | | | | | | | | | | | | | | |
|  | | | FEE SIMPLE | | | | | | | | | | | | | | | | | | | |
|  | | | **Description of premises being leased** | | | | | | | | | | | | | | | | | | | |
|  | | | THE WHOLE OF THE LAND | | | | | | | | | | | | | | | | | | | |
|  | | | **Term of lease** | | | | | | | | | | | |  | | **Rental/Consideration** | | | | | |
|  | | | Commencement date/event: | | | | ## / ## / 20## | | | | | | | | $## at commencement.  Adjustable in accordance with the relevant provisions of the Schedule). | | | | | | | |
|  | | | Expiry date: | | ## / ## / 20## | and/or Event: | | | | |  | | | |
|  | | | #Options: | ## | | | | | | | | | | |
|  | | | #Insert Nil, if no option or insert option period (e.g. 3 years or 2 x 3 years) | | | | | | | | | | | |  | | | | | | | |
|  | | | **Grant/Execution** | | | | | | | | | | | | | | | | | | | |
|  | | | The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule. | | | | | | | | | | | | | | | | | | | |
| **Witnessing officer must be aware of his/her obligations under section 162 of the *Land Title Act 1994*** | | | | | | | | | | | | | | | | | | | | | | |
| DIAMANTINA SHIRE COUNCIL | | | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | | | | | | | | | | | | | |
|  | | | | | | | | | | signature | | |  |  | | |  | | | | | |
|  | | | | | | | | | |  | | |  |  | | |  | | | | | |
|  | | | | | | | | | | full name | | |  |  | | |  | | | | | |
|  | | | | | | | | | |  | | |  |  | | |  | | | | | |
|  | | | | | | | | | | qualification | | |  | ## / ## / 20## | | | Chief Executive Officer | | | | | |
| **Witnessing Officer** | | | | | | | | | |  | | |  | **Execution Date** | | | **Lessor Signature** | | | | | |
| (Witnessing officer must be in accordance with Schedule 1 of *Land Title Act 1994* e.g. Legal Practitioner, JP, C Dec) | | | | | | | | | | | | |  |  | | |  | | | | | |
|  | | | **Acceptance** | | | | | | | | | | | | | | | | | | | |
|  | | | The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease. | | | | | | | | | | | | | | | | | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *##Lessee Name/ABN##* | | | | |
|  | signature |  |  |  |
|  |  |  |  | Director |
|  | full name |  |  |  |
|  |  |  |  |  |
|  | qualification |  | ## / ## / 20## | Director/Secretary |
| **Witnessing Officer** |  |  | **Execution Date** | **Lessee Signature** |
| (Witnessing officer must be in accordance with Schedule 1 of *Land Title Act 1994* e.g. Legal Practitioner, JP, C Dec) | |  |  |  |

|  |  |
| --- | --- |
|  | **Acceptance** |
|  | The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *##Lessee Name ##* | | | | |
|  | | | | |
|  | signature |  |  |  |
|  |  |  |  |  |
|  | full name |  |  |  |
|  |  |  |  |  |
|  | qualification |  | ## / ## / 20## |  |
| **Witnessing Officer** |  |  | **Execution Date** | **Lessee Signature** |
| (Witnessing officer must be in accordance with Schedule 1 of *Land Title Act 1994* e.g. Legal Practitioner, JP, C Dec) | |  |  |  |

# Reference Information

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Parties | | |  |
|  | | |  |
| Lessor: | | | Diamantina Shire Council |
| ABN 87 774 161 836 |
|  | | |  |
| Address for notices: | | |  |
|  | | |  |
|  | | Delivery/ Post: | 17 Herbert Street, Bedourie, Qld, 4829 |
|  | | Facsimile:  Email | (07) 4746 1272  [admin@diamantina.qld.gov.au](mailto:admin@diamantina.qld.gov.au) |
|  | | |  |
|  | | |  |
| Lessee: | | | ##. |
| ABN ##. |
|  | | |  |
| Address for notices: | | |  |
|  | | |  |
|  | | Delivery: | ##. |
|  | |  |  |
|  | | Post: | ##. |
|  | |  |  |
|  | | Facsimile: | ##. |
|  | | Email | ##. |
|  | | |  |
|  | | |  |
| Guarantor: | | | ##. |
|  | | |  |
| Address for notices: | | |  |
|  | | |  |
|  | | Delivery: | ##. |
|  | |  |  |
|  | | Post: | ##. |
|  | |  |  |
|  | | Facsimile: | ##. |
|  | | Email: | ##. |
|  | | |  |
| Guarantor: | | | ##. |
|  | | |  |
| Address for notices: | | |  |
|  | | |  |
|  | | Delivery: | ##. |
|  | |  |  |
|  | | Post: | ##. |
|  | |  |  |
|  | | Facsimile: | ##. |
|  | | Email: | ##. |
|  | | |  |
| 1. Premises | | |  |
|  | | |  |
| Description: | | | The whole of the land. |
|  | | |  |
| Address: | | | Bedourie Tourist Park, Nappa Street, Bedourie, Qld, 4829 |
|  | | |  |
| 1. Duration | | |  |
|  | | |  |
| Term: | | | # years. |
|  | | |  |
|  | Commencement Date: | | ##. |
|  |  | |  |
|  | Expiry Date: | | ##. |
|  | | |  |

|  |  |  |
| --- | --- | --- |
| First Extension period: | | # years. |
|  | |  |
|  | Start date: | ##. |
|  | |  |

|  |  |  |
| --- | --- | --- |
| Second extension period: | | # years. |
|  | |  |
|  | Start date: | ##. |
|  | |  |

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Rent | | |  |
|  | | |  |
| Commencing rent: | | | $## per annum.[[1]](#footnote-1) |
|  | | |  |
| Adjustment dates: | | | Each anniversary of the Commencement Date and on the commencement of each Extension Period. |
|  | | |  |
| Adjustment method: | | | CPI movement |
|  | | |  |
| 1. Use of Premises | | |  |
|  | | |  |
| Permitted use: | | | The operation of a tourist caravan park and camping ground, and associated facilities. |
|  | | |  |
| 1. Lessee Insurances | | |  |
|  | | |  |
| Damage: | | |  |
|  | | |  |
|  | Property to be covered: | | (2) All Lessee Property.  (3) All other insurable items located upon the Premises, including plate glass. |
|  |  | |  |
|  | Level of cover: | | Full reinstatement or replacement value. |
|  |  | |  |
|  | Beneficiaries: | | Lessee and Lessor (for their respective interests). |
|  | | |  |
| Business Interruption: | | |  |
|  | | |  |
|  | | Level of cover: | Sufficient to cover:  (a) rent and other money payable under the Lease; and  (b) Lessee expenses of Maintaining the Premises. |
|  | |  |  |
|  | | Beneficiaries: | Lessee. |
|  | |  |  |
| Public Liability: | | |  |
|  | | |  |
|  | | Level of cover: | Not less than $20,000,000.00 per claim. |
|  | |  |  |
|  | | Review intervals: | Every 3 years (computed from Commencement Date). |
|  | |  |  |
|  | | Beneficiaries: | Lessee, Lessor, and their respective Personnel. |
|  | |  |  |
| Workers Compensation: | | |  |
|  | | Beneficiaries: | Lessee Personnel. |
|  | |  |  |
| 1. Security | | |  |
|  | | |  |
| Form/Type: | | | Personal guarantee and indemnity (Part 19).  Security deposit (Part 20) in the sum of $#. |
|  | | |  |

# Lease Structure and Interpretation

## Conventions

#### The conventions detailed in this Clause 2.1 have been adopted in drawing this Lease instrument.

#### The instrument is composed of:

##### the titling Form 7 (together with the Form 20 Enlarged Panels, if any); and

##### this Schedule, including its narrative and appendices; and

##### the Guarantor attestations.

#### The Schedule provisions are divided into Parts.

#### Part 1 is composed of Items and each subsequent Part is composed of Clauses.

#### Some Clauses contain numbered component and subcomponent provisions.

*Examples: Clause 2.5(1); Clause 2.5(2)(a)*.

#### The following types of word begin with a capital letter:

##### a word that is, or is part of, an expression defined in Clause 2.6 or another Clause;

##### a word that begins a sentence;

##### a proper noun.

## Operative Provisions

Each provision of the Lease is an operative provision of the Lease agreement unless expressly identified as non‑operative.

## Severance

A provision is to be treated as omitted from the Lease if:

#### the provision is void, unenforceable, or incomprehensible; or

#### retaining the provision would render the Lease or part of the Lease void, unenforceable, or incomprehensible.

## Determining Intent of Lease Agreement

The intent of the Lease agreement is to be determined by reference at least to:

#### the subject of the agreement;

#### the express provisions of the Lease as originally made (including those omitted pursuant to Clause 2.3;

#### the nature of the provision/s omitted pursuant to Clause 2.3; and

#### the practicality of effectuating the Lease net of the omitted provisions.

## Interpretation of Lease Generally

#### The Lease is to be interpreted by reference to the provisions of this Part 2.

#### However, each such provision applies only to the extent that:

##### a given context does not require otherwise; or

##### a contrary intention is not apparent.

## Glossary

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross‑referenced provision shown opposite:

|  |  |
| --- | --- |
| Act | A legislative enactment of the Queensland Parliament or the Commonwealth Parliament.  Subordinate legislation made under the enactment.  A direction or requirement made by a competent entity under the enactment or subordinate legislation.  A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.  A planning instrument.  A local law. |
| Act of Insolvency | For a Party subject to the *Bankruptcy Act 1966 (Cwlth)*:  signing an authority that appoints a controlling trustee;  committing an act of bankruptcy;  presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition; or  becoming bankrupt upon a debtors petition or a creditors petition.  For a Party subject to the *Associations Incorporation Act 1981* or the *Corporations Act 2001 (Cwlth)*:  (if a company) entering voluntary administration;  (if a company or a Part 5.7 body[[2]](#footnote-2)) failing to satisfy a statutory demand;  (if an incorporated association) meeting a criterion for enforced winding up;[[3]](#footnote-3)  passing a voluntary winding up resolution, voluntarily applying to be wound up, or suffering presentation of an application for its winding up; or  suffering the appointment of a provisional liquidator;  being wound up or being deregistered.  For a local government:  suffering the declaration, by a court of competent jurisdiction, that it is unable to pay its debts as and when they fall due; or  suffering dissolution as a legal entity without another entity acceding to its functions.  For a Party in any event:  suffering the appointment of a receiver, which appointment is not terminated, postponed, or enjoined within 14 days after it is made;  suffering an encumbrancee taking possession of its assets or any of them;  failing to pay a judgment debt, or to have the judgment set aside, within 21 days after the judgment is given against it; or  failing to secure the return of an asset within 21 days after a creditor or an encumbrancee lawfully seizes it. |
| Address for Notices | For each Party:  its address for delivery, post, or facsimile shown in Item A;  such other address for delivery, post, or facsimile as it has notified to the Party giving it a notice as its address for notices under the Lease; or  if it is not at any of those addresses, its last principal place of business or facsimile number known to the Party giving it a notice. |
| Adjustment Date | A rent adjustment date specified at Item D. |
| Appendix | An appendix to this Schedule. |
| Bank | A trading bank licensed to conduct banking business, and conducting banking business, under an Act regulating banking. |
| Building | The building/s within the Premises:  as extended or modified from time to time; and  including all Lessor Property within or attached to the building/s. |
| Business Day | For giving notice or satisfying an obligation other than an obligation to make a payment: a day other than a Saturday, a Sunday, or another public holiday:  in the locality to which the notice is to be sent; or  in the locality in which the obligation is to be satisfied.  For making a payment: a day, other than a Saturday, a Sunday, or another public holiday, upon which banks are open for business in the locality of the recipient's Address for Notices. |
| Business Interruption Policy | An insurance policy that covers the assured for loss of income borne of damage to or loss of Lessee Property (upon the Premises or elsewhere) and Lessor Property precipitating:  suspension or cessation of the Permitted Use upon the Premises; or  diminution of Lessee capacity to conduct of the Permitted Use upon the Premises. |
| Clause | A numbered clause, sub‑clause, or other provision in this Schedule. |
| Commencement Date | The date upon which the Term commences. Refer to Item C. |
| Cost | Includes loss, liability, damage, and expense. |
| CPI | The Consumer Price Index (All Groups) Brisbane published at a relevant time by the Australian Bureau of Statistics (*ABS*).  If that index is inappropriate: the Wage Cost Index, Australia published by the ABS at the relevant times.  If neither of the foregoing two indices is appropriate: the Average Weekly Earnings, Australia index, published by the ABS at the relevant times.  If none of the foregoing three indices is appropriate: an index that the Australian Statistician nominates as appropriate (whether by public notice or by specific advice to the Lessor or the Lessee).  If the Australian Statistician has not published an appropriate index, and will not nominate one: an index or average the Lessor and the Lessee agree is appropriate.  An index or average is appropriate if it reflects on a consistent basis changes in the cost of living in Brisbane during a relevant period.  An index or average is inappropriate if:  it is suspended or discontinued; or  the method of its calculation is so substantially altered that it does not reflect on a consistent basis change in the cost of living in Brisbane during a relevant period. |
| CPI 1 | Refer to Clause 4.2(3)(c). |
| CPI 2 | Refer to Clause 4.2(3)(b). |
| Cross‑liability Provision | An insurance policy provision, or collection of provisions, that covers each beneficiary under the policy (each a *co‑assured*) upon claims made against it by each and any co‑assured as though a separate insurance policy were issued to each co‑assured. |
| Damage Policy | An insurance policy that indemnifies the assured against Cost borne of:  Harm to the insured property, particularly Harm from Destructive Events;  Harm to persons resulting from use of the insured property (to the extent that neither of a relevant Public Liability Policy and a relevant policy of workers compensation insurance covers the Harm);  and that extends the cover to equipment in the physical and legal control of the assured. |
| Default Notice | Refer to Clauses 17.2 and 17.3. |
| Destructive Events | Fire.  Entry of water.  Impact of irresistible natural forces, including cyclone and other storm and tempest, lightning, flood, and earthquake.  Civil commotion.  Explosion and concussion from explosion.  Impact of vehicles, aircraft, and articles escaping from them.  Malicious acts.  Negligent acts.  Theft.  (For a Damage Policy the Lessee must obtain) other risks nominated reasonably by the Lessor from time to time.  (For a Damage Policy the Lessor must obtain) other risks against which the Lessor considers it prudent or appropriate to insure. |
| Development Permit | An operative development permit for the *Planning Act 2016*.  *Examples: A development permit for material change of use, or for building work, or for operational work*. |
| Electrical Equipment | Electrical equipment as defined in the *Electricity Act 1994*.[[4]](#footnote-4) |
| Electrical Installation | An electrical installation as defined in the *Electricity Act 1994*.[[5]](#footnote-5) |
| Encumbrance | A security interest, including:  a mortgage;  a charge;  a pledge;  a lien;  an assignment of property to secure the performance of an obligation.  An attachment order or notice issued by a court or other lawful authority, including:  an enforcement warrant issued under the *Uniform Civil Procedure Rules 1999*;  a warrant of execution or attachment;  a garnishee order;  A third‑party notice issued by the Australian Taxation Office under:  *Income Tax Assessment Act 1936 (Cwlth)* section 255; or  *Taxation Administration Act 1953 (Cwlth)* Schedule 1, section 260‑5,  or a notice of a similar type issued by an authority pursuant to another Act.  A set‑off entitlement.  A lease (including an underlease).  An easement.  A profit‑à‑prendre.  A statutory covenant created under the *Land Title Act*.  A caveat.  An agreement to grant or create any of the foregoing interests or entitlements. |
| Expiry Date | The date the Term (as extended, if relevant) expires. (Refer to Item C). |
| Extension Period | Any and each of the First Extension Period and the Second Extension Period. Refer to Item C and Clause 3.2. |
| Facility | The Bedourie Tourist Park complex at the Premises. |
| Fees | All fees the Lessee charges for:  the hire of cabins, caravan sites and camping sites at the Facility; or  the use of an ancillary or other facility within the Facility. |
| First Extension Period | The period identified as such at Item C, by which the Term is extended pursuant to exercise of the option in Clause 3.2(1)(a). |
| Fixed Improvement | Astructure, of a permanent or semi‑permanent character, firmly affixed to the Premises or to a structure upon the Premises, to enable the Premises to be used or better used for a particular purpose.  Examples:  *a building, whether demountable or not;*  *an observation or viewing tower;*  *floodlighting apparatus (including pole);*  *a swimming pool or other bathing facility;*  *a brick or concrete block barbecue;*  *a cold room;*  *an integrated air‑conditioning system and an air‑conditioner that is mounted through a hole made in an external wall for the purpose of enabling the machine to be so mounted;*  *an in‑ground irrigation system;*  *a fence or wall other than a purpose‑designed temporary fence or wall;*  *a building slab;*  *an immovable sightscreen structure (irrespective of whether the screen itself can be repositioned from side to side upon the structure);*  *a concrete, paved, or otherwise‑constructed, path, patio, or similar structure;*  *an entrance arch.*  The expression does not include an item affixed to the Premises or to a structure upon the Premises to enable the item or structure to be used or better used.  Examples:  *a wall‑mounted dispensing machine;*  *a window‑mounted air‑conditioner;*  *football goalposts;*  *a flagpole;*  *a cargo container.* |
| *Foreign Interests Acts* | *Foreign Acquisitions and Takeovers Act 1975 (Cwlth)*.  *Foreign Ownership of Land Register Act 1988*. |
| *GST Act* | *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*, including related legislation. |
| Guarantor | ##. Refer to Item A. |
| Harm | All or any of:  death;  disease;  illness (including mental illness);  personal injury (including shock);  (for clarity) disablement, whether from disease, illness, or personal injury;  property damage;  property loss, including loss of use (complete or partial) and loss via misplacement and theft; and  reputation damage. |
| Institute | The Australasian Institute of Chartered Loss Adjusters ‑ Queensland Division. |
| Insurance‑relevant Information | Information relating to:  the Lessee; or  any of its Personnel; or  the persons with whom the Lessee customarily deals,  likely to affect an insurer’s or another indemnifier’s decision to grant or continue:  the Lessor’s damage cover; or  the Lessor’s public liability cover. |
| Item | An alphabetically identified item of information in Part 1. |
| Key | An implement that mechanically or electronically:  locks and unlocks any Building or other part of the Premises, or an item of Lessor Property; or  facilitates or ceases the operation of a Service.  The expression includes an electronically encoded plastic card or strip.  *Examples:*  *a metal item that must be inserted into a keyhole and turned, to unlock a door;*  *an encoded card or plastic strip that must be passed through ("swiped"), inserted into, or tapped upon an electronic scanning or reading device, to unlock a door or to trigger the operation of a machine (such as an air conditioner or a lift).* |
| Land | The land described in panel 2 of the Form 7. |
| Lease | This instrument (in titling Forms 7 and 20), including all instruments amending it.  The bargain evidenced by:  this instrument (if it is not amended); or  those instruments (if it is amended).  A written agreement or item of agreement expressed to be supplemental to:  this instrument or the bargain; or  those instruments or the bargain,  as the case may be. |
| Lease Year | Each separate year of the Term (as extended, where relevant):  the first beginning on the Commencement Date; and  each subsequent year beginning on an anniversary of the Commencement Date,  including a broken period between the end of the last complete year and the Expiry Date (if relevant). |
| Lessee | ##. Refer to Item A. |
| Lessee Property | Items of property owned by the Lessee or to which the Lessee is entitled to possession (other than Lessor Property):  located upon the Premises; or  used by the Lessee upon the Premises,  whether or not in connection with the conduct of the Lessee’s business upon the Premises. |
| Lessor | Diamantina Shire Council. Refer to Item A. |
| Lessor Property | All of the Lessor's buildings, plant, equipment, fixtures, fittings, and chattels situated within the Premises, including:  furnishings;  floor coverings (including carpets);  air-conditioning apparatus;  security equipment;  fire alarm and response equipment; and  equipment forming part of the Services,  the items detailed upon the inventory in the Appendix. |
| Loss Adjuster | A loss adjuster independent of the Lessor and the Lessee, who:  is a member of the Institute;  has been engaged continuously (though not necessarily exclusively), during the 5 years immediately preceding his appointment under the Lease, in assessing the nature, extent, and costing of damage to property comparable to the Premises; and  is appointed by the Chairman of the Institute to determine, for the purposes of the Lease, the extent of damage to or destruction of the Premises or a Building. |
| Maintenance | Includes repair and replacement. |
| Non‑imputation Provision | An insurance policy provision under which the insurer covenants that a breach, non‑compliance, or non‑disclosure by an assured or a person for whose benefit the insurance extends (the *defaulting party*) will not prejudice a claim for indemnity made by another assured or person for whose benefit the insurance extends if the defaulting party notifies the insurer of the breach, non‑compliance, or non‑disclosure without unreasonable delay after becoming aware of it. |
| Officer | For a Party that is a corporation: a director, a company secretary, or an attorney.  For a Party who is a natural person:  the person himself/herself;  his/her attorney (for a relevant purpose); or  his/her lawfully appointed guardian or administrator, if (s)he suffers impaired capacity (*for example, a guardian or administrator appointed under the* *Guardianship and Administration Act 2000*).  For each Party: its solicitor. |
| Overdraft Rate | The interest rate charged for the time being by the Lessor's banker to its customers on overdraft accommodation exceeding $100,000.00. |
| Part | A numbered part or section of the Lease, other than an Appendix or an attestations provision, containing:  one or more Items; or  one or more Clauses. |
| Party | In a provision other than Part 19 [Security (Guarantee and Indemnity)], either or each of the Lessor and the Lessee.  In a Part 19 provision, any or each of the Lessor, the Lessee, and the Guarantor. |
| Permitted Use | For the Premises: refer to Item E. |
| Personnel | For either Party, each of its:  Officers;  employees;  agents (including contractors, consultants, and other service providers, and their respective servants and agents);  customers/clients, invitees, and visitors (whether with or without invitation);  sub‑tenants, licensees, franchisees, and concessionaires,  and all other persons claiming under or through the Party; but excluding persons properly characterized as trespassers. |
| Planning Scheme | The planning scheme governing the Region, made pursuant to the *Planning Act 2016*. |
| *PPS Act* | *Personal Property Securities Act 2009 (Cwlth)*. |
| PPS Register | The Personal Property Securities Register maintained under the *PPS Act*. |
| Premises | The premises described at Item B, including:  all improvements upon the Land;  extensions or modifications made to the Premises from time to time;  any area, section, or portion of the Premises; and  all Lessor Property from time to time within or upon the Premises. |
| Public Company | A corporation whose shares are listed on any of the Australian Associated Stock Exchanges.  A foreign corporation whose securities are quoted for trade on an Australian stock exchange or in an  Australian market for public dealing in securities. |
| Public Liability Policy | An insurance policy that covers the assured against Claims by third persons, and liability to third persons, borne of or connected with Harm resulting directly or indirectly from occurrences upon the Premises. |
| Rates | General rates, special rates, and separate rates, made and levied under the *Local Government Act 2009* or another Act.  *Examples:*  *A separate rate or charge pursuant to Fire and Emergency Services Act 1990, to fund a rural fire brigade operating in a local government area.*  *An environmental levy, or any levy otherwise named but which is imposed to assist or to facilitate preservation, restoration, or improvement of the natural environment/s within the Region.*  Any levy that an owner or occupier of land must pay to the local government under an Act other than the *Local Government Act 2009*.  *Example: A levy under Fire and Emergency Services Act 1990, to fund fire services in urban districts.* |
| Registration | As the context requires:  recording of a relevant dealing upon the title to the Land, pursuant to the *Land Title Act 1994*;  recording, in the PPS Register, notice of a charge over Lessee trust assets. |
| Reinstatement | Entails:  cleaning the exterior and interior surfaces of the Premises;  treating, as previously treated, all wall and non‑carpeted floor surfaces of the Premises by painting, staining, or polishing;  repairing damaged floor coverings that can be properly repaired (the Lessee acknowledging that if a section of damaged or worn covering cannot be replaced with one that matches the remainder, that section cannot be properly repaired);  replacing with covering approved by the Lessor (acting reasonably) damaged floor coverings that cannot be properly repaired;  steam cleaning or shampooing carpets;  repairing damage to walls, floors, and other structures, or to Lessor Property, caused (with or without Lessor knowledge) by the Lessee or a predecessor in title to the Lessee under the Lease, irrespective of whether the damage occurred:  during the Term; or  during the term of an earlier lease of the Premises to the Lessee or the predecessor in title; or  during a period of holding over[[6]](#footnote-6) under any prior lease; and  removing signs, placards, posters and other adornments installed by the Lessee. |
| Remedial Expenses | For a policy of damage insurance:  the cost of repairing damage or reinstating damaged items, structures, or work, in each case at least to the condition in which it existed before it was damaged;  the cost of replacing destroyed items, structures, or work with items, structures, or work of at least equivalent quality;  the cost of demolition, debris removal and disposal, site clearance, and the cost of other work required by an Act;  the fees payable to architects, engineers, surveyors, solicitors, building contractors, and other service providers engaged to facilitate necessary repair, reinstatement, rebuilding, or replacement; and  expenses incidental to the foregoing expenses. |
| Restricted Dealing | Refer to Clause 11.1(1). |
| Second Extension Period | The period identified as such at Item C, by which the Term is (further) extended pursuant to exercise of the option in Clause 3.2(1)(b). |
| Security Account | An interest‑bearing account with a Bank. |
| Security Deposit | The cash sum specified at Item G. |
| Services | The utility services from time to time appurtenant to the Premises, including:  electronic services;  fire, sprinkler, and air conditioning;  lighting, gas, fuel, and other energy;  water, sewerage, and drainage.  The infrastructure via which those utility services are delivered, including fittings, fixtures, appliances, plant, and equipment.  Examples: Air-conditioning apparatus and fire equipment. |
| State Funding Agreement | means:  Special Condition 2 of Annexure A – Project Funding Schedule entered into between the Lessor and the State of Queensland dated 24 September 2020 in connection with the “Diamantina Solar Power Project – BoE R05 DIAM 0071’, and in accordance with the Head Funding Agreement dated 10 February 2020. |
| Structural | For a Building or another structure: load‑bearing or supportive, or otherwise essential to the integrity or fabric of the Building or structure. |
| Subrogation Waiver | An insurance policy provision, or collection of provisions, by which the insurer relinquishes its right to pursue and exercise the remedies of one co‑assured ore beneficiary (the *claimant*) against another co‑assured or beneficiary for the compensation of loss or expense against which the insurer has indemnified the claimant. |
| Term | The period identified as such at Item C (beginning upon the Commencement Date), as extended (if relevant) pursuant to the exercise of an option to extend contained in the Lease. |
| Utility Charges | Charges by the local government for the supply of:  water, gas, and sewerage services; and  cleansing services.  Any other service charge assessed in relation to the Premises under Chapter 14, Part 2 of the *Local Government Act 2009*. |
| Vehicle | An item of equipment, motorized or non‑motorized, for transporting persons, goods, commodities, or other items.  Included are:  a passenger car;  a truck (including a utility) with a tare not exceeding 2 tonnes; and  a motorcycle;  a moped;  a bicycle;  a wheelchair or similar conveyance;  Excluded are:  a Segway;  a hover board;  a skateboard; or  any similar conveyance or item that the Lessor excludes by notice to the Lessee. |
| *Workers Compensation Act* | *Workers Compensation and Rehabilitation Act 2003*. |

## Cognate Expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

## Non‑defined Expressions

A term not relevantly defined in the Lease carries the meaning the Oxford Dictionary of English ascribes to it.

## Parties

#### Reference to a Party who is a natural person includes the person’s personal representatives and permitted assigns.

#### Reference to a Party that is a legal entity other than a natural person includes the entity’s successors and permitted assigns.

*Examples of a legal entity other than a natural person:*

##### *a corporation;*

##### *a body politic.*

#### For a Party composed of two or more persons, each acknowledgement, representation, obligation, and entitlement binding or benefiting the Party binds or benefits:

##### all of those persons collectively; and

##### each of them as an individual.

## Durations (Days and Months)

#### A day is a 24‑hour period ending at midnight.

#### A month is a named month of the Christian calendar (a *calendar month*); for example, January.

#### However, if a single month or a series of months will or may begin upon a day (the *start day*) other than the first of a calendar month, the following provisions apply.

#### The single month ends:

##### in the calendar month that follows the calendar month in which it begins;

##### on the day before the day that corresponds with the start day.

*Example: A month prescribed as beginning on 15 January ends on 14 February.*

#### The series of months similarly ends:

##### in the last calendar month of the series;

##### on the day before the day that corresponds with the start day.

*Example: A 3‑month period prescribed as beginning on 15 January ends on 14 April.*

#### If the calendar month during which the month or series ends contains no day corresponding with the start day:

##### the month ends on the last day of that next calendar month;

##### the series ends on the last day of its final calendar month.

*Examples:*

##### *A month prescribed as beginning on 30 January ends on 28* *February (normal year) or 29 February (leap year).*

##### *A 3‑month period prescribed as beginning on 30 November ends on 28* *February (normal year) or 29 February (leap year).*

## Durations (Block References)

#### A period beginning upon a specified day begins at the beginning of that day.

#### A period ending upon a specified day ends at the end of that day.

#### Reference to the period between two specified dates, times, or periods includes each of those two dates, times, or periods.

*Example: A reference to the period “from 1 January to 31 December” or “between 1 January and 31 December” is a reference to the period comprising each of those two dates and all of the days between them.*

#### Reference to the items between two specified items (in this or another instrument) includes each of those two specified items.

*Example: A reference to the provisions “from sub‑clause (1) to sub‑clause (5)” is a collective reference to sub‑clause (1), sub‑clause (5), and to the sub‑clauses between them.*

## Inclusive References

The expression, *include*, and its derivatives are not expressions of limitation.

*Examples:*

*(a) In a Clause stating that item A includes item B, item B is one of the things that item A encompasses; it is not necessarily the only thing.*

*(b) (Obversely) in a Clause stating that item B is included in item A, item B is (again) one of the things encompassed by item A; it is not necessarily the only thing.*

## Particular References

The expressions, *in particular* and *particularly*, are not expressions of limitation.

*Example: A provision requiring compliance with an approval, "particularly" a specified condition of the approval or permit, does not limit the compliance obligation to the stated condition.*

## Examples

#### An example in or for a provision is part of the provision; it is not to be disregarded for interpretation purposes.

#### The example is not exhaustive, nor does it limit the meaning of the provision, but it may extend that meaning.

#### The example and the provision are to be read:

##### relative to one another; and

##### in the context of all provisions of the Lease.

#### If, so read, they are inconsistent, the example is to be disregarded.

## References to Acts/Statutory Provisions

#### Reference to an Act includes an Act that amends, consolidates, or replaces it.

#### Reference to a provision in an Act includes a provision that amends, consolidates, or replaces it.

#### Reference to an Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is to an Act of the Queensland Parliament.

## Miscellaneous References

#### Reference to the singular includes the plural, and vice‑versa.

#### Reference to a gender includes each other gender.

#### Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.

#### Reference to an entity that has ceased to exist, or has reconstituted, amalgamated, reconstructed, or merged, is to be treated as a reference to the entity:

##### established or constituted in its stead; or

##### succeeding, as nearly as may be, to its power or function.

#### Reference to an office or a position includes an office or a position:

##### established or constituted in lieu of that office or position; or

##### as nearly as may be, succeeding to its power or function.

#### Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.

#### Reference to termination of the Lease is a reference to termination by any means (for example, by expiry or merger, by frustration, or by termination for breach).

#### Reference to money is a reference to Australian dollars and cents.

#### Reference to a time of day is a reference to Australian Eastern Standard Time.

#### Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

## Headings and Notes

The table of contents, the headings, and any notes (including footnotes and endnotes):

#### appear for convenience only; and

#### are not operative provisions of the Lease.

## Covenants

Reference to a covenant or obligation in the Lease includes a covenant or obligation:

#### express or implied;

#### positive or negative; and

#### running with the land or merely personal to the Party it binds.

## Modification of Implied Covenants

#### The covenants implied by *Property Law Act 1974* sections 105[[7]](#footnote-7) and 107[[8]](#footnote-8) are modified by or excluded from the Lease to the extent of inconsistency with it.

#### No covenant is implied into the Lease by operation of section 109[[9]](#footnote-9) of that *Act*.

## Actions

#### Reference (direct or indirect) to person's act:

##### encompasses an act of commission and an act of omission; and

##### includes the act of another person if the law deems the other person’s act also to be the first‑mentioned person's act because of the legal relationship between the two.

*Example for sub‑clause (1)(b): The act of an employee, in the performance of that person's duties as employee, is imputed to his/her employer; that is, it is deemed by law also to be the act of the employer.*

#### A provision that obliges a person not to do something obliges the person also to prevent others over whom he has control or dominion from doing that thing.

## Contra Proferentem Interpretation

A provision of the Lease is not to be interpreted against the interest of a Party merely because the Lease or provision was drawn by or on behalf of that Party.

## Legislative Intrusion

A provision in an Act, purporting to exclude or amend a provision of the Lease, is inapplicable to the Lease to the extent that the Act or another law permits the Parties to exclude by agreement the application of that provision.

# Duration of Tenancy

## Term

#### The term of the Lease (the *Term*) is # years.

#### The Term commences on ## (the *Commencement Date*)

#### The Term expires on ## (the *Expiry Date*).

## Options to Extend Term

#### Subject to Clause 3.3, the Lessor grants the Lessee:

##### an option (the *first option*) to extend the Term by # years beginning on ## (the *First Extension Period*); and

##### (if the Term is extended through exercise of the first option) an option (the *second option*) further to extend the Term by # years beginning on ## (the *Second Extension Period*).

#### For clarity:

##### upon extension of the Term pursuant to the exercise of an option, the Expiry Date will correlatively adjust to become the last day of the Extension Period; and

##### the Lessee may not extend the Term beyond the end of the Second Extension Period.

## Loss of Option

The Lessee is not entitled to exercise an option to extend the Term if and while it is in default under the Lease.

## Exercise of Option

The Lessee may exercise an option (if entitled) only by giving notice to the Lessor:

#### not earlier than 180 days before the Expiry Date; and

#### not later than 90 days before the Expiry Date.

## Loss of Extension Entitlement

#### If, having lawfully exercised an option to extend the Term, the Lessee defaults under the Lease before the Extension Period begins, its notice exercising the option will be ineffective while the default or failure continues.

#### The Lessee will lose all entitlement to extend the Term if it is in default immediately before the Extension Period is due to begin.

#### Despite Clause 12.2, the Lessee will possess no entitlement to compensation from the Lessor if non‑Registration of the Lease results in loss of entitlement to extend the Term.

## Variation of Lease

If the Lessee lawfully extends the Term pursuant to this Part 3:

#### the Term will continue until the Extension Period expires;

#### the Lessor will prepare and submit to the Lessee a Registrable deed formally varying the Lease consistently with this Clause 3.6; and

#### the Parties must promptly execute and deliver the deed; and

#### subject to Clause 4.10, the Lessor must Register the deed.

# Rent and Charges

## Commencing Rent

The rent payable from the Commencement Date is $##, subject to adjustment under Clause 4.2.

## Rent Adjustment

#### Each anniversary of the Commencement Date (including the first day of each Extension Period) is an Adjustment Date.

#### The annual rent on and from each Adjustment Date will be determined by applying the formula:

*Base Rent  x*

#### For that formula:

##### *Base Rent* is the rent payable immediately before the Adjustment Date (*for example: if the rent to be paid during the second Lease Year is being calculated, the Base Rent for the calculation is the rent payable for the first Lease Year)*;

##### *CPI 2* is the CPI published for the quarter year last expiring before the Adjustment Date; and

##### *CPI 1* is the CPI published for the equivalent quarter of the previous year.

*Example for sub‑clause (c): If CPI 2 is the CPI for the third quarter of a given year, CPI 1 is the CPI for the third quarter of the previous year*.

#### If CPI 1 or CPI 2 is not ascertainable, the Parties must choose a substitute index.

## Rent Pending Adjustment

#### Adjusted rent will be payable from the Adjustment Date, irrespective of when the adjustment is calculated or payment is demanded.

#### The rent for an expired Lease Year continues to be payable post‑expiry unless and until an adjusted rent for the following Lease Year is determined.

#### Where the rental rate determined upon adjustment or review exceeds the rental rate payable before the Adjustment Date, the Lessee must pay with the first rent instalment due after the determination the additional rent referable to the period between the Adjustment Date and the date the first instalment is due.

*Example: If the Adjustment Date is 1 July, and the rent increase is determined and notified to the Lessee on 15 August, the Lessee must pay on 1 September the rent instalment calculated at the increased rate plus a sum representing the difference between the rent paid at the pre‑Adjustment Date rate and the rent payable at the increased rate for the period between 1 July (the Adjustment Date) and 1 September.*

#### Where the rental rate determined upon adjustment or review is less than the rental rate payable before the Adjustment Date, the Lessor must credit to the Lessee the resulting excess in paid rent within 30 days after the new rent is determined.

## Payment of Rent

#### The Lessee must:

##### pay the rent for each Lease Year by equal consecutive monthly instalments;

##### pay each monthly rent instalment in advance, not later than the first day of the month; and

##### make each payment without demand.[[10]](#footnote-10)

#### The Lessee must pay the first instalment of rent no later than the Commencement Date.

## Apportionment for Broken Periods

#### Clauses 4.5(2) and 4.5(3) apply if a Lease Year:

##### begins on a day other than the first of a month; or

##### expires on a day other than the last day of a month.

#### The Lessee must pay for the broken period:

##### preceding the first complete month; and

##### following the last complete month,

a proportionate part of the monthly instalment payable on account of the rent (calculated at a pro rata daily rate).

#### The Lessee must make the payment no later than the first day of the broken period.

## Payment of Rates and Utility Charges

#### The Lessee must pay upon demand the Lessor's accounts for Rates and Utility Charges, or their equivalents, levied or imposed concerning the Premises.

#### This Clause 4.6 applies irrespective of whether the Premises are rateable land for the purposes of the *Local Government Act 2009*.

#### The Lessor's entitlements under this Clause 4.6 are additional to, not in derogation of, its entitlement, as local government, to levy and recover Rates and Utility Charges under the *Local Government Act 2009* in relation to the Premises.

## Interest on Arrears

#### If rent or other Lessee payments under this Lease are in arrears, the Lessee must pay the Lessor interest upon the arrears from the due date until the date of payment.

#### The interest will be calculated at the Overdraft Rate and will compound at 30‑day rests.

## Energy Charges

The Lessee must pay all charges for gas and electricity consumed upon the Premises, or serving them.

## Costs of Litigation

#### This Clause 4.9 applies if, through no fault of its own, the Lessor is drawn into litigation (other than litigation between the Lessor and the Lessee):

##### commenced by or against the Lessee; and

##### arising directly or indirectly from the Lessee's occupancy of the Premises.

#### The Lessee must pay the Lessor upon demand:

##### all legal fees and disbursements (assessed on a solicitor‑and‑own‑client basis) the Lessor incurs in connection with the litigation save those recovered from another party to the litigation; and

##### costs reasonably incurred by the Lessor in seeking recovery of those costs from the other party or parties.

#### The Lessor is not obliged to take unreasonable steps to recover its costs from another party to the litigation.

## Costs Generally

#### The Lessee must pay to the Lessor upon demand:

##### all duty upon or arising from the Lease and a dealing with the Lease (including interest and fines not attributable to the omission of the Lessor); and

##### the Registration fees payable upon the Lease (excluding requisition fees not attributable to the act of the Lessee).

#### The Lessee also must pay to the Lessor upon demand the Lessor's reasonable legal and other expenses of:

##### negotiating, documenting, executing, stamping, and Registering the Lease;

##### obtaining a Registrable plan showing the location of the Premises (if they form part only of the Land);

##### obtaining a consent or approval (such as a reconfiguration approval) required for the Lease or a dealing with the Lease, particularly a consent or approval requested by the Lessee;

##### negotiating, documenting, executing, stamping, and Registering its consent to a Lessee dealing with the Lease (for example, a transfer, a subletting, the grant of a security interest, or a surrender);

##### extending the Term or renewing the Lease;

##### exercising, or attempting to exercise, a Lessor entitlement concerning Lessee default under the Lease (including costs of or incidental to action taken pursuant to *Property Law Act 1974* section 124[[11]](#footnote-11) or section 128,[[12]](#footnote-12) irrespective of whether relief against forfeiture is granted); and

##### preparing and serving a notice for *Property Law Act 1974* section 127.[[13]](#footnote-13)

## Usage Fees

#### The Lessor will determine from time to time the maximum Fees that the Lessee may charge, but:

##### the Lessor must not set a Fee at an undervalue; and

##### in any event, the set Fees must be reasonable having reference to all relevant circumstances.

#### The Fees will be taken as set on a GST‑exclusive basis.

#### The Lessee must not charge Fees in excess of those (GST‑exclusive) sums that the Lessor has determined.

# Goods & Services Tax

## Interpretation of Terms

Each of the following expressions bears the meaning the *GST Act* ascribes to it:

#### *adjustment event;*

#### *adjustment note;*

#### *Commissioner;*

#### *consideration;*

#### *creditable acquisition;*

#### *GST;*

#### *GST group;*

#### *input tax credit;*

#### *recipient;*

#### *recipient created tax invoice;*

#### *registered;*

#### *representative member;*

#### *supplier;*

#### *taxable supply;*

#### *tax invoice.*

## GST Grouping

Also, references to a supplier, a recipient, a payer, or a payee who is a member of a GST group[[14]](#footnote-14) include the representative member for that person’s GST group.

## Character of Payments

* + - 1. Non‑monetary consideration for a taxable supply under the Lease is GST‑inclusive.
      2. However, unless the Lease states otherwise, monetary consideration for a taxable supply under the Lease is GST‑exclusive.

## Responsibility for Payment

The recipient must:

#### bear the GST upon a taxable supply under the Lease;

#### pay the supplier a sum equivalent to that GST with the consideration for the supply.

## Input Credits Adjustment (Reimbursements)

#### If the Lease requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.

#### If the Lease requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input tax credit to which the supplier is entitled for the cost.[[15]](#footnote-15)

#### If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.

#### If the Lease obliges a Party to indemnify the other Party against a Cost the other incurs or sustains, the Cost will be net of all input tax credits the payee is entitled to claim concerning that Cost.

#### For clarity, if the net Cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

## Adjustments

#### This Clause 5.6 applies if an adjustment event occurs concerning a taxable supply made under the Lease.

#### The consideration for the supply will be recalculated to reflect the adjustment event.

#### As the case requires:

##### the recipient must pay the resultant GST shortfall to the supplier; or

##### the supplier must refund the resultant GST overpayment to the recipient.

## Tax Invoices and Adjustment Notes

#### The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Lease if:

##### the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipientcreated tax invoice for the supply; and

##### the recipient gives the supplier a recipientcreated tax invoice or an adjustment note (as the case requires) for that supply.

#### Otherwise, however, the supplier must give the recipient, when it makes the taxable supply or in exchange for the consideration, a tax invoice for the supply.

#### The supplier also must give the recipient an adjustment note:

##### in exchange for payment of a GST shortfall; or

##### in conjunction with the payment of a GST refund.

#### If the consideration for a taxable supply is non‑monetary, the tax invoice for the supply, and a relevant adjustment note, must state as the consideration the GST‑inclusive market value of the supply.

#### A Party that has been issuing recipientcreated tax invoices for taxable supplies under the Lease must notify the other Party promptly if it loses its entitlement to issue such invoices.

## Registration

#### Each Party declares that it is registered.

#### A Party must notify the other promptly if it ceases to be registered.

# Use of Premises

## Permitted Use of Premises

#### The Lessee may conduct upon the Premises the activities specified atItem E (the *Permitted Use*), and only those activities.

#### The Lessee agrees to assume the Lessor’s obligations and liabilities under the State Funding Agreement, insofar as those obligations and liabilities relate to the Premises, the Permitted Use and/or any relevant Fixed Improvement or item of Lessor Property contained on the Premises.

#### The Parties agree that the State and/or the Lessor may enforce the relevant provisions of the State Funding Agreement against the Lessee as though it were the named Organisation/ Recipient in the original State Funding Agreement.

#### To avoid doubt, the parties acknowledge and agree that obligations under the State Funding Agreement will be satisfied by the Lessee where:

##### the Premises (including any relevant Fixed Improvement and/or items of Lessor Property contained therein) is continued to be used for the Permitted Use; and

##### any rooftop solar generation equipment installed on the Premises (in connection with the State Funding Agreement) are continued to be used for purpose, and in the manner intended, under the State Funding Agreement,

##### until 3 August 2031 (or the earlier termination or expiry of this Lease).

#### To the extent of any inconsistency between this Lease and the State Funding Agreement (such as to interfere with the intended operation of this clause 6.1), then the provisions of the State Funding Agreement will prevail.

## Name of Facility

#### The Lessee must operate the Facility under whatever name the Lessor lawfully requires.

#### If it requires the Lessee to operate the Facility, or not to operate it, under a particular name:

##### the Lessor must notify the Lessee of the requirement; and

##### the Lessee will be bound by the requirement upon receiving the notice.

## Business Hours

#### The Lessor will determine from time to time the business hours for the Facility.

#### The Lessor will notify the Lessee of those hours.

## Availability of Facility

#### Subject to any specific provision of this Lease to the contrary, the Lessee must keep the Facility open and available for the hire of caravan sites, camping sites and cabins (and their ancillary facilities) by the members of the public.

## Notice of Fees

The Lessee must display at a conspicuous location near the main entrance to the Facility, and in its office at the Facility, a notice or notices detailing at least the current fees payable for the hire of cabins, caravan sites and camping sites, and the use of ancillary or other facilities, at the Facility.

## Standards for Conduct of Business

#### The Lessee must conduct the Permitted Use competently and reputably, with due respect for the rights and interests of others.

#### The Lessee must pay its creditors and employees promptly, and collect without delay money owing by its debtors.

#### The Lessee must comply promptly and diligently with the requirements of all Acts regulating use of the Facility, particularly those of the *Manufactured Homes (Residential Parks) Act 2003* (where applicable) and the *WHS Act*.

#### The Lessee must ensure that the Facility office or telephone is attended during business hours, to provide information, take bookings, and receive payments.

#### The Lessee must ensure that use of the facilities at the Premises is properly and adequately supervised or monitored, to ensure the safety of persons and property.

#### The Lessee must conduct itself, and ensure that its Personnel conduct themselves, in a manner that maintains or enhances good public relations, particularly with persons attending the Facility.

#### In particular, the Lessee must not do or permit, upon the Premises, anything:

##### that is unlawful;

##### that might affect adversely, or reflect unfavourably upon, the business or reputation of the Lessor or the Premises;

##### that might confuse, mislead, or deceive the public; or

##### that is annoying, noxious, or offensive to the Lessor or persons outside or beyond the Premises.

#### The Lessee also must not cease operating the Facility during the Term.

## Assumption of Risk by Lessee

#### The Lessee will occupy and use the Premises at its own risk, and the Lessor will not be liable for Harm to Lessee Property.

#### Further, the Lessor will not be liable for loss of profits resulting from that Harm.

#### However, this Clause 6.7 does not exclude Lessor liability where the damage results from Lessor default or neglect.

## Compliance with Statutory Requirements

#### The Lessee must perform punctually the relevant requirements of all Acts that regulate its occupation and use of the Premises.

#### In particular, the Lessee must use the Premises in compliance with:

##### all Acts governing fire safety;

##### the lawful requirements of the Queensland Fire and Emergency Service;

##### all relevant industrial awards and agreements;

##### in compliance with the relevant requirements of the Planning Scheme; and

##### in compliance with the conditions of any relevant Development Permit.

#### Further, the Lessee must not do anything[[16]](#footnote-16) that might render the Lessor liable to incur:

##### a penalty prescribed by an Act; or

##### a Cost generated by the necessity to discharge a requirement under an Act.

## Exclusion of Structural Work

Despite Clause 6.8, the Lessee is not obliged to undertake Structural work upon the Premises, other than work necessitated by:

#### the carelessness, neglect, or default of the Lessee or its Personnel;

#### the nature of the Permitted Use; or

#### the number or sex of the employees or persons occupying and using the Premises.

## Promotion of Facility

The Lessee must:

#### actively promote the Facility as an ideal caravan park offering accommodation to the travelling public; and

#### if required by the Lessor, actively assist the Lessor to advertise and promote the Facility.

## Personnel

#### The Lessee must ensure that the Facility is operated and managed personally by the Lessee and/or by the Lessee’s own Personnel.

#### The Lessee must ensure that, save to the extent reasonable security measures otherwise require, all Facility staff (including the Lessee) seen by the public in the course of their duties at the Facility:

##### are neatly attired; and

##### wear clearly visible identification as Facility staff.

## Consultation between Parties

#### Whenever the Lessor requests it to do so, the Lessee must meet with and consult the Lessor’s chief executive officer, or their delegate, concerning:

##### operations at the Facility; and

##### pursuit and achievement of the Lessor’s objectives for the Facility.

#### The Lessee must:

##### consult fully and openly at each meeting; and

##### work with and assist the Lessor in formulating concepts for development and improvement of the Facility.

#### Without limitation, the Lessee must make available at each meeting any reports or material the Lessee requests.

## Public Relations/Courtesy

#### The Lessee must conduct itself, and ensure that its Personnel conduct themselves, in a manner that maintains or enhances good relations with persons attending, using, or seeking to use the Facility.

#### In particular, the Lessee must:

##### answer promptly and courteously all correspondence it receives concerning the Facility;

##### engage courteously and constructively with community members to consider, in conjunction with the Lessor, any proposals they might advance for enhancing or improving the utility of the Facility as a community‑significant facility; and

##### deal promptly, courteously, and efficiently with all complaints it receives concerning the Facility.

## Provision of Information Generally

#### The Lessee must provide promptly any information or report the Lessor requests of it from time to time concerning the Facility and its operation pursuant to this Lease.

#### The Parties acknowledge that the information and reports the Lessee provides in response to a Lessor request will be commercially sensitive, and they covenant to receive and treat the information/reports as confidential information.

## Overloading

#### The Lessee must not place on any interior or exterior surface of any Building, without Lessor consent, an item the weight of which will or might exceed the load‑bearing capacity of the surface.

#### The Lessor will give its consent only where the item:

##### is reasonably necessary for conduct of the Permitted Use; and

##### will not cause, or is unlikely to cause, in the Lessor's opinion (reasonably held), damage to the Building or the Premises.

#### The Lessee must:

##### promptly rectify damage to the Premises resulting from its use of a heavy item; or

##### reimburse the Lessor upon demand the expenses the Lessor incurs in rectifying that damage.

## Damage to/Misuse of Premises

The Lessee must:

#### refrain from damaging, misusing, or overloading any Service or other component of the Premises;

#### ensure that its Personnel do likewise; and

#### take all reasonable steps to ensure that patrons and visitors do likewise.

## Use of Services

#### The Lessee must not use a Service, or permit its use, for a purpose other than one for which the Service is designed and constructed.

#### In particular, the Lessee must ensure that no deleterious substances (for example, sweepings, rubbish, rags, or ashes) are placed in water or sewerage apparatus or in air-conditioning apparatus.

#### Except to the extent the Lease permits, the Lessee must not interfere with a Service without Lessor consent.

## Light and Power

Other than during a period of power failure or power restriction (when it may use auxiliary power or lighting other than an exposed flame), the Lessee may use only light, power, or heat generated by electric current supplied through meters.

## Dangerous Items and Activities

#### Subject to any express provision to the contrary, the Lessee:

##### must not use or store dangerous goods at the Premises, or permit their storage there;

##### must not conduct a dangerous activity at the Premises, or permit such an activity to occur there without the Lessor’s approval and without a relevant authorization, consent, or licence required under an applicable Act.

#### This Clause 6.19 does not apply to cleaning fluids, fuels, and other materials necessary for operating the Facility under this Lease, where proper safety procedures and the requirements of applicable Acts are observed in the storage and use of those item.

## Inventory

#### The Lessee must maintain at the Premises a fully detailed and up to date inventory of all buildings, fixtures, fittings, and chattels forming part of the Premises and the Facility.

#### Without limitation, the inventory must detail ownership, age, condition, Maintenance dates, recommended replacement date, and location, of each item.

#### The Lessee must make the inventory available to the Lessor upon request.

#### The Lessor may require the Lessee to amend any detail in the inventory (for example, a description of the condition of an item or its recommended replacement date).

#### The Lessee acknowledges that the items detailed upon the inventory in the Appendix:

##### are located at the Premises; and

##### are and will remain Lessor Property.

## Loss of Property

#### The Lessee must take all reasonable precautions to prevent theft or loss of property from the Property.

#### The Lessee must report promptly to the Police and to the Lessor every theft or unexplained loss of property from the Property.

## Lighting

The Lessee must keep the Facility fully and safely illuminated by electric lights at all times when natural light is inadequate to ensure their safe use.

## Plant and Equipment

#### The Lessee must use the plant and equipment the Lessor has provided for day to day Facility operation.

#### The Lessor must not withhold permission unreasonably, or grant permission subject to an unreasonable condition.

## Preservation of Insurance Protection

#### Other than in the ordinary course of conducting the Permitted Use, the Lessee must not do or permit to occur upon the Premises anything that it knows, or ought reasonably to know:

##### will or might render void or voidable a policy of Lessor insurance over the Premises or over property kept there; or

##### will or might increase a premium payable upon the insurance.

#### Without prejudicing the Lessor's entitlement to terminate the Lease for breach of this Clause 6.19, the Lessee must pay the Lessor upon demand an insurance premium increase occasioned by such a breach.

## Keys

#### The Lessor will supply the Lessee the Keys reasonably required by the Lessee to access the Premises.

#### The Lessee must not permit the production of duplicate Keys without Lessor consent.

#### The Lessee must give the Lessor from time to time a list of all Lessee Personnel who possess Keys (including permitted duplicates).

#### The Lessee must promptly report to the Lessor the loss of a Key.

## Changing Locks

#### The Lessee must ensure that:

##### no locks at the Premises are changed without the Lessor’s consent; and

##### any additional locks installed at the Premises are keyed into the master key system (if any) for the Facility.

#### For clarity, this Clause 6.26 does not apply to locks on patron caravans and other patron equipment.

## Auction Sales

The Lessee must not hold upon the Premises:

#### an auction; or

#### an end‑of‑tenancy sale or a liquidation, relocation, fire, or similar sale.

## Amusement and Vending Machines

#### The Lessee must not install, or permit to be operated, within the Premises, without Lessor consent:

##### an amusement or electronic games machine; or

##### a vending machine.

#### The Lessor must not withhold consent unreasonably in relation to a vending machine.

#### Otherwise, however, the Lessor may withhold or withdraw consent at its discretion.

## Audio and Vision Equipment

#### The Lessee must not operate upon the Premises, or permit to be operated there, without Lessor consent, a musical instrument or audio or audio‑visual equipment.

#### However, that prohibition applies only if, in the Lessor’s opinion, reasonably held, the sound is or is likely to be obtrusively audible, or the picture is or is likely to be obtrusively visible:

##### beyond the caravan, camp site or building in which it is being operated; or

##### beyond the Premises.

## Burning Rubbish

The Lessee must not burn anything upon the Premises, or permit anything to be burnt there, other than wood burned in the use of barbeque equipment or the designated fire pit.

## Security

The Lessee must ensure that the doors, windows, and other openings through which it is possible (irrespective of difficulty) to access or leave the Premises are locked securely at all times when the Premises are unattended.

## Vehicles

For clarity, the Lessee must ensure that the Vehicles it uses, and those used by its Personnel, at the Premises are:

#### registered in compliance with the Transport Operations (Road Use Management) Act 1995;

#### structurally and mechanically sound; and

#### operated responsibly and competently, by appropriately licensed personnel.

## Social Media

#### The Lessee acknowledges that the Lessor is the owner of any Facebook or other internet site relating to the Facility.

#### The Lessee must not make any public announcements in respect of the Lessor or any aspect of this Lease (including its terms) via social media such as Facebook or Twitter without the prior written approval of the Lessor.

#### The Lessee must moderate social media in respect of the Facility by:

##### regularly monitoring official social media applications administered by the Lessee;

##### exercising responsible management of external comments prior to them being made public.

##### removing any derogatory comments immediately on the Lessee becoming aware of such comments; and

##### ensuring all of the Lessee’s comments involving the Lessor are approved by the Lessor prior to posting on social media.

#### Upon termination of this Lease, the Lessee must provide to the Lessor all usernames and passwords to social media and other internet sites relating to the Facility.

#### The Lessee may not access internet sites relating to the Facility after the expiration or termination of this Lease.

## Customer Surveys

#### The Lessee must conduct from time to time, when directed by the Lessor, a survey of Facility patrons.

#### The Lessee must conduct the survey:

##### in the manner the Lessor requires; and

##### to acquire the statistical information the Lessor requires,

#### The Parties acknowledge that the survey reports will be commercially sensitive, and covenant to receive and treat the reports as confidential information.

## Existing Condition and Fitout

#### The Lessee accepts the Premises in the condition the are in as at the Commencement Date, with the Existing Fitout in situ, and the Lessor is not required to undertake any work in relation to the removal of any Existing Fitout from the Premises.

#### The Lessee acknowledge the Existing Fitout left in the Premises by the Lessor and that the Lessor gives no warranty as to the condition or suitability of the Existing Fitout

#### The Lessee indemnifies the Lessor against all Harm arising during or after the Term in relation to the Existing Fitout, except the extent caused of contributed to by the Lessor’s default or negligence.

#### In this clause ‘**Existing Fitout’** means fitout, fitting and equipment installed in the Premises by the Lessor and remaining in the Premises as at the Commencement Date in accordance with the appendixed Inventory of Lessor Property.

# Cleanliness and Maintenance

## Cleaning / Hygiene

The Lessee must:

#### keep the Premises clean and tidy, particularly washrooms and toilets and operating equipment;

#### in particular, ensure washrooms are adequately supplied with toilet requisites;

#### not allow rubbish or derelict items to accumulate within the Premises;

#### maintain all food preparation and storage areas and facilities free from grease, spillage, and pests, to ensure the highest practical standards of cleanliness and hygiene;

#### take all reasonable measures to prevent the incidence and spread of disease within the Premises; and

#### (without limitation) promptly remove graffiti, and otherwise repair damage caused by vandals, within the Premises and upon external walls and other structures.

## Blockages and Cleansing

Without limitation, the Lessee must:

#### keep clean and flowing to optimum capacity, all pipes, drains, water closets and other apparatus at the Premises;

#### keep clean and disinfected all surfaces of the Premises that are subject to fouling, including particularly toilets and concourses, by regular and effective use of soap, cleansers, and disinfectants; and

#### notify the Lessor of blockages occurring beyond the Premises, in pipes, drains, and other water conduits that serve the Premises.

## Refuse Disposal

#### The Lessee must supply and maintain covered refuse bins for the collection and storage of refuse within the Premises.

#### The Lessee must remove from the Premises daily all wet refuse generated upon the Premises.

#### The Lessee also must remove regularly from the Premises all cartons, containers, packing materials, and other waste items that the local government does not remove, to avoid its accumulation into an eyesore or a fire or health hazard.

## Vermin and Pests

The Lessee must keep the Premises free of vermin and pests (for example, rodents, termites, and cockroaches)

## Infectious Diseases

If it discovers, or possesses reasonable grounds for believing or suspecting, there is present upon the Premises an infectious disease that requires notification under an Act, the Lessee must:

#### notify the proper authority or authorities as required by the Act;

#### notify the Lessor; and

#### fumigate and disinfect the Premises thoroughly.

## Maintenance of Premises (General)

#### The Lessee must ensure proper Maintenance of the Premises, to keep them in at least the repair, working order, and condition in which they existed at the Commencement Date save for fair wear and tear.

#### Fair wear and tear does not include damage or deterioration consequent upon failure to address the effects of the fair wear and tear.

*Example: Damage to/deterioration of floor covering from penetration of water through a deteriorated window seal. The deterioration in the seal may be the result of fair wear and tear. The damage to the floor covering is not*.

#### Without limitation, the Lessee's obligation to Maintain the Premises includes:

##### rectifying damage to the Premises;

##### replacing broken glass;

##### replacing inoperative or damaged light bulbs or other illumination sources within the Premises;

##### repairing or replacing (as necessary) Lessor Property damaged by the Lessee or its Personnel (which repair or replacement may be, at the Lessor's option, effected by the Lessor at the Lessee's expense);

##### maintaining in good repair Lessor Property within or exclusively serving the Premises, including (where the Lessor reasonably requires it) entering and maintaining service contracts with persons the Lessor approves;

##### ensuring that Electrical Equipment and Electrical Installations connected to the source of electricity supply in the Premises are kept free of defects likely to cause fire or electric shock;

##### keeping cleansed, free of blockage, and flowing to optimum capacity, all pipes, drains, water closets and other conduits at the Premises;

##### keeping cleansed and disinfected all surfaces that are subject to fouling, including particularly change rooms, shower facilities, toilets, and concourses, by regular and effective use of soap, cleansers and disinfectants; and

##### remove any trees deemed to be a nuisance.

## Excluded Maintenance Items

Clause 7.6 does not oblige the Lessee to repair:

#### inherent defects in the Structure of the Premises or a Building;

#### inherent defects in the Lessor Property; or

#### in the absence of its carelessness, negligence or default, Structural defect and Structural damage.

## Licensed Personnel

#### For this Clause 7.8, *licensed personnel* are appropriately skilled persons licensed under an Act to perform the relevant work.

#### The Lessee must ensure that licensed personnel attend to all installation and Maintenance work upon the Premises concerning:

##### water supply, sewerage, and drainage apparatus;

##### electrical and mechanical apparatus;

##### buildings and other structures;

##### vermin and pest control;

##### wildlife removal;

##### other things for which the application of formally‑accredited skill is necessary or prudent.

## Repainting

#### During the last 3 months of the Term, and at any other time it is reasonably required by the Lessor to do so, the Lessee must repaint or re treat:

##### at its own expense (including the cost of paint and other material); and

##### to the Lessor’s satisfaction (in which respect the Lessor must act reasonably),

those surfaces of the Premises that are painted or otherwise treated.

#### The Lessee must use, for the purpose of repainting or re treating the Premises, paints or materials:

##### of at least the same quality; and

##### in at least the same quantities (in terms of the number of coats),

as those with which the relevant surfaces were previously painted or treated.

#### If the Lessee fails to discharge its obligations under Clauses 7.9(1) and 7.9(2), the Lessor may perform the work at the Lessee's expense.

## Notice of Damage

Upon becoming aware of it, the Lessee must notify the Lessor promptly of:

#### damage to the Premises;

#### the defective operation of a Service to the Premises; or

#### an unsafe condition of the Premises or of a Building.

## Landscaping and Gardening

The Lessee must:

#### keep the Premises free of long grass, noxious plants, and other weeds;

#### water and fertilize all plants;

#### replace plants that die or are destroyed;

#### plant trees and lay grass upon the Premises, and otherwise landscape them, as required by the Lessor;

#### Maintain throughout the Term, to the Lessor's satisfaction, what it has been completed under Clause 7.11(4); and

#### remove any trees deemed to be a nuisance or dangerous having regard to any legislative requirements (for example cultural heritage or environmental requirements).

## Environmental Protection

#### The Lessee must not dispose, or permit the disposition, of any substance or item (including refuse, garbage, oil, or a chemical):

##### into a watercourse; or

##### onto land (in contradistinction to deposition into an appropriate, dedicated receptacle).

#### Without limitation, disposition of a substance occurs if the substance leaks, or is washed, blown, or otherwise conveyed.

#### The Lessee must:

##### use all reasonable endeavours to overcome or minimize environmental harm arising from its use of the Premises; and

##### rehabilitate any watercourse, and any area of the Land or any other land, suffering environmental harm resulting from its use of the Premises and any other area of the Land.

## Boundary Fences

Irrespective of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Lessee is responsible for constructing and repairing whatever fences bound the Premises.

# Alterations

## Necessity for Lessor Consent

#### The Lessee must not make, without Lessor consent, an alteration or addition to the Premises (including a Service or other Lessor Property).

#### This Clause 8.1 applies irrespective of whether the alteration is necessary to enable the Lessee lawfully to conduct or continue conducting the Permitted Use.

*Example: An alteration required because of the number or sex of the persons working upon the Premises.*

#### A request for consent must be accompanied by detailed and complete:

##### drawings and specifications of the proposed work; and

##### particulars of the materials to be used.

#### The Lessor must not withhold its consent if the alteration will not cause demonstrable and permanent Harm to the Premises, and, in any event, must not withhold its consent unreasonably.

#### The Lessee must not vary the drawings, specifications and materials the Lessor has approved unless the Lessor approves the variation.

#### The Lessor must not withhold or delay its approval unreasonably.

#### The Lessee will indemnify the Lessor against whatever Cost results from or in connection with Harm attributable to the alteration, irrespective of Lessor consent.

## Performance of Work

#### The Lessee must perform at its own expense whatever work the Lessor approves for performance by it upon the Premises.

#### The Lessee will indemnify the Lessor against every Cost borne of Harm arising from performance of the work.

## Vesting of Fixed Improvements

Fixed Improvements that the Lessee constructs or installs upon the Premises become part of the Land from the time of their construction or installation.

## Severance of and Removal Fixed Improvements

#### The Lessee may not sever a Fixed Improvement from the Premises unless:

##### the Lessor approves the severance; or

##### the Lessor requires the Lessee to sever or remove the item.

#### Mere severance from the Premises does not re‑vest a Fixed Improvement in the Lessee.

#### If the Lessee wishes to sever or remove a Fixed Improvement it has made to the Premises, it must apply for Lessor permission, before the Expiry Date.

#### An application for permission to remove a Fixed Improvement must detail fully:

##### the improvement;

##### how the Lessee proposes to sever and remove the improvement; and

##### how the Lessee proposes to repair damage caused or likely to be caused by the severance and removal, and to Reinstate the Premises to the condition required by Clause 14.5 (including, where applicable, how it will perform necessary landscaping or land stabilization work).

#### The Lessor may grant or refuse consent to the application:

##### in its absolute discretion;

##### conditionally or unconditionally; and

##### without giving reasons.

#### The Lessee must:

##### comply strictly with the requirements (if any) the Lessor imposes concerning the severance and removal process;

##### ensure that the improvement is severed and removed, and all relevant repair and reinstatement work is completed, to the Lessor’s satisfaction (acting reasonably); and

##### the severance and removal is completed not later than 30 days after the date of termination.

#### Irrespective of any conditions of consent imposed by the Lessor, severance and removal must be completed not later than 30 days after the Expiry Date or the date the lease otherwise terminates.

#### The Lessee will lose its entitlement to sever and remove any relevant improvements that remain upon the Premises after the 30‑day period expires.

#### Without limiting the effect of any other provision in this Clause 8.4: if it severs and removes a Fixed Improvement, the Lessee must:

##### clear from the Land what it has severed, including all debris created by the severance and removal; and

##### leave the Land clean and tidy,

to the Lessor’s satisfaction.

## Signs

#### The Lessee must not paint or place, without Lessor consent, a sign or hoarding upon the Premises.

#### The Lessor must not withhold unreasonably its consent for a sign or hoarding customary for the Permitted Use if the sign or hoarding complies strictly with the lawful requirements (if any) of the Lessor and every other relevant authority.

#### Upon expiry or sooner termination of the Lease, the Lessee must remove promptly each sign or hoarding it has painted or placed upon the Premises.

#### Other than where their destruction results in termination of the Lease, the Lessee must restore the Premises to the condition in which they existed immediately before the sign or hoarding was painted or installed.

## Damage/Defacement

#### The Lessee must not deface, mark, or insert nails, screws, or hooks into, a surface of the Premises (other than a tenant fixture or other Lessee Property) without Lessor consent.

#### The Lessor must not withhold consent unreasonably.

#### The Lessee must pay the Lessor upon demand all reasonable costs of repairing or reinstating to its former condition every surface defaced, marked, or otherwise damaged by the Lessee in breach of this Clause 8.6.

# Lessor Benefit Covenants

## Indemnity and Discharge

#### The Lessee will indemnify the Lessor against every Cost incurred directly or indirectly from an occurrence upon or about the Premises, referable at all to the Lessee’s use or occupation of, or presence upon, the Premises,[[17]](#footnote-17) including (for example):

##### non‑timely performance of a Lessee obligation under the Lease, particularly an obligation the breach of which would place the Lessor in breach of an equivalent obligation under a head‑lease over the Premises;

##### negligent or improper use of a Service by the Lessee or its Personnel;

##### escape (by leakage, overflow, or other cause) of water, fire, electricity, gas, or other harmful agents;

##### Lessee failure to notify the Lessor of defect in a Service if the Lessee is, or ought reasonably to be, aware of the defect; and

##### improper or faulty transportation or installation of Lessee Property to or upon the Premises.

#### The indemnity does not extend to Costs borne of Claims for Harm resulting from the Lessor’s carelessness or wilful act.

#### The Lessee releases and discharges the Lessor from liability to it upon any and every Claim the subject of its indemnity in this Clause 9.1.

## Interruption of Services

The Lessee will possess no remedy against the Lessor if:

#### a Service is malfunctioning, partially or wholly inoperative, or unavailable (other than through Lessor default); or

#### the Lessor has withdrawn the Service:

##### for Maintenance or replacement; or

##### to comply with an Act.

## Suitability of Premises

#### The Lessee acknowledges that:

##### save as recorded in writing before it executed the Lease; and

##### irrespective of whether the Lessee notified the Lessor of the business the Lessee proposed to conduct upon the Premises,

the Lessor has given it, and gives it, no suggestion or assurance that the Premises:

##### are suitable or adequate for the Permitted Use or the Lessee's purposes; or

##### satisfy relevant requirements of any Act or Development Permit.

#### The Lessee waives the benefit of every warranty implied by law about the suitability, fitness, or adequacy of the Premises.

## Disclosure of Insurance‑relevant Information

The Lessee assures the Lessor that it disclosed all Insurance‑relevant Information to the Lessor in writing before the Lessor entered the Lease.

## Condition Precedent to Lessor Liability

Irrespective of a rule of law, and a provision of the Lease, to the contrary, the Lessor will not be liable to the Lessee for any Cost resulting from or referable to Lessor neglect or default unless:

#### the Lessee gives the Lessor notice of that neglect or default; and

#### without reasonable cause, the Lessor fails to take appropriate remedial action within a reasonable time.

## Foreign Interests Legislation

The Lessee assures the Lessor:

#### it has complied with all requirements of the *Foreign Interests Acts* governing its entitlement to enter the Lease or otherwise to occupy the Premises; and

#### it will continue to do so as long as it continues to occupy the Premises (whether during the Term, or while holding over[[18]](#footnote-18) after the Term expires, or otherwise).

## Change of Ownership/Concurrent Lease

#### If a person other than the Lessor becomes the owner of the Premises, the change of ownership will release the Lessor from further obligation under this Lease (but, for clarity, not from obligations acquired before the change of ownership).

#### If a person other than the Lessor becomes a concurrent lessor of the Premises:

##### the concurrent lessor will acquire the Lessor's obligations under the Lease; and

##### the Lessor will be released from those obligations for the duration of the concurrent lease.

#### For clarity, obligations the Lessor acquires before a change of ownership or the commencement of a concurrent lease will continue to bind the Lessor despite the change of ownership or grant of the concurrent lease).

## Appropriating Premises (Plebiscites and Emergencies)

#### If required by the Lessor, the Lessee must make the Premises available without fee:

##### on the day of a plebiscite,[[19]](#footnote-19) or

##### during a civil emergency,

for use by the Lessor or by an organization or organizations the Lessor nominates.

#### A *civil emergency* is an event beyond the Parties’ control:

##### that adversely affects, or may adversely affect, the safety and amenity of persons and property within the Region or a community or area within the Region; and

##### that requires immediate governmental response to avert or minimize or ameliorate large‑scale Harm.

#### Specific examples of civil emergency are:

##### natural disaster (for example, flood, bushfire, cyclone);

##### broad‑scale conflict (for example, war, terrorist action, rioting);

##### small‑scale conflict (for example, siege or sniper activity)

##### transportation disaster (for example, aviation, maritime, or rail crash disaster).

#### On the day of the plebiscite, the Lessor or the nominee body or bodies may use the Premises to conduct polling, counting, and other plebiscite‑related activities.

#### During the civil emergency, the Lessor or the nominee body or bodies may use the Premises:

##### to provide shelter or other relief to the displaced, the injured, or the endangered;

##### as a storage, logistics, or communications facility; or

##### for any other emergency‑response purpose for which the Premises are suitable (including, for example, a temporary mortuary).

#### The Lessor must give the Lessee reasonable notice that the Premises are required for use under this Clause 9.8.

#### The Lessee acknowledges that, in a civil emergency, short notice may be reasonable notice.

# Lessee Insurance

* 1. **Independence of Obligations**
     + 1. The insurance obligations in this Part 10 are independent of the Lessee's indemnity obligations under this Lease.
       2. Accordingly, the limits of those indemnity obligations do not confine or limit the insurance obligations nor do the insurance obligations confine or limit those indemnity obligations.

## Types of Insurance

#### The Lessee must maintain throughout the Term:

##### a Damage Policy; and

##### a Business Interruption Policy;

##### a Public Liability Policy; and

##### any other insurance cover the Lessor reasonably requires.

#### The Lessee also must maintain cover under the *Workers Compensation Act* for all of its Personnel and other workers at the Premises.

## Damage Policy

The Damage Policy must cover:

#### all Lessee Property; and

#### all other insurable items located upon the Premises, including plate glass, other than items that the Lessor is responsible for insuring under this Lease.

for full reinstatement or replacement cost, including at least the Remedial Expenses.

## Public Liability Policy

#### The Public Liability Policy must provide per‑claim indemnity of not less than the sum specified at Item F.

#### The Lessor may require from time to time, but not more frequently than once every 3 years, that the Lessee increase the level of its cover under the Public Liability Policy to the sum nominated in a notice (an *escalation notice*) to the Lessee.

#### In determining the extent of an increase in the level of indemnity under the Public Liability Policy, the Lessor must act reasonably and by reference to demonstrable changes in the real value of damages awards.

#### Upon service of an escalation notice, the sum specified in the notice will be deemed the indemnity level specified at Item F.

#### The Lessor may not give an escalation notice earlier than the third anniversary of the Commencement Date.

## Business Interruption Policy

The Business Interruption Policy must provide indemnity sufficient to enable the Lessee to meet its obligations:

#### to pay rent and other money due under the Lease; and

#### to maintain the Premises,

whenever the Lessee is substantially unable to undertake the Permitted Use upon the Premises.

## Insurers

#### Each policy of general insurance this Part 10 requires must issue from:

##### a registered insurer that the Lessor approves; or

##### an exempt captive insurer that the Lessor approves.

#### A *registered insurer* is an entity licensed under the *Insurance Act 1973 (Cwlth)* to conduct general insurance business.

#### An exempt captive insurer is a captive insurer for a corporate group to which the Lessee belongs, which insurer the Australian Prudential Regulatory Authority has exempted from regulation under the *Insurance Act 1973 (Cwlth)*.[[20]](#footnote-20)

#### For clarity, the Lessor may refuse to approve an insurer that holds a financial strength rating lower than:

##### from A.M. Best Company:  A minus;

##### from Standard & Poor’s:  A minus;

##### from Moody’s:  A3; or

##### from Fitch Ratings:  A minus.

#### The Lessee must give the Lessor upon request, for each policy of general insurance under this Part 10, evidence confirming the insurer's current financial strength rating.

## Common Policy Requirements

#### This Clause 10.7 applies to each of the Damage Policy and the Public Liability Policy.

#### Each policy must be occurrence‑based; that is to say, it must provide indemnity upon each claim made after expiry or cancellation of the policy where the event precipitating the claim occurs during the term of the policy (irrespective of whether the occurrence is one of a series arising from or in connection with the same event).

#### Each policy must expressly insure the Lessor as a third party beneficiary, whether by name or as a member of a specified class of beneficiary:

##### covering the Lessor for its interests and entitlements under the Lease; and

##### enabling the Lessor to make claims under the policy, and to enforce it, directly against the insurer.

#### For clarity, a policy must not merely note the Lessor as a party with an insurable interest in the Premises.

#### Each Policy must:

##### cover the Parties and their Personnel for their respective rights, interests, and liabilities connected with the Premises and the Lease;

##### treat each Party as if the Party were issued a separate or individual policy;

##### contain a Cross‑liability Provision, a Non‑imputation Provision, and a Subrogation Waiver;

##### provide automatic limit‑of‑indemnity reinstatement following payment of a claim;

##### cover each insured against upon Claims resulting or arising from its own negligence; and

##### contain no provisions (particularly exclusions, endorsements, or alterations) that the Lessor reasonably disapproves.[[21]](#footnote-21)

## Notices from Insurer

If it receives a notice from the insurer under a policy that also covers the Lessor, the Lessee must give the Lessor promptly a copy of that notice.

## Policy Changes

The Lessee must not pursue or agree, without Lessor consent, a change to any policy the subject of this Part 10.

## Excesses

If a policy that covers the Lessor requires the insured to pay a claims excess, the Lessee will indemnify the Lessor against whatever Cost the Lessor reasonably incurs because of the requirement.

## Payment of Premiums

The Lessee must ensure the prompt payment of all premiums and other money (for example, duty and GST) due to any person or authority upon or concerning the insurance it is obliged to maintain.

## Proof of Insurance

#### The Lessee must give the Lessor, whenever the Lessor reasonably requests it to do so:

##### a copy of each insurance policy that covers the Lessor;

##### a certificate of currency of each such policy; and

##### a certificate of currency of its *Workers Compensation Act* policy.

#### Each certificate of currency must issue from the insurer, not from the Lessee's broker.

#### The Lessee must comply with the Lessor's request not later than 7 days after the Lessor makes the request.

## Failure to Insure

If the Lessee fails to maintain insurance as this Part 10 requires:

#### the Lessor may obtain or maintain the insurance; and

#### the Lessee must reimburse the Lessor upon demand whatever Cost the Lessor incurs in the exercise of that entitlement.

## Acting Reasonably

#### The Lessor may not delay or withhold unreasonably an approval under this Part 10.

#### The Lessor may not require unreasonably the inclusion, retention, modification, or exclusion of an insurance policy provision.

## Settlement of Claims

#### The Lessee must not pursue a claim under a policy if the Lessor (acting reasonably) notifies it that the Lessor has elected to pursue the claim.

#### If it elects to pursue the claim, the Lessor must:

##### pursue the claim diligently; and

##### make every reasonable effort to ensure that each insured Party receives from the insurer no less than its entitlement under the policy.

# Assignment, Subletting, Encumbrance

## Dealings Requiring Consent

#### Each of the following Lessee actions is a Restricted Dealing:

##### assigning the Lessee’s interest in the Lease;

##### subletting the Premises or any portion of them;

##### parting with possession of the Premises; or

##### licensing a person to use the Premises.

#### While it is in default under the Lease, particularly default in the payment of rent or other money, the Lessee is not entitled to engage in a Restricted Dealing.

#### Irrespective of whether it is in default, the Lessee must not engage in a Restricted Dealing with a person proposing to conduct upon the Premises an activity other than a Permitted Use activity (whether or not in conjunction with the Permitted Use).

#### For clarity, the Lessee does not contravene this Clause 11.1 merely through permitting persons to enter the Premises in the ordinary course of visiting and transacting day‑to‑day business with it.

## Refusal of Lessor Consent (Lessee Default)

If it is not in default under the Lease, the Lessee may engage in a Restricted Dealing only if it possesses Lessor consent.

## Change in Shareholder Control

#### This Clause 11.3 applies if the Lessee is a corporation other than a Public Company.

#### A change in the shareholding of the Lessee that alters the effective control of the Lessee will be deemed a transfer of the Lessee's interest in the Lease.

#### The Lessee must not, without Lessor consent:

##### register the transfer of a share;

##### deal with a beneficial interest in a share;

##### issue a new share; or

##### take or attempt to take other action,

if the action will result in:

##### alteration to the effective control of the Lessee; or

##### the shareholders of the Lessee immediately preceding the transfer beneficially holding or controlling together less than 51% of the voting, income or capital participation entitlements in the Lessee.

## Pre‑requisites for Consent to Dealing

The Lessor is not obliged to consent to a dealing with the Lease if the Lessee fails to comply with this Part 11.

## Notice of Proposed Dealing

#### The Lessee must apply for Lessor consent under Clause 11.1 not later than 21 days before the due date for completion of the dealing.

#### The application must include, for a proposed assignment:

##### copies of all relevant contract documents;

##### full details of the other party or parties to the proposed dealing (if these are not contained in the contract documents);

##### a current statement of the proposed assignee's assets and liabilities;

##### the proposed assignee's business plan, including budgeted expenditures, income projections, and profit and loss projections; and

##### other relevant information the Lessor reasonably requests.

#### The application must include, for a proposed sublease:

##### a copy of the draft sublease instrument and of any related agreement;

##### full details of the other party or parties to the proposed dealing (if these are not contained in the draft sublease and related agreement/s); and

##### other relevant information the Lessor reasonably requests.

#### The Lessor may require that a Chartered Accountant or a Certified Practising Accountant prepares a proposed assignee’s statement of assets and liabilities and its business plan.

#### Subject to Clause 11.5(6), the Lessor must not disclose to a third person confidential information it receives from the Lessee pursuant to Clause 11.5(1).

#### Clause 11.5(5) does not prohibit disclosure to:

##### the Lessor's solicitor;

##### a barrister advising or representing the Lessor in a matter to which the information is relevant;

##### the Lessor's financier, or a financier from which the Lessor is seeking assistance;

##### a court of competent jurisdiction;

##### another party to litigation with the Lessor, where the disclosure is relevant to the issue in dispute and the Lessor is not entitled to claim privilege from disclosure; and

##### a person to whom the Lessor is required under an Act to make disclosure.

## Suitability of Proposed Assignee/Sub‑lessee

The Lessee must demonstrate to the Lessor's satisfaction (in which respect the Lessor must act reasonably) that a proposed assignee or sub‑lessee:

#### is respectable and responsible;

#### possesses sufficient financial substance to operate profitably and perform its obligations as tenant of the Premises;

#### will perform, in the case of a transferee, the Lessee's obligations under the Lease (or, in the case of a transferee by operation of Clause 11.3, or a sub‑lessee, will ensure their continued performance);

#### will conduct the Permitted Use competently (or in the case of a transferee by operation of Clause 11.3, or a sub‑lessee or licensee, will ensure continued competent conduct of the use);

#### is not likely, in the case of a sub‑lessee or licensee, to do anything that breaches a Lessee obligation under the Lease; and

#### is not likely (or certain) to cause, through its occupation or use of the Premises or its control of the Lessee (in the case of a transferee by operation of Clause 11.3):

##### a security risk to the Premises;

##### a loss of amenity within the Premises; or

##### a diminution in value of the Premises,

greater than that (if any) hitherto caused by the Lessee's occupation.

## Consent/Accession Agreements

Before completing a Restricted Dealing, the Lessee must execute, and ensure that the proposed assignee, sub‑lessee, licensee, or other relevant party, executes in favour of the Lessor, a deed of agreement, in the form the Lessor reasonably requires, containing:

#### (for an assignment) an assignee covenant to perform the Lessee obligations under the Lease, whether running with the Land or not;

#### (for a sublease or licence) a sub‑lessee or licensee covenant to perform its obligations under the sublease or licence and to refrain from causing or contributing to a Lessee breach of the Lease; and

#### a grant of the proposed assignee's, sub‑lessee's, or licensee’s power of attorney in favour of the Lessor, in terms analogous to those of the Lessee's power of attorney in the Lease.

## Guarantee (Accession Obligations)

#### The Lessee must arrange delivery of a guarantee and indemnity in the Lessor's favour if the Lessor reasonably requires it to secure or better to secure:

##### the performance of Lessee obligations by a proposed assignee of the Lessee’s interest in the Lease; and

##### the performance of a sub‑lessee’s or licensee’s obligations under the conditions of its deed of agreement with the Lessor.

#### The guarantee and indemnity:

##### must be in the form the Lessor reasonably requires; and

##### must be given by a person or persons acceptable to the Lessor.

#### The Lessor must not decline unreasonably to accept a proposed guarantor and indemnifier.

## Security over Lease

#### The Lessee must not Encumber the Lease.

#### However, the Lessor will not treat the Lessee as having breached this Clause 11.9 if the person granted the security executes a deed of agreement, in the form the Lessor requires, specifying the conditions upon which the grantee may:

##### deal with the Lessee’s interest in the Lease; and

##### enter and use the Premises to enforce its security.

## Excepted Finance Dealings

#### The Lessee need not obtain Lessor consent where it wishes to secure financial accommodation via Encumbrance of Lessee Property.

#### However, Clause 11.10(1) is not a Lessor consent to the Encumbrance.

#### Irrespective of the terms of the Encumbrance, absent Lessor consent, the financier will acquire no entitlement:

##### to enter the Premises; or

##### to deal with this Lease, the Premises, or the Lessee's interest in the Premises,

other than in compliance with the relevant provisions of this Part 11 (as if it were the Lessee).

#### The Lessee must bring this Clause 11.10 clearly to the attention of the encumbrancee before granting the Encumbrance:

## Accession Agreements

The Lessor's solicitors will prepare all agreements for execution pursuant to this Part 11.

## Lessor Expenses

The Lessee must pay the Lessor upon demand (irrespective of whether the relevant dealing is completed) the legal costs and other expenses the Lessor reasonably incurs:

#### investigating a proposed assignment of the Lease, or a proposed sublease, licence, security, or finance transaction, whether proposed or completed;

#### drawing, settling, executing, and stamping a related deed or other instrument; and

#### producing a certificate of title, or doing anything else necessary or requested, to facilitate Registration of the relevant dealing.

# Lessor Covenants

## Quiet Enjoyment

#### The Lessee may occupy and use the Premises without interruption from the Lessor, other than interruption the Lease permits, while:

##### it occupies the Premises under the Lease; and

##### it performs promptly its obligations under the Lease.

#### However, whilst it must not engage in conduct that causes the Lessee nuisance, the Lessor is not obliged to take action against any person to prevent that person from engaging in conduct that causes or may cause the Lessee nuisance.

## Registration of Lease by Lessor

Subject to Clause 4.10:

#### if the Term does not exceed 3 years, the Lessor will Register the Lease upon request by the Lessee; and

#### if the Term exceeds 3 years, the Lessor will Register the Lease without the necessity for a request from the Lessee.

## Insurance of Lessor Property

#### The Lessor will insure the Lessor Property against damage and destruction, with an insurer of its choice.

#### The policy will provide indemnity at the level the Lessor considers necessary (acting reasonably) to cover the Remedial Expenses.

#### The insurance may provide for such deductibles, exclusions, or qualifications, as its insurer requires.

#### The Lessor will be relieved of its obligations under this Clause 12.3 where its insurance indemnity entitlement is vitiated by:

##### an act[[22]](#footnote-22) of the Lessee; or

##### an act of a person upon the Premises with the Lessee's express or implied authority.

# Damage and Destruction

## Abatement/Suspension of Obligations

#### Without limiting Clause 13.4, if the Premises are destroyed, or damage to the Buildings renders the Premises wholly inaccessible or wholly unfit for the Permitted Use, the following Lessee obligations will be suspended until the Premises are rendered accessible and fit for the Permitted Use:

##### the obligation to pay the instalments of rent;[[23]](#footnote-23)

##### the obligation to pay the Rates and Utility Charges;[[24]](#footnote-24) and

##### the obligation to clean and Maintain the Premises.[[25]](#footnote-25)

#### The Lessee is entitled to that relief only if the destruction or damage is not the product of its wilful act, its neglect, or its default.

#### If the Premises are partially inaccessible or partially unfit for the Permitted Use, the obligations the subject of Clause 13.1(1) will abate proportionally with the extent of the damage and diminution of utility until the Premises are rendered fully accessible and fully fit for the Permitted Use.

## Disputes (Nature/Extent of Damage)

Either Party may refer for determination by a Loss Adjuster[[26]](#footnote-26) a dispute about the nature or extent of damage or destruction the subject of Clause 13.1.

## Restoration of Premises

#### The Lessor is not obliged to repair or reconstruct the Premises damaged or destroyed.

#### However, if the Lessor:

##### fails to commence repair or reconstruction within 90 days after destruction or damage; or

##### having commenced the repair or reconstruction, fails to complete it diligently,

the Lessee may give notice requiring the Lessor to commence or continue the repair or reconstruction within 30 days after service of the notice.

#### If the requirements of the notice are not met, the Lessee may terminate the Lease by notice to the Lessor.

## Entitlement to Terminate after Destruction

#### If the Premises are destroyed or rendered wholly inaccessible or wholly unfit for the Permitted Use:

##### the Lessor may terminate the Lease if the damage/destruction results from the wilful act, the neglect, or the default of the Lessee;

##### otherwise, subject to Clauses 13.3(2) and 13.3(3), either Party may terminate the Lease.

#### Termination under Clause 13.4(1), must be effected by notice given not later than 30 days after the destruction or the relevant damage occurs.

#### The termination will not prejudice entitlements that have accrued to either Party beforehand.

## Entry by Lessor during Restoration

#### While repairing or reconstructing the Premises or the Building (if the Lease has not been terminated under Clause 13.4), the Lessor may enter the Premises to perform work necessary or reasonable for the purposes of the repair or reconstruction.

#### The Lessor may enter the Premises under Clause 13.5(1):

##### at reasonable times, upon reasonable notice to the Lessee;

##### with contractors, workmen and other necessary personnel, and all necessary materials.

#### The Lessor must not interfere unreasonably with the Lessee's (permitted) use of the Premises when it enters under Clause 13.5(1).

#### The Lessor need not reproduce the condition in which the Premises existed before destruction or damage, but the repairs or reconstruction must not result in a material diminution of the area and the standards of finish and appearance of the Premises, as they existed immediately before the damage or destruction.

## Continuity of Business

While the Premises are being reconstructed or repaired, the Lessee must continue the Permitted Use upon the Premises so far as it is practical to do so given:

#### the extent of the damage; and

#### the nature of the Lessee's business.

# Entitlements upon Termination

## Holding Over

#### If the Lessee continues to occupy the Premises after the Term expires, without Lessor objection and without entering a new lease,[[27]](#footnote-27) it will do so as a monthly periodic tenant.[[28]](#footnote-28)

#### The terms of the tenancy will be those of the Lease that adapt to a monthly periodic tenancy, as adapted.

#### The rent will remain payable in advance while the Lessee holds over.

#### The monthly rent payable by the Lessee while holding over will be the monthly rent instalment payable under the Lease immediately before the Term expired.

#### At any time while the Lessee holds over, the Lessor may review the rent, in accordance with the review process in Clause 4.1 (adapted as if the Term was further extended when the Lessee began holding over).

## Lessee's Fixtures

If it is not in breach of obligation under the Lease when it is to vacate the Premises, the Lessee may (and, if the Lessor requires, must) sever and remove from the Premises its tenant fixtures and other Lessee Property.

## Abandonment

#### The Lessor may treat as abandoned any tenant fixtures and Lessee Property that the Lessee fails to remove from the Premises:

##### either as‑of‑right or by Lessor requirement;

##### within 14 days after the Lessee vacates the Premises.

#### Though it may deal with as its own the items it treats as abandoned, the Lessor may recover from the Lessee as a debt the expenses the Lessor incurs in storing and disposing of those items. However, the Lessor must credit against those expenses whatever it receives upon disposal of the items.

#### For clarity, the Lessor need not account to the Lessee for any surplus of disposal proceeds over the expenses or storage and disposal.

## Return of Keys

#### Before it vacates the Premises, the Lessee must return all Keys (including duplicates) to the Lessor.

#### If the Lessee fails to return a Key after its entitlement to occupy the Premises ceases, the Lessor may:

##### decode the Key;

##### alter a Building security system;

##### change a relevant lock.

#### The Lessor may require the immediate return of a Key if, in the Lessor's opinion, its usage by the person holding it:

##### is compromising, or will or might compromise, the security of the Premises or a Building; or

##### is inconsistent with the operation of the Premises as a quality caravan park.

#### The Lessee must pay the Lessor upon demand the Cost the Lessor reasonably incurs in:

##### replacing a Key;

##### changing a lock; or

##### decoding a Key or altering a security system,

because the Lessee, or the person to whom the Key was issued at Lessee request:

##### has lost the Key (or an authorized duplicate); or

##### refuses to comply with a lawful request by the Lessor for return of the Key.

## Return of Possession

#### Subject to Clauses 13.3, 14.2, and 14.3, when it vacates the Premises, the Lessee must return them to the Lessor, properly Reinstated after severance and removal of tenant fixtures and other Lessee Property (whether the severance or removal is voluntary or by Lessor direction).

#### The Lessee’s obligation to Reinstate does not include repairing:

##### fair wear and tear;

##### inherent defects in the Premises; and

##### Structural damage not referable to its wilful act, its neglect, or its default.

# Reservations

## Entry to View/Perform Work

#### The Lessor may enter the Premises:

##### to view their condition; and

##### to verify the manner in which and purposes for which the Lessee is using them.

#### The Lessor also may enter the Premises to undertake alterations, repairs, or remodelling that:

##### it is required by law to undertake;

##### it wishes to undertake to ensure the preservation or safety of the Premises; or

##### the Lessee is obliged, but has failed, to undertake, in contravention of a notice from the Lessor requiring it to do the work.

#### The Lessor may enter the Premises to install apparatus:

##### to improve or enhance existing Services to the Premises; or

##### to provide future Services.

#### Further, the Lessor may enter the Premises to inspect, install, Maintain, remove, alter, or extend a Service.

#### The Lessee must make an Electrical Installation available, immediately upon demand, for inspection by or on behalf of the Lessor.

## Manner of Entry

#### The Lessor may enter the Premises under Clause 15.1 with contractors, workers and other staff, and all necessary materials, machinery and appliances.

#### However, the Lessor may enter only at reasonable times, and must not enter:

##### without giving the Lessee reasonable notice of its intention to do so (unless there is an emergency); or

##### in a manner that unreasonably inconveniences or interrupts the Lessee in its conduct of the Permitted Use.

#### The Lessor will be the sole judge of whether an emergency is occurring, but it must act honestly in making its judgement.

#### The Lessee or responsible members of its Personnel:

##### may accompany the Lessor and its Personnel while they are upon the Premises; but

##### must not interfere with activities being lawfully undertaken in exercise of Lessor entitlements under Clause 15.1.

## Inspection by Prospective Purchaser or Lessee

#### The Lessee will permit the Lessor:

##### at all reasonable times (but upon reasonable notice); and

##### in the company of the Lessee or a responsible member of its Personnel (if the Lessee desires),

to show the Premises to prospective purchasers or tenants of the Premises.

#### However, the Lessor will be entitled to show the Premises to prospective tenants only during the final 180 days of:

##### the Term (if the Lease is not being renewed); or

##### (if the Lease is renewed) the term of the renewed Lease.

#### In exercising its entitlement under Clause 15.3 the Lessor must not inconvenience or disturb the Lessee in its conduct of the Permitted Use more than is practical and reasonable.

#### Clause 15.3 will not apply if the Lessee is in breach of Clause 6.1[[29]](#footnote-29) at the time of the inspection.

## Grant of Easements

#### Subject to Clause 12.1, the Lessor may enter with:

##### an owner or occupier of land adjacent or near the Premises; or

##### a public authority,

arrangements or agreements to provide:

##### access over the Premises;

##### support for structures upon adjacent land; or

##### Services to the Premises or to adjacent or nearby land.

#### The Lessor may grant easements upon the terms and conditions it considers appropriate, for the purposes of this Clause 15.4.

#### However, for clarity, the Lessor must not exercise its entitlement under this Clause 15.4 in a manner that materially derogates from the entitlements it has granted to the Lessee under the Lease.

# Trustee Covenants

## Application of Part

This Part 16 applies if the Lessee holds the Lease as a trustee.

## Personal Liability

The Lessee acknowledges that it is personally liable upon its covenants under the Lease.

## Lessee Warranties

The Lessee declares that:

#### it is the sole trustee of the trust;

#### it has fully disclosed to the Lessor the terms of the trust;

#### it possesses unqualified power under the trust to enter the Lease;

#### it possesses unqualified power under the trust to assume all of its obligations as tenant;

#### it possesses unqualified entitlements to exoneration and recoupment from the trust assets for the liabilities it incurs in the exercise of its trustee powers;

#### the trust assets are, and it will ensure they remain, sufficient to satisfy those exoneration and recoupment entitlements;

#### it enters the Lease in the proper exercise of its trustee powers;

#### it is not in breach of trust when entering the Lease, except as disclosed in writing to the Lessor;

#### it will not breach the trust;

#### no action has been taken to terminate the trust, and none is proposed;

#### no beneficiary is presently entitled to trust assets.

## Prohibited Dealings

#### The Lessee must not engage in a prohibited trust dealing without Lessor consent.

#### The Lessor must not withhold consent unreasonably.

#### The Lessee engages in a prohibited trust dealing if:

##### it amends or revokes the trust, or permits amendment or revocation;

##### it retires, or suffers removal, as trustee of the trust;

##### it appoints a new or additional trustee of the trust, or permits the appointment;

##### it accelerates vesting or termination of the trust, or permits accelerated vesting or termination to occur;

##### it encumbers a trust asset; or

##### it does anything that will or might result in the diminution of its entitlement to indemnity from the trust assets or the beneficiaries;

##### it commits a breach of trust.

## Remedies upon Lessee Default

#### If it incurs a liability to the Lessor for default under this Lease, the Lessee must exercise, upon demand by the Lessor, all exoneration and recoupment entitlements it possesses against the trust assets and beneficiaries, to discharge the liability.

#### The Lessee grants the Lessor a security interest over all of those exoneration and recoupment entitlements, to assure the payment of all amounts that become owing to the Lessor under the Lease.[[30]](#footnote-30)

#### The Lessee irrevocably appoints the Lessor and each of the Lessor’s Officers, individually, its attorney to do in its name, on its behalf, anything the Lessor considers necessary to exercise those exoneration and recoupment entitlements pursuant to the security interest.

## Copy Trust Instrument

#### The Lessee must give the Lessor, upon request, a copy of the deed or deeds comprising the current trust constitution, to enable the Lessor to verify that the trust:

##### is properly constituted; and

##### otherwise meets the requirements of this Part 16.

#### The Lessor must treat the trust deed/s as confidential.

# Lessee Default and Termination

## Events of Default

#### The Lessee defaults under the Lease if:

##### it fails to perform an obligation the Lease imposes upon it (a *Lessee obligation*);

##### it commits an Act of Insolvency.

#### Failure to perform a Lessee obligation includes failure to comply with a condition of Lessor consent or permission granted under the Lease.

#### Failure to perform a Lessee obligation also includes failure by a third person (a person other than a Party) to perform an obligation to the Lessor under an agreement made between the third person and the Lessor to satisfy:

##### a Lessee obligation; or

##### a condition of Lessor consent or permission granted under the Lease.

## Remediable Default Entitlements

#### For a remediable Lessee default, the Lessor may exercise an entitlement arising from the default (whether under the Lease or at law) only if the Lessee fails to comply with a Default Notice.

#### A *Default Notice* for a remediable Lessee default is a notice from the Lessor to the Lessee:

##### specifying the default in reasonable detail; and

##### directing the Lessee to remedy the default by the date, or within the period, specified in the notice, which date or period must be reasonable.

## Irremediable Default Entitlements

#### For an irremediable Lessee default, the Lessor may exercise an entitlement arising from the default (whether under the Lease or at law) only after giving the defaulting Party a Default Notice.

#### A *Default Notice* for an irremediable Lessee default is a notice from the Lessor to the Lessee:

##### specifying the default in reasonable detail;

##### stating that the default is irremediable and why; and

##### stating the Lessor’s intention, or its requirements of the Lessee, arising from the default; or

##### reserving the Lessor’s rights arising from the default.

#### For clarity: the Default Notice may state that the Lessor terminates the Lease, in which event it must state the date by which the Lessor requires the Lessee to vacate the Premises.

## Remedies upon Default

#### If Clause 17.2 is satisfied, the Lessor may terminate the Lease without prejudicing the entitlements that have accrued to it for any earlier default by the Lessee.

#### Without limitation, the Lessor may effect the termination by retaking possession of the Premises, with or without notice.

#### If the default is a failure to pay money, or to perform an obligation, to a person other than the Lessor, the Lessor may:

##### pay the money or perform the obligation as the agent of the Lessee; and

##### recover from the Lessee as a debt all of the money it expends in doing so.

#### A Default Notice for failure to pay money under this Lease must allow the Lessee at least 14 days to pay.

## Entry without Forfeiture

#### If the Lessee vacates the Premises during the Term (whether or not it ceases to make rent and other payments under the Lease), none of the following Lessor actions will constitute termination of the Lease or a waiver of the Lessor’s entitlement to recover the rent and other money owing by the Lessee:

##### acceptance of the Keys;

##### entry upon the Premises to inspect, clean, repair, or alter them, or to show them to prospective occupiers; or

##### advertisement of the Premises for tenancy.

#### Despite any of those actions, the Lease will continue, fully binding and effective, until the earlier of:

##### the time a new tenant or licensee takes occupation of the Premises; and

##### the time the Lease expires.

#### Lessor entry upon the Premises before that time will be deemed entry with Lessee permission.

#### This Clause 17.5 will not apply where the Lessor:

##### gives the Lessee notice accepting repudiation of the Lease; or

##### gives the Lessee notice confirming forfeiture (termination) of the Lease; or

##### retakes possession of the Premises (whether by changing the locks or otherwise preventing the Lessee reassuming possession); or

##### signs the acceptance in a formal surrender of the Lease, and gives the executed instrument to the Lessee.

## Removal of Equipment and Stock‑in‑Trade

#### Upon lawfully terminating the Lease for Lessee default, the Lessor may:

##### remove Lessee Property from the Premises; and

##### store that property at the Lessee's cost.

#### In exercising that entitlement, the Lessor will not be liable to the Lessee for:

##### conversion or unlawful distress; or

##### Cost occasioned by the removal or storage.

#### The Lessee must reimburse the Lessor upon demand expenses the Lessor reasonably incurs in removing and storing Tenant Lessee under Clause 17.6(1).

## Tender after Determination

Money tendered by the Lessee and accepted by the Lessor after the Lease is terminated for Lessee default, may be applied (and, absent express contrary election by the Lessor, must be applied):

#### first, on account of rent and other money in arrears under the Lease; and

#### second, on account of the Lessor's expenses of termination and re-entry.

## Essential Terms

Each of the following Lessee covenants is an essential term of the Lease:

#### the covenants to pay at the times and in the manner specified:

##### the annual rent (Clauses 4.4 and 22.1(3));

##### the Rates and Utility Charges (Clause 4.6);

##### the GST or prospective GST payable in conjunction with a payment under the Lease (Clause 5.4 and 22.1(3)); and

##### all other money payable by it under the Lease (Clause 22.1(3));

#### the covenants to use the Premises in the required manner and to hold any necessary use‑related Development Permit (Clauses 6.1 to 6.2);

#### the covenant not to do anything that renders or might render void or voidable insurance over the Premises or property kept there (Clause 6.24(1));

#### the covenant to Maintain the Premises (Clauses 7.6);

#### the covenants to obtain and maintain Lessee insurances in the manner required and to provide proof of insurance (Clauses 10.2 to 10.12);

#### the covenants not to engage, or not to do engage without Lessor consent, in restricted Dealings and not to Encumber the Lease (Part 11):

#### the covenant not to engage in a prohibited trust dealing without Lessor consent (Clause 16.4).

## Damages upon Termination for Breach

If the Lessor lawfully terminates the Lease for breach of an essential term (whether the term possesses the character of essentiality pursuant to or independently of Clause 17.8), the Lessor:

#### may recover damages for the breach, including damages for loss of bargain;[[31]](#footnote-31) but

#### will not be relieved of the duty it otherwise possesses at law to mitigate its loss.

## Termination for Convenience

Either Party may terminate this Lease during the Term by giving the other Party 90 days’ notice.

# Power of Attorney

## Grant of Power

The Lessee irrevocably appoints the Lessor and each of the Lessor's Officers, individually, the Lessee's attorney:

#### to pursue a claim under a policy of Lessee insurance, pursuant to Clause 10.15;

#### to terminate on behalf of the Lessee, and as the act of Lessee, a sublease, licence, or other permission to use or occupy the Premises, granted by the Lessee in breach of Part 11;

#### to recover on behalf of the Lessee, and as the act of the Lessee, possession of the area the subject of the terminated sublease, licence, or other permission;

#### to execute and Register a surrender of the Lease following termination for Lessee default; and

#### after Lessor termination the Lease for Lessee default, to execute and Register an instrument withdrawing a Lessee caveat affecting the Premises.

## Enlivenment of Power

Power under Clause 18.1(2) to (5) is enlivened only when the Lessor becomes entitled to terminate the Lease for Lessee breach.

## Proof of Entitlement to Terminate

Sufficient proof of the Lessor having acquired the entitlement to terminate the Lease will be a statutory declaration to that effect by the Lessor or the attorney/s, which states also the basis of the entitlement.

## Ratification and/Reimbursement

#### The Lessee will:

##### ratify whatever the attorney does; and

##### reimburse the Lessor upon demand every Cost the attorney reasonably and properly incurs,

in the lawful exercise of its powers as attorney.

#### The Lessee releases the Lessor from all liability the Lessor incurs to the Lessee through exercising power under Clause 18.1.

# Security (Guarantee and Indemnity)

## Guarantee and Indemnity

#### The Guarantor acknowledges that:

##### the Lessor grants the Lease at the Guarantor's request; and

##### the Guarantor's attestation upon the Lease[[32]](#footnote-32) confirms the request.

#### In return for the Lessor granting the Lease at its request, the Guarantor irrevocably and unconditionally contracts with the Lessor upon the terms in this Part 19.

#### The Guarantor guarantees to the Lessor punctual performance of the Lessee's obligations under the Lease.

#### The Guarantor will indemnify the Lessor against every Cost the Lessor sustains or incurs, directly or indirectly, because of the Lessee failing punctually to perform an obligation under the Lease.

## Irrelevance of Registration

This Part 19 binds the Guarantor irrespective of whether the Lease is Registered.

## Payment on Demand

Without limitation, the Guarantor must pay the Lessor upon demand the sum necessary to enable the Lessor to perform a Lessee obligation under the Lease, or to obtain its performance.

## Refund of Recovered Money

#### If it recovers, from a person otherwise responsible for paying it, money received from the Guarantor under this Part 19, the Lessor must refund the money to the Guarantor net of:

##### the recovery expenses incurred; and

##### money the Guarantor still owes it.

#### The Lessor must make the refund without unreasonable delay.

## Interest on Overdue Money

If it fails to pay by the due date money that it owes the Lessor under this Part 19, the Guarantor must pay interest at the Overdraft Rate on the daily balances outstanding.

## Lessee Insolvency

#### The Lessor may require the Guarantor (or, if the Guarantor consists of more than one person, whichever of those persons the Lessor selects) to accept a lease over the Premises if:

##### a liquidator or trustee‑in‑bankruptcy appointed to the Lessee disclaims the Lease; or

##### the Lessor becomes entitled to terminate the Lease.

#### The Lessor must exercise that entitlement by notice given to the Lessee not later than 180 days after the date of the disclaimer or termination.

#### The Guarantor must pay:

##### the Lessor's costs of giving the notice;

##### the Lessor's legal costs of and incidental to documenting and Registering the new lease; and

##### the Registration fees payable upon the new lease.

#### The duration of the lease will be the non‑expired residue of the Term at the date of disclaimer or termination.

#### Otherwise, the lease will contain the Lease provisions referable to the non‑expired residue of the Term.

## Liability as Principal Debtor and Contractor

Although, relative to the Lessee, it is a surety[[33]](#footnote-33) only, if its liability to the Lessor is in issue, the Guarantor will be deemed the principal debtor and contractor, collectively and individually liable with the Lessee to perform the Lessee obligations under the Lease.

## Waiver of Entitlements as Surety

To the extent that they are inconsistent with a provision of this Part 19, the Guarantor waives its entitlements as surety of the Lessee.

## Continuity of Obligations

#### The Guarantor obligations under this Part 19 will remain fully enforceable until the Lessee obligations under the Lease are fully performed.

#### The Guarantor acknowledges that its obligations will not be affected by:

##### extension of the Term pursuant to the exercise of a Lessee option under the Lessee;

##### termination of the Lease;

##### the grant of time or some other concession to the Lessee;

##### waiver of the failure to perform a Lessee obligation under the Lease;

##### postponement of the exercise of a Lessor entitlement under the Lease;

##### variation of the respective obligations and liabilities of the parties to the Lease (including variation in rent) whether made with or without Guarantor knowledge or consent;

##### a change in the positions inter se[[34]](#footnote-34) of the Lessee and the Guarantor, irrespective of whether the Lessor receives notice of the change;

##### assignment or purported assignment of a Lessee interest in the Lease;

##### transfer or purported transfer of a Lessor interest in the Land;[[35]](#footnote-35)

##### an Act of Insolvency committed by the Lessee (irrespective of whether the Lessee is declared bankrupt or placed into liquidation, or enters a scheme that restricts or defers its creditors' claims); or

##### disclaimer of the Lease by a trustee‑in‑bankruptcy or a liquidator appointed to the Lessee.

## Irrelevance of Negligence/Laches

The Guarantor obligations under this Part 19 also will remain unaffected by:

#### neglect or laches[[36]](#footnote-36) by the Lessor in the enforcement of its entitlements; or

#### the release or loss of a security held by the Lessor; or

#### the discharge or release of any of the persons comprising the Guarantor (where more than one).

## Independence/Non‑conditionality of Obligations

#### The Guarantor's obligations under this Part 19 are not conditional or dependent upon the validity or enforceability of the Lessee's obligations, or those of any other obligor under the Lease.

#### The Guarantor obligations in this Part 19 are enforceable against every person who signs this instrument as Guarantor, regardless of whether another person the instrument names as Guarantor fails to sign in that capacity.

## Priority of Lessor Entitlements (Lessee Insolvency)

#### This Clause 19.12 applies if the Lessee commits an Act of Insolvency before it has performed all of its obligations under this Lease.

#### While any of those obligations remain outstanding:

##### the Guarantor must not lodge, without Lessor consent, a proof of debt or similar claim concerning an entitlement it possesses against the Lessee (including an entitlement arising from this Part 19);

##### the Guarantor must not attempt to enforce a security granted to it by the Lessee;

##### the Guarantor must hold in trust for the Lessor whatever entitlements or benefits it possesses under a security granted to it by the Lessee;

##### if required by the Lessor, the Guarantor must lodge proof of debt, enforce its security, and do anything else the Lessor lawfully requires of it to obtain for the Lessor the benefit of the claim or security;

##### the Guarantor must not claim the benefit, or seek to require the transfer, of a guarantee or other security held by the Lessor concerning the money or obligations secured under this Part 19; and

##### the Guarantor must pay the Lessor upon demand the equivalent to all sums the Lessor receives for the credit of the Lessee but is obliged to remit to a trustee, administrator, liquidator, or other person.

## Void Lessee Payments

#### A void payment that the Lessee makes under the Lease does not diminish the Guarantor's liability to the Lessor.

#### Each of the Lessor and the Guarantor retains the entitlements it held before the Lessee made the void payment.

## Warranty of Power

The Guarantor assures the Lessor that it possesses unqualified and unrestricted power to enter the covenants of this Part 19.

## Address for Payment

Money due by the Guarantor to the Lessor under this Part 19 is payable at:

#### the Lessor's Address for Notices; or

#### an alternative address that the Lessor notifies to the Guarantor.

## Evidence of Money Owing

A certificate signed by the Lessor, or one or more of its Officers, specifying a sum as owing to the Lessor under this Part 19 at a specified date, is prima facie evidence[[37]](#footnote-37) of what the Guarantor owed or owes at the specified date.

## Transfer of Lessor Entitlements

If the Lessor transfers its interest in the Land or in the reversion upon the Lease,[[38]](#footnote-38) its entitlements under this Part 19 will be deemed transferred with that interest.

## Authority to Complete Lease

#### The Guarantor irrevocably authorizes the Lessor and its solicitor, collectively and individually, to complete the Lease and every ancillary document by:

#### inserting a plan or sketch identifying the Premises and any licensed area;

#### inserting necessary words and figures;

#### initialling, executing, or correcting the Lease or document (if necessary),

but to the extent only that doing so does not alter the substance of what the Parties have agreed.

# Security Deposit

## Payment of Deposit

#### The Lessee must deliver the Security Deposit to the Lessor when it delivers the executed Lease.[[39]](#footnote-39)

#### The Lessor may apply the Security Deposit:

##### to remedy Lessee defaults under the Lease; and

##### to compensate the Lessor for Cost the Lessor incurs directly or indirectly through Lessee defaults under the Lease.

## Investment of Deposit

#### The Lessor must place the Security Deposit in a discrete Security Account, in its name.

#### The Security Account must provide for the accrual of interest upon the Security Deposit.

## Periodic Adjustment of Deposit

#### If the rent increases, the Lessee must increase the Security Deposit proportionally with the increase in rental rate.

#### The Lessee must pay the Security Deposit increase to the Lessor not later than 30 days after the rent increases.

## Drawing upon Deposit

#### Without limiting or waiving a Lessor entitlement under the Lease, if the Lessee defaults, the Lessor may draw from the Security Account:

##### the money the Lessee owes, including accrued interest (where the default is non‑payment of money);

##### the money the Lessor must expend to remedy the default.

#### For clarity, remedying a default includes:

##### rectifying the damage resulting from the default; and

##### reimbursing money the Lessor otherwise loses or expends because of the default.

## Replacement of Forfeited Deposit

Where the Lessor lawfully draws money from the Security Account, the Lessee must pay the Lessor upon demand the lesser of:

#### the amount drawn; and

#### the Security Deposit then required by Clause 20.1, adjusted (if applicable) as required by Clause 20.3.

## Refund of Deposit

If money remains in the Security Account after the Lease ends (by whatever means) and all Lessee defaults (if any) have been remedied or waived, the Lessor must pay the money to the Lessee without unreasonable delay.

## Transfer of Deposit

If the Lessor transfers its interest in the Land or in the reversion upon the Lease:[[40]](#footnote-40)

#### its entitlements and obligations under this Part 20 will be deemed transferred with that interest; and

#### it must transfer to a similar account in the name of the transferee the money in the Security Account.

## Grant of Attorney

#### The Lessee irrevocably appoints the Lessor and each of the Lessor's Officers, individually, the Lessees attorney, to execute whatever instruments the attorney reasonably considers necessary or desirable to secure payment or retention of the Security Deposit.

#### Where the Lessee is a corporation, those instruments include the instruments necessary to secure Registration of particulars of the security interest in Lessee property (in the cash comprising the Security Deposit and accrued interest) created by this Part 20.

#### The Lessee will:

##### ratify whatever the attorney does; and

##### reimburse the Lessor upon demand whatever Cost the attorney reasonably and properly incurs,

in lawfully exercising the power of attorney.

#### If the Lessee fails to make the reimbursement, the money owing will bear interest at the Overdraft Rate from the date the Lessor demands payment until the date the Lessor receives payment.

# Notices

## Formal Requirements

#### This Part 21 governs notices under the Lease unless another provision of the Lease expressly provides otherwise.

#### A notice must be in writing and is ineffective unless given in writing.

#### The Party giving the notice, or one of its Officers, must sign the notice.

#### If a Party is constituted by more than one person:

##### a notice by that Party need not be signed by all of those persons if it expressly states that the signatory is, or signatories are, authorized by all of those persons to sign the notice; and

##### the recipient of the notice need not enquire into the validity of the authorization.

## Service of Notices

A Party may give a notice:

#### by delivering it to the intended recipient's Address for Notices; or

#### by posting it to the intended recipient at its Address for Notices; or

#### by transmitting it by facsimile to the intended recipient at its Address for Notices.

## Receipt of Notices

#### A notice delivered or posted will be deemed received:

##### if delivered, at the moment of delivery;

##### if posted to an address in Australia, 5 Business Days after posting;

##### if posted to an address outside Australia, 7 Business Days after posting.

#### A notice sent by facsimile transmission will be deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 5:00pm.

#### If the confirmation report discloses receipt of the transmission after 5:00pm, the notice will be deemed received at 8:30am on the Business Day following the date of receipt disclosed in the report.

#### A *confirmation report* is a facsimile transmission confirmation report produced by the sender’s facsimile machine:

##### containing the identification code of the intended recipient's facsimile machine; and

##### indicating that the machine received the transmission without error.

# Miscellaneous Covenants

## Payment of Money Generally

#### The Lessee must pay all money due to the Lessor under this Lease:

##### without set‑off or other deduction;

##### by the date or time for payment, or within the payment period, the Lease specifies; or

##### upon demand, if neither a date or time for payment, nor payment period, is specified; and

##### otherwise in the manner the Lessor directs.

#### Absent a contrary direction from the Lessor, the Lessee must pay the Lessor the money at the latter's Address for Notices

#### Absent a contrary stipulation concerning a given payment, time is of the essence of each Lessee obligation to pay money to the Lessor under the Lease.

## Short Payments

#### Payment or receipt of less than a sum due to the Lessor under the Lease (a *short payment*) will be treated as made and received only in reduction of the full amount due.

#### If the Lessee tenders a short payment, the tender will not create an accord and satisfaction merely because:

##### a letter or note accompanying the payment or giving notice of it; or

##### a negotiable instrument comprising the payment,

contains or (for a negotiable instrument) is endorsed with a statement that the sum tendered represents full or final payment of what is due.

#### The Lessor may accept a short payment without prejudice to its entitlement:

##### to recover the outstanding balance; or

##### to pursue another remedy available to it.

## Conditional Remittances

#### A payment made subject to a final satisfaction qualification will create no accord and satisfaction.

#### A *final satisfaction* *qualification* is a statement:

##### endorsed upon a negotiable instrument; or

##### contained in correspondence accompanying or covering a payment by negotiable instrument or other means,

that the payment is tendered in full settlement of what is due from the Lessee to the Lessor.

#### The Trustee may accept the payment without prejudicing its entitlement:

##### to recover the outstanding balance; or

##### to pursue another remedy available to it.

## Time for Performance

#### If a provision does not specify the time within which a Party must perform a given obligation, the Party must perform the obligation promptly.

#### If the day upon which, or the final day by which, a Party must perform an act (each a *deadline day*) is not a Business Day, the Party must perform the Act not later than the first Business Day that follows the deadline day.

## Lessor Security Interests

#### Inasmuch as the Lessee grants the Lessor, under a provision of the Lease, a security interest in personal property:

##### the Lease is a security agreement for the *PPS Act*; and

##### the Lessor may Register its security interest.

#### The Lessee will bear, and pay the Lessor upon request, whatever Cost the Lessor reasonably incurs in:

##### Registering its security interest; and

##### Registering release of that security interest.

#### The Lessee waives its entitlement to receive from the Lessor, pursuant to *PPS Act* section 157, notice of the Registrar’s verification statement for any such Registration.

#### To the extent that the Parties may lawfully exclude their operation, the following *PPS Act* provisions do not apply to this Lease:

##### section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor;

##### section 132(3)(d) (contents of statement of account after disposal);

##### section 132(4) (statement of account if no disposal);

##### section 135 (notice of retention);

##### section 142 (redemption of collateral); and

##### section 143 (reinstatement of security agreement).

## Independent Determinations

#### Where a person independent of the Parties is to determine an issue for the purpose of the Lease, the person must make and deliver the determination in compliance with Clauses 22.6(2) and 22.6(3).

*Example determinations:*

##### *determination of the extent of damage to the Premises (by a Loss Adjuster).*

#### The independent person must:

##### act as an expert, not an arbitrator;

##### act bona fide, without bias, and without reference to irrelevant considerations; and

##### deliver the determination in writing, addressed to the parties collectively.

#### The determination must contain a full statement of the reasoning leading to it, including:

##### each fact considered relevant;

##### the weight given to each such fact;

##### each fact disregarded; and

##### the reason for disregarding each such fact.

#### If it complies with Clauses 22.6(2) and 22.6(3), the determination is final and binding upon the parties.

#### If a Loss Adjuster's determination favours the Party at whose instance the dispute was referred to him, the other Party to the dispute must pay:

##### the fee (if any) charged by the Institute (or its President) for appointing the Loss Adjuster; and

##### the Loss Adjuster's fee.

#### If the Loss Adjuster's determination favours the other Party, the Party at whose instance the dispute was referred to the Loss Adjuster must pay the Institute's (or its President's) fee and the Loss Adjuster's fee.

#### Otherwise the Parties must bear the Institute's (or its President's) fee and the Loss Adjuster's fee equally.

#### The Loss Adjuster's determination favours a Party if it is closer to the assessment submitted by that Party than it is to the assessment submitted by the other Party.

#### If, in the Loss Adjuster’s opinion, it is not possible to determine with certainty whether his determination favours one Party or another, the Parties must bear the Institute's (or its President's) fee and the Loss Adjuster's fee equally.

## Communications between Parties

* + - 1. Neither an approval nor a consent or permission given under the Lease binds the person giving it unless that person gives it in writing.
      2. An appointment or direction made or given under the Lease is ineffective unless made or given in writing.
      3. A statement the Lease obliges a Party to give is ineffective unless given in writing.
      4. A request made under the Lease is deemed neither made nor received if not made in writing.

## Waiver/Abandonment of Entitlement

#### The mere fact that a person does not exercise an entitlement under or concerning this Lease when the entitlement accrues:

##### does not deprive it of the entitlement; and

##### does not deprive it of similar entitlements that accrue at other times.

#### The mere fact that a person grants an indulgence under or concerning the Lease on a given occasion does not entitle the recipient to the same or a similar indulgence on another occasion.

#### The mere fact that a person grants an indulgence under or concerning the Lease in a given circumstance does not entitle the recipient to the same or a similar indulgence in a similar circumstance.

#### The waiver of an entitlement under the Lease is not binding unless evidenced in writing.

## Endeavours Obligations

#### An endeavours obligation does not require a Party to act against its own interests.

#### An *endeavours obligation* is an obligation that requires a Party, whether expressly or in effect:

##### to make a reasonable effort to achieve a given outcome; or

##### to use reasonable endeavours to achieve a given outcome; or

##### to use its best endeavours to achieve a given outcome.

## Honest Refusals

#### Although an obligation not to refuse its consent unreasonably obliges the Lessor to consider honestly a request for the consent:

##### it does not oblige the Lessor to act against its own interests in deciding the request;

##### it does not oblige the Lessor to pursue the applicant for material that the applicant must or should provide to obtain the consent;

##### it does not oblige the Lessor to grant the request despite the applicant having failed to satisfy a consent prerequisite the Lease specifies;

##### it does not oblige the Lessor to grant the request merely because the applicant has satisfied a consent prerequisite, or the consent prerequisites, the Lease specifies.

#### Similarly, if the acquisition of an entitlement or the receipt of a benefit is conditional upon a Party (the beneficiary) satisfying specified prerequisites:

##### the other Party (the obligor) is not obliged to pursue the beneficiary for material, or to take other action, necessary for ensuring or establishing satisfaction of the prerequisites;

##### whether it is reasonable for the obligor to refuse to permit the acquisition or receipt, or to recognize it, is irrelevant if the beneficiary fails to satisfy the prerequisites; and

##### irrespective of whether it wishes to deny the beneficiary the entitlement for another reason, the obligor does not act dishonestly (or unreasonably) in declining to permit or recognize the acquisition or receipt if the beneficiary fails to satisfy the prerequisites.

## Cumulative Entitlements

The remedies and other entitlements the Lease gives a person:

#### are cumulative, not alternative; and

#### are not exclusive of other entitlements that the person possesses (whether under an Act or at general law).

## Survival of Provisions

* + - 1. A provision of the Lease continues to be fully enforceable after Registration of the Lease if:
         1. Registration does not give it effect; and
         2. it is capable of taking effect after Registration.
      2. A provision of the Lease capable of continued application after the Lease terminates remains enforceable unless waived or released by the Party entitled to its benefit.

## Entirety of Agreement

#### The Lease, together with any incentive agreement executed collaterally to it, details the entire arrangement between the Parties concerning the Lessee’s tenancy of the Premises, irrespective of:

##### negotiations or discussions preceding execution of the Lease; and

##### the content of any brochure, report or other document produced by or on behalf of the Lessor for potential tenants of the Premises.

#### The Lessee acknowledges that it has not been induced to accept the Lease by any representation, verbal or other, made by or on behalf of the Lessor and not detailed in the Lease.

## Warranty of Authority

Each person signing the Lease as an Officer, attorney, agent, or trustee, or in any other representative capacity, assures all Parties of his unqualified authority to execute the document in that capacity at the time of signing.

## Character of Instrument

This instrument is a deed,[[41]](#footnote-41) binding each Party, irrespective of:

#### its terminology (for example, referencing “Clause” rather than “covenant”); and

#### whether it records the passage of consideration between the Parties.

## Delivery of Instrument

Each Party delivers this instrument as its deed conditionally upon all Parties:

#### executing the instrument; and

#### notifying one another that they have done so.

## Governing Law

#### Queensland law governs the Lease.

#### For clarity, Queensland law includes Commonwealth laws to the extent that they bind Queensland.

## Jurisdiction (Adjudication of Disputes)

#### For this Clause 22.18, a *Queensland Court* is:

##### a court or tribunal constituted under Queensland legislation and empowered to adjudicate a dispute arising under the Lease; and

##### the High Court of Australia.

#### The Parties submit exclusively to the jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under the Lease.

#### Each Party undertakes to refrain from bringing action upon the Lease in a forum other than a Queensland Court.

#### Each Party waives all entitlement to object to a Party bringing action upon the Lease before a Queensland Court, including entitlement to claim that:

##### the Queensland Court is an inconvenient forum; or

##### no Queensland Court has jurisdiction.

## Completion of Documents

The Lessee irrevocably authorizes the Lessor and its solicitor, collectively and individually, to complete the Lease and every ancillary document by:

#### inserting a necessary word and figure;

#### initialling, executing, or correcting the Lease or document (if necessary),

but to the extent only that doing so will not alter the substance of the Parties’ agreement.

|  |  |  |
| --- | --- | --- |
|  | *[Appendices and Guarantor Attestations follow]* |  |



[Inventory of Lessor Property]

All items of property and equipment owned and used by the Lessor previously in the carrying on the Permitted Use at the Premises, and existing in the Premises as at the Commencement Date (if applicable), with the exception of any:

(i) telephone equipment and ancillary telecommunication systems;

(ii) computer and IT equipment and ancillary systems (including any ADSL);

(iii) loose items of personal property (not directly pertaining to carrying on of the Permitted Use); and

(iv) motor vehicles or other transportation equipment,

which will be removed by the Lessor on or prior to the Commencement Date and will not be made available to the Lessee for its use in connection with the Premises and the Permitted Use under this Lease.

Guarantor Attestations

|  |
| --- |
|  |
| Notice to Guarantor  If you sign this document you become responsible for:   * ensuring performance of the Lessee’s obligations under the Lease; and * compensating the Lessor for loss and expense it incurs if the Lessee fails to honour those obligations.   It would be prudent, particularly if you stand to derive no personal benefit from providing the guarantee and indemnity, to obtain, before you sign, **independent legal advice** about the extent of your obligations as guarantor and indemnifier.  If you sign without obtaining that advice, you may be taken to have waived (foregone) your entitlement to take advice, and to have signed with full knowledge, understanding, and acceptance of the obligations you have assumed. |

1. In return for the Lessor agreeing, at the Guarantor's request, to grant the Lease to the Lessee, the Guarantor covenants with the Lessor upon the terms of Part 19 of the Lease.
2. The Guarantor's request to the Lessor is confirmed by these attestations.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Executed** by **##Name##**:   * as his/her deed; * in the presence of a witness: | | | | |
|  | | | | |
|  | |  |  |  |
| Signatory | | Witness |
|  |
|  |
| Full name [*Print*] |
|  |  |  |  |
|  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Executed** by **##Name##**:   * as his/her deed; * in the presence of a witness: | | | | |
|  | | | | |
|  | |  |  |  |
| Signatory | | Witness |
|  |
|  |
| Full name [*Print*] |
|  |  |  |  |
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1. This figure is GST‑exclusive. Refer to Clause 5.3. [↑](#footnote-ref-1)
2. Part 5.7 bodies encompass certain corporations that are neither companies nor exempt public authorities nor corporations sole, certain foreign corporations, and certain unincorporated associations and partnerships. [↑](#footnote-ref-2)
3. Refer to Associations Incorporation Act section 90. [↑](#footnote-ref-3)
4. At the Commencement Date, section 13 defines “electrical equipment” as, to paraphrase, any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire used for controlling, generating, supplying, transforming, or transmitting electricity at a voltage greater than extra low voltage, or operated by electricity at a voltage greater than extra low voltage, or that is, or forms part of, a cathodic protection system. However, the expression does not include certain equipment associated with motor vehicles, e.g. headlights, spark plugs, and suchlike. [↑](#footnote-ref-4)
5. At the Commencement Date, section 14 states in broad terms (and again to paraphrase), that an “electrical installation” is a group of items of electrical equipment permanently connected to one another electrically, other than electricity generation and transmission works items (such as generators, transformers and cables), to which electricity can be supplied from generation and transmission works. An example is the switchboard, wiring, lighting, socket outlets, and other electrical equipment permanently connected for a shopping centre, or for a shop in a shopping centre. [↑](#footnote-ref-5)
6. Continuing to occupy premises after a lease over the premises expires, without lessor objection and without having entered a new lease, constitutes “holding over” under the expired lease. [↑](#footnote-ref-6)
7. Section 105 specifies obligations to pay the agreed rent and keep the premises repaired, which apply unless the parties agree otherwise. [↑](#footnote-ref-7)
8. Section 107 specifies a number of lessor entitlements that are implied into a lease unless the parties agree otherwise. [↑](#footnote-ref-8)
9. Section 109 specifies a number of provisions that can be implied into a lease by the inclusion of short form expressions in the document. [↑](#footnote-ref-9)
10. Refer to Clause 22.1 for general provisions concerning payment of money to the Lessor. [↑](#footnote-ref-10)
11. Section 124 prevents a lessor from terminating a lease for remediable lessee default unless it has given the lessee a notice providing reasonable particulars of the breach and requiring the lessee to remedy the breach, and the lessee has failed to remedy the breach within a reasonable period following its receipt of the notice. [↑](#footnote-ref-11)
12. Section 128 prevents a lessor from relying upon an entitlement to forfeit a lessee’s option to renew a lease because of breach unless the lessor gives the lessee a notice, in the form prescribed under the Act, that specifies the breach and informs the lessee that, subject to a court order granting the lessee relief from the forfeiture, the lessor proposes to treat the breach as having precluded the lessee from exercising its option. The notice must be given to the lessee within 14 days after the purported exercise of option. [↑](#footnote-ref-12)
13. Section 127 provides, with limited specified exceptions, that a lessee served with a notice to effect decorative repairs may apply to the court to relieve it of the obligation; and the court may grant the relief if it considers, by reference to all relevant circumstances, that the notice is unreasonable. [↑](#footnote-ref-13)
14. Companies within a 90%‑owned group, and in some cases other entities (such as non‑profit bodies), can be approved by the Commissioner as a GST group. One member of the group then deals with all the GST liabilities and entitlements of the group (excepting GST on most taxable importations), and (in most cases) intra‑group transactions are excluded from GST. [↑](#footnote-ref-14)
15. Example: If 75% of the cost of the creditable acquisition is to be reimbursed, the recipient may deduct from that amount 75% of the input tax credit to which the supplier is entitled concerning the acquisition. [↑](#footnote-ref-15)
16. The Lessee also must not omit to do something in this context. Refer to Clause 2.20 (Actions). [↑](#footnote-ref-16)
17. The Lessee’s liability extends to the consequences of imputed acts. Refer to Clause 2.20 (Actions). [↑](#footnote-ref-17)
18. Refer to “holding over” explanation in footnote 6 (page 18). [↑](#footnote-ref-18)
19. For example, an election or a referendum. [↑](#footnote-ref-19)
20. Refer to Act section 7. [↑](#footnote-ref-20)
21. Refer, however, to Clause 10.14 (Acting Reasonably). [↑](#footnote-ref-21)
22. Refer again to Clause 2.20 (Actions). [↑](#footnote-ref-22)
23. Clause 4.3. [↑](#footnote-ref-23)
24. Clause 4.6. [↑](#footnote-ref-24)
25. Clauses 7.1 and 7.6. [↑](#footnote-ref-25)
26. Clause 22.6 details the manner in which the Loss Adjuster must determine the dispute. [↑](#footnote-ref-26)
27. In other words, if the Lessee "holds over” under the expired lease. Refer again to footnote 6 (page 18). [↑](#footnote-ref-27)
28. A monthly periodic tenancy (otherwise called a tenancy from month to month) is a tenancy for an initial period of one month, which is renewed automatically at the end of that month, for a further period of one month, and continues to be renewed automatically each month, until it is terminated by notice, or otherwise is terminated by law. [↑](#footnote-ref-28)
29. Clause 6.1: Permitted Use of Premises. [↑](#footnote-ref-29)
30. Refer to Clause 22.4 concerning Registration of security interest. [↑](#footnote-ref-30)
31. Loss of bargain is loss of the benefit of performance of the Lessee’s obligations under the Lease during the period between the date of termination by the Lessor and the date upon which the Lease otherwise would have expired. [↑](#footnote-ref-31)
32. Refer to page 93. [↑](#footnote-ref-32)
33. A surety is a person who undertakes to discharge contractual obligation of another person (the obligor) to a third person if (but only if) the obligor fails to discharge the obligation. [↑](#footnote-ref-33)
34. In relation to one another; but not in relation to the Lessor. [↑](#footnote-ref-34)
35. Example of the transfer of a part of that interest: the grant of a concurrent lease. [↑](#footnote-ref-35)
36. In simple terms, laches is the neglect to assert an entitlement, which neglect, when considered together with lapse of time and other circumstances that prejudice the party against whom the entitlement exists, renders enforcement of the entitlement inequitable. [↑](#footnote-ref-36)
37. Prima facie evidence is evidence that, in the absence of evidence contradicting it, suffices as proof of a fact or proposition. It contrasts with conclusive evidence. Conclusive evidence is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing that it overbears all proof to the contrary, establishing the fact or proposition beyond reasonable doubt. [↑](#footnote-ref-37)
38. The reversion is the interest in leased premises that reverts to the lessor when a lease expires. Thus, if the lessor owns the freehold interest in the leased premises subject to an easement, and does not grant a further lease to commence after the existing lease expires, the reversion is the freehold subject to the easement. If the lessor grants the further lease, the reversion is the freehold subject to the easement and the further lease. [↑](#footnote-ref-38)
39. Refer to Clause 22.4 concerning Registration of security interest. [↑](#footnote-ref-39)
40. The reversion is the interest in leased premises that reverts to a lessor when a lease expires. Thus, if the lessor owns the freehold interest in the leased premises subject to an easement, and does not grant a further lease to commence after the existing lease expires, the reversion is the freehold subject to the easement. If the lessor grants the further lease, the reversion is the freehold subject to the easement and the further lease. [↑](#footnote-ref-40)
41. Relevantly, a deed is a special form of written commitment, which may constitute a contract if it records an agreement (but not necessarily). A commitment made by deed binds its signatory or signatories without the necessity for consideration to pass from the recipient or beneficiary of the commitment, i.e. without the necessity for the recipient or beneficiary to do or promise something in return. Nevertheless, a contract (which does require the passage of consideration) also may take the form of a deed. [↑](#footnote-ref-41)