

**BRADLEY ROBERT WOODGATE AND AMBER MICHELLE WOODGATE
AS TRUSTEES FOR THE LITTLE BISCUITFACE SUPERANNUATION FUND AND
JETBLUE PTY LTD (ACN 078 515 349) AS TRUSTEE FOR THE CARTER
SUPERANNUATION FUND
(Landlord)**

- AND -

**CARTER WOODGATE PTY LTD (ACN 082 287 821)
AS TRUSTEE FOR THE CARTER WOODGATE UNIT TRUST
(Tenant)**

**LEASE OF OFFICE / COMMERCIAL PREMISES –
UNIT 4, 4 – 10 FARRALL ROAD, MIDVALE**

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LEASE

THIS LEASE is made the 1st day of JULY 2014

BETWEEN

BRADLEY ROBERT WOODGATE AND AMBER MICHELLE WOODGATE as trustees for the Little Biscuitface Superannuation Fund both of 12 Panoramic Terrace, Kalamunda in the State of Western Australia

AND

JETBLUE PTY LTD (ACN 078 515 349) as trustee for the Carter Superannuation Fund of Unit 4, 4-10 Farrall Road, Midvale in the State of Western Australia

(collectively, **Landlord**)

AND

CARTER WOODGATE PTY LTD (ACN 082 287 821) AS TRUSTEE FOR THE CARTER WOODGATE UNIT TRUST of Unit 4, 4-10 Farrall Road, Midvale in the State of Western Australia (**Tenant**)

RECITALS

- A. The Landlord is registered as the proprietor or entitled to be registered as the proprietor of an estate in fee simple of the Land.
- B. The Landlord has agreed to lease and the Tenant has agreed to take a lease of the Premises for the term and at the Rent and on the terms and conditions contained in this Lease.

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

In this document unless the contrary intention appears:

Air Conditioning Plant means any plant, machinery or equipment for heating, cooling or circulating air and all ducting and associated works now or at any time after the date of execution of this Lease installed by the Landlord or by the Tenant in the Premises;

Authority includes a government, a local, statutory or public authority, and a person entitled to carry out a statutory function;

Bank Guarantee means an unconditional undertaking (or any replacement or addition to it under **clause 19**) by an Authorised Deposit-taking Institution under the Banking Act 1959 and on terms acceptable to the Landlord, acting reasonably, to pay on demand the amount specified in **Item 9 of Schedule 1**.

BEED Act means the *Building Energy Efficiency Disclosure Act 2010 (Cth)*;

Business Day means a day (not including a Saturday or a Sunday) on which the major trading banks are open for business in Western Australia;

Claim means, in relation to any person, a claim, action, proceeding, judgement, damage, expense or liability incurred by or against the person, whether present, unascertained, immediate, future, contingent, direct or indirect;

Commencement Date means the date described in **Item 3 of Schedule 1**;

Consideration has the meaning given in the GST Act;

Default GST means penalties, fines, interest, and additional payments required or imposed under the GST Act as a result of the non-payment or late payment of GST under the GST Act;

Extended Term means the period, or periods, specified in **Item 5 of Schedule 1**;

Financial Year means the period from 1 July to 30 June in each year of the Term;

GST means a goods and services tax, consumption tax, value added tax, retail turnover tax or a tax of a similar nature;

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

Input Tax Credit has the meaning given in the GST Act;

Interest Rate means the rate of interest referred to in **clause 14**;

Land means the land described in **Item 1 of Schedule 1**;

Lease means, depending on the particular context:

- (a) this Lease;
- (b) the Leasehold estate created on the signing or registration of this Lease;
- (c) any other legal or equitable interest arising from either or both of:
 - (i) entry into possession of the Premises; or
 - (ii) the payment or acceptance of money for the right to occupy and use the Premises, or
- (d) any holding-over period created under the terms of **clause 2.3**;

Lettable Area means the area measured in accordance with the Property Council of Australia's Method of Measurement 1997 that is appropriate to the type of Premises, or such other methodology as shall replace it as the dominant methodology used in determining lettable area of commercial premises in the State;

Managing Agent means the person, or firm specified in **Item 8 of Schedule 1** and includes the employees and agents of the Managing Agent or any other Manager as may from time to time be appointed by the Landlord to manage the Land and the building;

NABERS means National Australian Built Environment Rating System;

Operating Costs means every cost the Landlord reasonably incurs in respect of the ownership, insurance, management, operation, maintenance, use and occupation of the improvements and the Land including but not limited to, the cost of:

- (a) Rates and Taxes;
- (b) insuring the improvements and the Land (and any equipment or appliance in the improvements or on the Land) in accordance with the provisions of this Lease and against any risk that the Landlord considers prudent to insure against;
- (c) Managing Agents fees;

- (d) cleaning;
- (e) maintaining, repairing, renovating, replacing, redecorating and refurbishing;
- (f) if the BEED Act applies to the Premises, the cost of complying with the BEED Act including assessment and monitoring the Premises to obtain a Building Energy Efficiency Certificate or NABERS rating and registration on the Building Energy Efficiency Register;
- (g) removing garbage and trade waste;
- (h) engaging professional pest control agents;
- (i) gardening, landscaping and reticulation;
- (j) maintaining and repairing car parking;
- (k) security and caretaking;
- (l) supplying Services including the operation, inspection, maintenance and replacement and upgrading of Services to comply with the requirements or orders of any authority or laws;
- (m) audit costs incurred in by the Landlord in having its auditors determine the Operating Costs payable by the Tenant; and
- (n) legal fees and disbursements incurred by the Landlord;

But excluding

- (o) interest on borrowed money;
- (p) capital expenditure;
- (q) income tax and capital gains tax;
- (r) land tax in respect of the Land in excess of the amount payable on a single holding basis; and
- (s) a cost that the law does not allow the Landlord to recover from the Tenant.

Parties means the Landlord and the Tenant, and **Party** is a reference to any one of them as the context requires;

Permitted Use means the use specified in **Item 6 of Schedule 1**;

Premises means the Land and the improvements together with the Landlord's fixtures and fittings forming part of or annexed or affixed to the Premises;

Primary Payment means the payment by the Tenant to the Landlord of any Rent, Operating Costs or other amount payable by the Tenant to the Landlord under this Lease;

Property Law Act means the *Property Law Act 1969* (WA);

Rates and Taxes means any amount charged or assessed against the Land, the Tenant or the Landlord in respect of the ownership, occupation or use of the Land by any Authority and includes each of the following:

- (a) council rates and charges together with all rubbish removal rates and charges;
- (b) land tax and metropolitan improvement tax on a single holding basis; and
- (c) water, drainage and sewerage rates and service charges including meter rents, charges for the disposal of stormwater and water consumption;

Rent means the Rent described in **Item 4 of Schedule 1**;

Rent Review Dates means each of the Dates specified in **Item 4(c) of Schedule 1**;

Services means every service that is available for use in, or provided in respect of, the Premises and includes air conditioning and every service that enables access to the Premises for people or goods;

Strata Titles Act means the *Strata Titles Act 1985*;

Taxable Supply has the meaning in the GST Act;

Tax Invoice has the meaning in the GST Act;

Term means the period between the Commencement and Termination Dates (inclusive) described in **Item 3 of Schedule 1** and any additional period consequent upon either the Tenant holding over or the exercise of an option of renewal;

Termination Date means the date specified in **Item 3 of Schedule 1** being the end of the initial Term or (as the context requires) any Extended Term; and

Value has the same meaning in the GST Act.

1.2 Interpretation

In this document unless the contrary intention appears:

- (a) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this document and references to this document include any recital, schedule or annexure;
- (b) a reference to this document or another instrument includes any variation or replacement of either of them;
- (c) headings and any table of contents or index are for convenience only and do not affect the interpretation;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (f) the word **person** includes an individual, a firm, a corporate entity, an unincorporated entity, a partnership, or government authority;
- (g) a reference to a person includes that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (i) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (j) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) where the day or last day for doing an action or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is not a Business Day, the day or last day for doing that action or payment of that money or on which that entitlement arises or notice is deemed served, is deemed to be the next Business Day;
- (l) where any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29th, 30th or 31st day of a month which

does not contain such a date, then references are construed as reference to the last day of that month;

- (m) a day means the period of time commencing at midnight and ending 24 hours later;
- (n) a month means a calendar month;
- (o) a financial year means the period of time commencing on 1 July and ending on the next following 30 June;
- (p) a reference to currency is a reference to Australian currency;
- (q) **including** is deemed to be followed by the words, **but not limited to**;
- (r) no rule of construction of documents applies to the disadvantage of a Party on the basis that that Party put forward this document or any relevant part of it;
- (s) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
- (t) a reference to:
 - (i) a right includes a benefit, remedy, discretion, authority or power;
 - (ii) an obligation includes a warranty or representation;
 - (iii) a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (iv) provisions or terms of this document include a reference to both express and implied provisions or terms;
 - (v) writing includes any means or mode of representing or reproducing words in a tangible and permanently visible form, and includes facsimile transmissions; and
 - (vi) signature and signing includes due execution by a corporation or other relevant entity.

2. GRANT AND TERM OF LEASE

2.1 Grant

- (a) The Landlord grants to the Tenant the rights to possess and use the Premises for the Term stated in **Item 3 of Schedule 1** and under the provisions of the Lease.
- (b) The Landlord reserves the right to do anything the Landlord believes necessary or desirable in relation to any of the following:
 - (i) Maintaining the Premises;
 - (ii) Providing or maintaining any Service to any part of the Premises;
 - (iii) Complying with any law or legal requirement;
 - (iv) Using the exterior of the Premises for signs;
 - (v) Creating any easement or other right through or around the Premises;
 - (vi) Subdividing the Premises.
- (c) The Landlord may enter the Premises at any reasonable time in order to exercise its right under the previous clause. Except in any emergency, the

Landlord must give the Tenant reasonable notice before exercising it. The Landlord must exercise its right under the previous clause at a reasonable time and in a way which minimises any interference with the Tenant's occupation and use of the Premises,

2.2 Term

The term begins and ends on the dates stated in **Item 3 of Schedule 1** and includes each of those dates and also includes any additional period consequent upon either the Tenant holding over or the exercise of an option of renewal.

2.3 Holding Over

If the Tenant occupies the Premises after the end of this Lease with the Landlord's consent, the Tenant will do so as a tenant from month to month (**holding over**). Those Lease terms that are relevant will apply to the holding over and either the Landlord or the Tenant may end it by giving one month's written notice to the other expiring at any time.

2.4 Application of Lease

The Lease binds the Landlord's and Tenant's personal representatives and assignees, or if either or both of them are corporations, their successors and assignees, as if they were parties to it. The Landlord named and described in this Lease as the Landlord (**Original Landlord**) enters into this Lease to the intent to bind the Original Landlord and the registered proprietor of the Land from time to time. The Original Landlord will not be liable to the Tenant for damages for breach of covenant or in any other manner under this Lease, except in respect of those occurring while the Original Landlord remains the registered proprietor of the Land.

3. RENT

3.1 Rent

- (a) The Tenant must pay the Rent to the Landlord for the right to possess and use the Premises and the fittings and accessories.
- (b) The Tenant must pay the Rent, whether demanded or not and without any deductions.
- (c) In the first year of this Lease, the annual Rent is the amount referred to in **Item 4 of Schedule 1**. In the second and following years, it is that amount varied in accordance with **clause 3.2**.
- (d) The Tenant must pay the Rent in advance by monthly instalments, each of which is 1/12 of the annual Rent.
- (e) The Tenant must pay the first instalment on the Commencement Date and must pay each following instalment on the first of each month. If the Commencement Date is not on the first of the month, the first and last instalments will be adjusted proportionally.

3.2 Review

The Rent is to be reviewed on the Rent Review Dates in accordance with the provisions of **Schedule 2**.

4. OTHER PAYMENTS BY THE TENANT

4.1 Rates and Taxes

- (a) The Tenant must pay all Rates and Taxes;
- (b) If the Rates and Taxes are assessed directly against the Tenant or the Premises, the Tenant must pay them by the due date for payment. At the

beginning and end of the Lease, the Tenant must pay the daily pro rata proportion of the Rates and Taxes for any period that is less than the full rate or tax period. The Tenant must give the Landlord copies of assessments and receipts if the Landlord asks for them;

- (c) If the Rates and Taxes are not assessed directly against the Tenant or the Premises the Landlord may in its absolute discretion elect to charge the Tenant in accordance with:
 - (i) the Landlord's estimate of those Rates and Taxes, by calendar monthly instalments in advance payable as part of the Operating Costs; or
 - (ii) the amount paid or payable by the Landlord in respect of that of Rates and Taxes, the charge to be due and payable by the Tenant on demand on production by the Landlord to the Tenant of a copy of the assessment or invoice for the item of Rates and Taxes.
- (d) The Landlord must pay any rates, taxes and charges in respect of the Premises that the Tenant does not have to pay under the provisions of this Lease.

4.2 The Services

The Tenant must promptly pay directly to the supplier concerned (or, if the Landlord so directs, to the Landlord) charges for the Services. In default of any such payments the same may be paid by the Landlord at its option and are recoverable from the Tenant as overdue Rent.

4.3 The Operating Costs

- (a) The Tenant must pay the Operating Costs;
- (b) One (1) month before the start of each Financial Year, the Landlord may give the Tenant a written estimate of the Operating Costs. The Landlord may require the Tenant to pay that estimate by monthly instalments in advance on the dates for payment of Rent; and
- (c) If the Tenant pays the Operating Costs by monthly instalments in advance, within three (3) months after the end of each Financial Year, the Landlord will give the Tenant a statement that details all of the Landlord's actual Operating Costs. The Tenant must pay the Landlord any shortfall between what the Tenant has paid and what is due on the basis of the Landlord's actual Operating Costs. If the Tenant has overpaid, the Landlord must pay the Tenant the amount overpaid, or credit it against the Tenant's next payment.

4.4 Increase in Insurance Premiums

If by reason of:

- (a) carrying on the trade or business of the Tenant on the Premises; or
- (b) any alteration or addition to the Premises by or at the request of the Tenant,

any premium or rate of insurances effected by the Landlord is increased, the Tenant must pay to the Landlord the amount of the increase.

4.5 Landlord's Cost of Default Notices

The Tenant must pay to the Landlord all reasonable costs, charges and expenses (including solicitors' costs (on a solicitor and own client basis) and surveyors' fees) for the purpose of or incidental to the preparation and service of any notice required

to be served under the *Property Law Act 1969* or otherwise under this Lease. This includes any notice under Section 81 of the *Property Law Act 1969* requiring the Tenant to remedy a breach of any of the covenants in this Lease, even if forfeiture is avoided in a different manner than by relief granted by the Court.

4.6 Interest

If payment of Rent or any other sum due to the Landlord is not made on the due date, the Tenant must pay interest on the sum due at the Interest Rate. This interest is computed from the date that the amount due became due and payable and will accrue from day to day and be payable on demand.

4.7 Recovery of Cost of Default Repairs

Clause 4.6 also applies to all expenses incurred by the Landlord in completing any repairs or carrying out any works in respect of which the Tenant has failed to comply with any notice given by the Landlord under the Property Law Act or the Lease.

4.8 Costs

The Tenant must pay the costs (including, without limitation, legal costs on a solicitor and own client basis) in connection with the instructions for, and the preparation, execution, completion (and registration, if applicable) of the Lease as well as all costs and expenses of and incidental to any document, act, matter or thing required pursuant to this document to be prepared, executed, done or completed.

5. TRANSFER, SUBLETTING AND PARTING WITH POSSESSION

5.1 Restriction

Subject to this clause, the Tenant must not assign, sub-let, mortgage, charge or encumber the Premises or any part of the Premises (whether at law or in equity) or otherwise part with possession of the Premises or any part of the Premises without the prior written consent of the Landlord. The provisions of Sections 80 and 82 of the Property Law Act will not apply to this Lease.

5.2 Consent

- (a) Consent of the Landlord will not be unreasonably withheld in the case of an assignment or sub-lease of the whole of the Premises to a financially respectable and responsible person, proof of which will be on the Tenant.
- (b) It will be a condition precedent to the granting of consent to any assignment or sub-lease that:
 - (i) the Tenant is not in breach of the Lease;
 - (ii) the Tenant and the person the Tenant wishes to assign or sub-lease to provide any Bank Guarantee, security deposit or other security the Landlord reasonably requires; and
 - (iii) the Tenant obtain the execution by the proposed assignee, sub-tenant and guarantors as the Landlord may require of a deed:
 - A. prepared by the Landlord's solicitors at the expense of the Tenant; and
 - B. wherein the permitted sub-tenant, assignee and guarantors (if any) covenant with the Landlord to comply with the covenants and agreements contained in this Lease on the part of the Tenant, or those of them as the Landlord's solicitors consider necessary.

5.3 Change in Control

If the Tenant is a corporation, it will be treated as transferring this Lease for the purposes of **clause 5.1**, if the person or persons who beneficially own or control a majority of its voting shares at the start of this Lease cease to do so, except as a result of transmission on the death of a shareholder. This sub-clause does not apply if the Tenant is a corporation, the voting shares of which are listed on a stock exchange in Australia.

5.4 Costs

The Tenant must pay the Landlord's reasonable legal and other costs incurred in considering and giving consent, including any costs that the Landlord incurs in making inquiries about the character and financial status of any proposed sub-tenant or the person to whom possession is to be transferred.

6. MAINTENANCE AND REPAIR — TENANT'S OBLIGATIONS

6.1 Maintenance

The Tenant must:

- (a) at its own expense
- (b) throughout the Term and for as long as the Tenant remains in occupation of the Premises
- (c) when, where and so often as is needed,

maintain, replace, repair and keep:

- (d) the Premises; and
- (e) every part of them; and
- (f) all additions to them; and
- (g) all the Landlord's fixtures and the doors, windows, roof and guttering; and
- (h) all furnishings, carpet, paintwork, equipment, locks, keys and fittings

in good, clean and substantial repair and condition (fair wear and tear and damage by fire, storm, earthquake, tempest and Act of God excepted unless by some act or omission on the part of the Tenant, the Tenant's servants, agents or lawful visitors).

6.2 Repair

- (a) The Tenant must keep the Premises in good repair, bearing in mind the condition of the Premises at the beginning of this Lease, but need not carry out:
 - (i) any structural work or repairs of a capital nature, unless it has become necessary because of any actions, whether negligent or deliberate, of the Tenant or those for whom the Tenant is responsible or because of the Tenant's use and occupation of the Premises;
 - (ii) repairs that are necessary because of fair wear and tear; or
 - (iii) repairs that are necessary because of a natural disaster or other serious event that is out of the Tenant's control.
- (b) To comply with its obligation under **clause 6.2(a)**, the Tenant must:
 - (i) immediately repair any damage to the Premises caused by the actions, whether negligent or deliberate of the Tenant or those for whom the Tenant is responsible;

- (ii) immediately repair or replace all broken glass including exterior windows with glass of the same or some similar quality and all damaged, defective or broken heating, lighting and electrical equipment including any fluorescent tubes installed upon the Premises;
- (iii) regularly maintain and repair the Landlord's fixtures and fittings that are located within the Premises;
- (iv) pay the costs of repairing and making good any damage to the Premises or to any part of them caused by or through the act, neglect, default or omission of the Tenant or the servants, agents or lawful visitors of the Tenant and indemnify the Landlord against all Claims for damage so caused. All repairs will be carried out by the Landlord and (at the Landlord's discretion) under the supervision of an architect nominated by the Landlord; and
- (v) enter into and keep current at the Tenant's cost any maintenance service and repair contracts, made with Landlord-approved contractors that the Landlord reasonably requires.

6.3 Cleaning of the Premises

- (a) The Tenant must at its own expense keep the Premises clean;
- (b) The Tenant must store all garbage, rubbish and refuse in a hygienic manner and attend to its expeditious disposal and observe any directions given by the Landlord.
- (c) The Tenant must take all reasonable precautions to keep the Premises free of rodents, vermin, insects, pests, birds and animals. If the Tenant fails to do so it will at the request of the Landlord but at the cost of the Tenant employ pest exterminators approved by the Landlord.

6.4 Air Conditioning Plant

Except in respect of the replacement of any part of the Air Conditioning Plant which is in the nature of capital expenditure, the Tenant is to maintain the Air Conditioning Plant in good working order and condition and for this purpose the Tenant is to maintain with reputable contractors a fully comprehensive air conditioning maintenance agreement. The Tenant is to produce to the Landlord a copy of that agreement upon request.

6.5 Maintain landscaped and other outside areas

The Tenant is to:

- (a) re-plant, maintain and reticulate the landscaped areas on the Premises; and
- (b) keep all parking areas, accessways and other areas on the Land in good repair and condition.

6.6 Repainting

Each five (5) years and in any event within three (3) months before the end of the Term the Tenant must:

- (a) paint with two (2) coats at least those parts of the Premises usually painted;
- (b) paper all parts usually papered; and

- (c) re-decorate in any other fashion all parts of the Premises usually decorated,

in a proper manner, using suitable, good quality material of a colour and quality first approved by the Landlord in writing.

6.7 Security

The Tenant is to be responsible for all security of the Premises including employing security contractors, installing any additional security systems if required and maintaining all systems and devices for the purpose of security.

6.8 Signs

- (a) Unless with the prior written consent of the Landlord (which approval will not be unreasonably withheld), the Tenant is not, and is not to permit anyone else to do the following:
- (i) erect any signs, notices or advertisements on the external walls or in any of the windows of the Premises;
 - (ii) erect any signs, notices or advertisements within the Premises which are visible from the outside of the Premises; or
 - (iii) install either temporarily or permanently flashing or moving lights or signs on the external walls or in any of the windows of the Premises.
- (b) The Tenant must ensure that any sign, notice or advertisement complies with the requirements of any relevant Authority.

6.9 Rules

The Tenant must comply with any rule the Landlord has made or makes in relation to access and use of the Premises. The rules must not unreasonably affect the Tenant's rights under this Lease.

6.10 Managing Agent

The Landlord may at any time vary or terminate the authority of the Managing Agent. Communications from the Landlord supersede those from the Managing Agent if there is any inconsistency between them.

6.11 Indemnity and Nuisance

The Tenant must:

- (a) indemnify the Landlord from all loss and damage to the Premises caused by the negligent use or misuse, waste or abuse of the water, gas or electricity supplied to the Premises or to the Tenant in connection with the Premises or by faulty sanitary, water, gas or electric light fittings or fixtures fixed or installed by or on behalf of the Tenant;
- (b) give to the Landlord prompt written notice of any accident to or defects in or want of repair to the water pipes, electric light wiring or fittings or fixtures and of any circumstances likely to be or to cause any danger or risk or hazard to the Premises or any person in them;
- (c) (except in the case of the Landlord's own wilful or negligent acts or omissions) indemnify and hold harmless the Landlord from and against all Claims which the Landlord may suffer in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises or the use by the Tenant of the

Premises or any part of them or to any person or the property of any person using or entering on or near the Premises;

- (d) not to do or allow to be done on the Premises anything which may be or become a nuisance to the Landlord or occupiers of any adjoining or neighbouring premises;
- (e) not to do or leave undone or allow to be done or left undone any act matter or thing amounting to a nuisance (or that any Authority may deem to be a nuisance) and immediately to abate any such nuisance;
- (f) The provisions of **clause 6.11** do not oblige the Tenant to indemnify the Landlord in respect of:
 - (i) Claims by an employee of the Landlord in respect of which the Landlord is covered under its policy issued pursuant to Workers Compensation legislation where the injury is not due to the negligence of the Tenant or its servants or agents;
 - (ii) Claims arising from loss or damage attributable to the defective condition of any property of the Landlord unless that defective condition was created by the Tenant or its servants or agents;
 - (iii) any accident or injury to or death of any person or damage or injury to or loss of the property of any person resulting from any wilful or negligent act of the Landlord or its officers, servants or agents; and
 - (iv) Claims arising under **clause 6.11** to the extent that they are covered by any insurance effected pursuant to **clause 8** or any other insurance which may be in force at the relevant time.

6.12 Occupational safety and health

The Tenant agrees that for the purposes of the *Occupational Safety and Health Act 1984 (WA)* it has control of the Premises and will comply with the provisions of that Act that are required to be complied with by a person having control of the Premises.

6.13 Compliance with Requisitions of Authorities

- (a) Subject to **clause 6.13(b)**, the Tenant must:
 - (i) construct works;
 - (ii) make alterations to the Premises; and
 - (iii) perform and do such acts and things
 as are during the Term required by any order or requisition whether addressed to the Tenant or the Landlord in pursuance of:
 - (i) the Health Act 1911 (WA)
 - (ii) the Local Government Act 1995 (WA)
 - (iii) any amendment of the Acts or any of them; or
 - (iv) any other Acts for the time being in force; or
 - (v) any by-laws or regulations made under them relating to public health or safety, water supply, sewerage or drainage; or
 - (vi) any requisitions or requirements of any Authority having control over electrical installations or fixtures, safety, health insurance matters or similar subjects.

- (b) The Tenant is not liable for structural alterations or additions unless required by reason of the nature of the business conducted by the Tenant on the Premises. If a dispute arises whether any work is of a structural nature it is determined by an architect or structural engineer:
 - (i) nominated by the Landlord;
 - (ii) who acts as an expert and not as an arbitrator; and
 - (iii) whose fees are paid by the party against whom the decision is made.
- (c) The Tenant is not liable to carry out any alteration, sealing or other treatment to the roof of the Premises and/or such other areas of the Premises that contain asbestos and/or asbestos fibres (if any).

7. REPAIR — LANDLORD'S RIGHTS

- (a) At all reasonable times the Landlord, its agents or both may enter the Premises to look at the condition of the Premises, the Landlord's fittings and accessories, and the Services. The Landlord may notify the Tenant of any defects and require the Tenant to remedy them within a reasonable time.
- (b) At all reasonable times the Landlord, its agents or both may enter the Premises, without causing unnecessary interference with the use of the Premises by the Tenant, to:
 - (i) comply with the terms of any statute affecting the Premises;
 - (ii) carry out any structural work that the Landlord thinks should be carried out;
 - (iii) install any Services;
 - (iv) carry out any repairs to the Premises that the Landlord thinks should be carried out;
 - (v) carry out any works to any adjoining premises that the Landlord thinks should be carried out;
 - (vi) take inventories of fittings and accessories; and
 - (vii) remedy any defects about which the Landlord has notified the Tenant under **clause 7.1(a)** and which the Tenant has not remedied within a reasonable time.
- (c) If the Landlord carries out any works on the Premises that the Tenant should have carried out, the Tenant must pay the costs of that work to the Landlord on demand.

8. INSURANCE

8.1 Policies

- (a) The Tenant must, at its own expense, take out and keep up to date insurance policies as described in **Item 7 of Schedule 1** over the Premises in the names of the Landlord and the Tenant.
- (b) The insurance policies must be taken out with an insurance company approved by the Landlord.
- (c) The Tenant must take out:
 - (i) a public risk policy that gives a minimum cover for each accident, event or Claim of the amount stated in **Item 7 of Schedule 1**, or if

the Landlord notifies the Tenant, any reasonable higher amount. The cover provided under this policy must not be contributory with any policy the Landlord takes out;

- (ii) a plate glass policy, if there is any plate glass in the Premises; and
 - (iii) a policy covering fittings, accessories and stock in the Premises or associated with the business carried on by the Tenant in the Premises. Insurance cover under this policy must be for the full insurable value of the fittings, accessories and stock against loss or damage because of fire and other risks including water, storm and rainwater damage.
- (d) The Tenant must give copies of the insurance policies of the types described in **Item 7 of Schedule 1** to the Landlord before taking possession under this Lease.
 - (e) Within seven days of receiving any certificate of renewal or further policy, the Tenant must give a copy of it to the Landlord.
 - (f) If requested by the Landlord, the Tenant must show evidence of renewal of an expired policy to the Landlord.

8.2 Tenant Obligations

- (a) The Tenant must not do anything directly or indirectly that might make any insurance on or relating to the Premises void or voidable or which might increase the policy premium.
- (b) The Tenant must pay any increase in insurance premiums or charges incurred because of the Tenant's use of the Premises.
- (c) The Tenant must:
 - (i) comply with the insurance, sprinkler and fire alarm regulations that apply because of the use of the Premises; and
 - (ii) comply with the requirements of any insurer of the Premises; and
 - (iii) pay for any necessary alterations to the sprinkler or fire alarm installation to ensure compliance.
- (d) The Tenant must apply all money received under the plate glass insurance policy towards reinstating the damaged glass. If the money is insufficient to meet the cost of the reinstatement, the Tenant must pay the extra amount to reinstate the damaged glass to the Landlord's satisfaction.

8.3 Indemnity

- (a) The Tenant must indemnify the Landlord from and against all Claims which the Landlord may suffer or incur in connection with the loss of life and or personal injury to any person and or damage to any property (wheresoever occurring):
 - (i) arising from or out of any occurrence at the Premises;
 - (ii) arising from or out of the use by the Tenant of the Premises or any part thereof; or
 - (iii) occasioned wholly or in part by any neglect or omission by the Tenant or by the servants, agents or lawful visitors of the Tenant or by any other person or persons using or upon the Premises.
- (b) The Tenant must indemnify the Landlord against all loss and damage to the Premises caused by:

- (i) the negligent use or misuse, waste or abuse of air-conditioning, fire protection or fire fighting installations or equipment, water, gas or electricity supplied to the Premises or the Tenant in connection with the Premises or the use and occupation thereof; or
- (ii) faulty sanitary, water, gas or electric pipes or wires or fittings or fixtures fixed or installed in the Premises by the Tenant.

8.4 Tenant's Risk

The Tenant occupies the Premises and uses the Premises at the Tenant's own risk.

8.5 Release of Landlord

The Landlord will not be liable for any loss or damage suffered by the Tenant by reason of any accident arising from the water, sewerage, gas or electricity or other services used or installed in the Premises or by reason of any leakage overflow or escape of water, gas or electricity unless the same is directly attributable to the negligence of the Landlord or the employees of the Landlord.

9. USE OF THE PREMISES

9.1 Tenant's Business

- (a) The Tenant:
 - (i) must only use the Premises for the Permitted Use; and
 - (ii) must conduct its business on the Premises in a business like and commercial manner.
- (b) The Parties acknowledge and agree that the *Commercial Tenancy (Retail Shops) Agreement Act 1985* (Retail Shops Act) does not apply to this Lease. The Tenant acknowledges that the Permitted Use does not and will not constitute the Premises as a retail shop as defined in the Retail Shops Act.

9.2 No Landlord Representation

The Landlord does not represent that the:

- (a) Premises are suitable for the Permitted Use;
- (b) Landlord's fittings and accessories or Services are suitable for the Permitted Use;
- (c) Premises may lawfully be used for the Permitted Use; or
- (d) zoning of the Premises will allow the Premises to be used for the Permitted Use,

and the Tenant agrees that, before signing this Lease, the Tenant made its own inquiries about zoning.

9.3 Restrictions on Tenant

The Tenant must not:

- (a) do or allow anything which may:
 - (i) cause loss or damage to the Premises; or
 - (ii) choke or otherwise damage sewerage connections, drains and fittings;
- (b) use or allow the use of the toilets, conveniences and the water, lighting, heating and air conditioning apparatus, and fire sprinkler systems in the

Premises for any purposes other than those for which they were constructed;

- (c) overload, or allow the overloading of the floors of the Premises by placing heavy articles on them, the individual or combined weights of which exceed the design and construction limits of the Premises;
- (d) cause or allow any unduly loud noise or any other nuisance, disturbance or annoyance to be made in or to emanate from the Premises;
- (e) conduct or allow any auction sale, fire sale, warehouse sale or liquidation sale in the Premises;
- (f) mark, paint, deface or place any signs or advertising on any internal or external surface of the Premises unless permitted by the Landlord (which consent shall not be unreasonably withheld). The Tenant must ensure that any signs or advertising complies with the requirements of any relevant Authority;
- (g) permit any rubbish to accumulate in the Premises unless confined in suitable containers; or
- (h) interfere with or attempt to control any part of the fire alarm, sprinkler systems, any air conditioning equipment or any other machinery or equipment of the Landlord installed in the Premises.

10. OPTION TO RENEW LEASE

10.1 First Extended Term

Subject to the conditions set out in **clause 10.2**, the Tenant may renew the Lease for the periods stated in Item 5 of Schedule 1 starting on the day following the end of the initial Term of the Lease (First Extended Term).

10.2 Conditions of renewal

The Tenant may only renew the Lease in accordance with **clause 10**:

- (a) by serving (in accordance with this clause) on a day no earlier than six (6) months and no later than three (3) months before the end of the current Term or Extended Term (as the case may be) a written notice of the intention of the Tenant to renew the Lease for the next renewal period;
- (b) if the Tenant is not in breach of the Lease at the time of service of the notice of intention to renew the Lease;
- (c) the same terms and conditions apply during the Extended Terms as apply during the Term except in respect of any previously exercised Extended Term and any change in the Rent that has occurred; and
- (d) the Rent payable during the First Extended Term is subject to variation in accordance with **clause 3.2, Item 5 of Schedule 1** and the provisions of **Schedule 2**.

11. TERMINATION FOR BREACH

11.1 Essential Terms

The following Tenant's covenants are essential terms of this Lease:

- (a) the covenant to pay Rent, Operating Costs, the Bank Guarantee and other charges during the Term (**clauses 3, 4 and 19**);
- (b) the covenant not to deal with this Lease, or part with possession of the Premises without consent (**clause 5**);

- (c) the covenant requiring the Tenant to insure the Premises (**clause 8**);
- (d) the covenant about use of the Premises (**clause 9**); and
- (e) the covenants about the BEED Act (**clause 23**).

11.2 No Waiver

The Landlord's acceptance of late payment of Rent does not waive the essentiality of the Tenant's obligation to pay Rent.

11.3 Right to terminate Lease

The Landlord may terminate this Lease if:

- (a) all or part of the Rent or other money due to the Landlord under the Lease remains unpaid for 14 days after it is due, whether formally demanded or not;
- (b) the Tenant breaches the Lease, or any rule or regulation made under this Lease, and fails to rectify that breach within 14 days after receiving notice of that breach;
- (c) defects notified under **clause 7(a)** are not remedied within the time specified in the notice;
- (d) the Tenant is a corporation and an order is made or a resolution is passed for its winding up, unless it is for reconstruction or amalgamation;
- (e) the Tenant is a company that:
 - (i) stops or threatens to stop carrying on its business;
 - (ii) goes into liquidation, whether voluntary or not;
 - (iii) is wound up;
 - (iv) is placed under the control of a liquidator or receiver (in both cases whether provisional or otherwise);
 - (v) is placed under official management under the Corporations Act; or
 - (vi) enters into a composition or scheme of arrangement;
- (f) the interest of the Tenant under this Lease is taken in execution; or
- (g) the Tenant or any person claiming through the Tenant conducts any business from the Premises after the Tenant has committed an act of bankruptcy.

11.4 Method of termination

For the purposes of **clause 11.3** the Landlord may terminate this Lease by:

- (a) notifying the Tenant of the termination;
- (b) re-entering the Premises, with force if necessary, ejecting the Tenant and all other persons from the Premises and repossessing them; or
- (c) doing both.

11.5 Continuation of Tenant Liability

If the Landlord terminates this Lease under **clause 11.3** the Tenant remains liable for any previous breach of this Lease and other remedies available to the Landlord for recovery of unpaid Rent or for breach of this Lease are not affected.

11.6 Recovery of Damages

If the Landlord terminates this Lease under **clause 11.3**, it may, in addition to any other rights and remedies that it might have, recover damages from the Tenant for the loss of the benefit of so much of this Lease as would have continued but for the termination.

12. END OF TERM

12.1 Surrender of Premises

At the end of this Lease, the Tenant:

- (a) must remove from the Premises all of its furniture, fittings and effects. Any furniture, fittings and effects not removed by the Tenant will be dealt with in accordance with **clause 13**. The Landlord will not be liable to the Tenant for any loss or damage;
- (b) must restore the Premises to the same state and condition as it was in at the beginning of this Lease;
- (c) will not remove the Landlord's fixtures and fittings;
- (d) will quietly yield up possession to the Landlord;
- (e) if so desired by the Landlord, will remove or erase to the Landlord's satisfaction any sign or other thing erected on or about the Premises; and
- (f) must surrender all keys for the Premises to the Landlord at the Landlord's address.

12.2 Landlord May Erect Signs and Allow Inspection

During the last three (3) months before the end of the Term the Tenant must allow:

- (a) the Landlord or its agent to affix upon any part of the Premises a notice for re-letting them; and
- (b) intending tenants and others with written authority from the Landlord or its agent at reasonable times of the day upon application to view the Premises.

13. REMOVAL OF THE TENANT'S PROPERTY

If the Landlord terminates this Lease under **clause 11** it may:

- (a) remove the Tenant's property; and
- (b) store it at the Tenant's expense; and
- (c) after storing the property for 30 days, dispose of it and apply any proceeds towards:
 - (i) any unpaid Rent, Operating Costs or other money;
 - (ii) any loss or damage;
 - (iii) the payment of storage and other expenses,
 without being liable to the Tenant for trespass, detinue, conversion or negligence.

14. INTEREST

- (a) The Tenant must pay interest to the Landlord:
 - (i) on any money due under this Lease; or
 - (ii) on any judgment for the Landlord in an action arising from this Lease,

until all outstanding money and interest is paid in full.

- (b) Interest will accrue and be calculated daily at the rate set by the Landlord's bank as its benchmark rate for overdrafts of \$100,000 or more or, if there is no set rate, at the annual rate of 15%.

15. QUIET ENJOYMENT

If the Tenant pays the Rent and all other amounts payable under this Lease and does not breach this Lease it may use the Premises during this Lease without any interference from the Landlord, the Landlord's agents or transferees, subject to the Lease and the Landlord's rights under it.

16. LANDLORD'S COVENANTS

The Landlord (so as to bind the Premises and their proprietor for the time being but not to make itself personally liable except for its own acts and defaults or the acts of its servants or agents while it is the registered proprietor) agrees with the Tenant that the:

- (a) Tenant duly paying the Rent and performing and observing the terms covenants and conditions of this Lease may peaceably and quietly hold and enjoy the Premises during the Term without any interruption by the Landlord or by any person or persons rightfully claiming under or in trust for the Landlord;
- (b) Landlord must pay all outgoings not payable by the Tenant pursuant to the terms of this Lease;
- (c) Landlord must maintain the Premises in a sound structural condition and must repair all items of damage in respect of the Premises which are not specifically the responsibility of the Tenant to repair under this Lease;
- (d) Landlord must at all times during the Term use its best endeavours to maintain in proper working condition all mechanical installations and Services provided by the Landlord or connected by the Landlord to the Premises. The Landlord is not responsible or liable to the Tenant for any loss or damage suffered by the Tenant as a result of any breakdown of or defect in any matter or thing beyond the reasonable control of the Landlord;
- (e) Landlord must at its own expense promptly comply with and observe all notices and requirements of any Authority with respect to the Premises whether involving structural alterations or not except such as may be served on the Landlord arising out of or in the course of the Tenant's occupation and/or use of the Premises.

17. LANDLORD'S RIGHTS

17.1 Negation of Warranty

The Landlord does not expressly or impliedly warrant that the Premises are now or will remain suitable or adequate for all or any of the purposes of the Tenant. Any warranties as to suitability and adequateness of the Premises implied by law are expressly negated.

17.2 Landlord not liable for Damage to Tenant's property

If property of any kind which may be in the Premises during the Term is destroyed or damaged by water, heat, fire, vermin or in any other way, no part of the loss or damage occasioned is borne by the Landlord.

17.3 Landlord not liable for Interruption of Services

- (a) Despite any implication or rule of law to the contrary, the Landlord is not (except for any wilful or negligent acts of the Landlord or its officers, servants or agents) liable to the Tenant for any loss or damage suffered by the Tenant through:
- (i) any malfunction, failure to function or interruption of or to the water gas or electricity services, the air-conditioning equipment, fire equipment, or any of the appurtenances contained in the Premises; or
 - (ii) the blockage of any sewers, water drains, gutters, downpipes or storm water drains from any cause.
- (b) The Tenant is not entitled to terminate this Lease for any such reason nor will the Tenant have any right of action or Claim for compensation or damages against the Landlord in respect of such failure.

18. DESTRUCTION

18.1 Damage or Destruction

If the Premises are destroyed or so damaged by fire, tempest, Act of God or other event beyond the control of the Tenant as to be (in the opinion of the Landlord) unfit for occupation and use, the:

- (a) Landlord or the Tenant may by notice in writing to the other within sixty (60) days elect to cancel and terminate the Lease. The Term terminates one (1) month after notice is given and the Tenant must vacate the Premises and surrender the Premises to the Landlord. No party has any Claim against the other either in law or in equity in respect of such determination;
- (b) Rent reserved (or a fair and just proportion of it according to the nature and extent of the damage sustained) is suspended until the Premises are again fit for occupation and use. In case of a dispute over this proviso the same is referred to the award of a single Arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1985 (WA)*. The abatement of Rent and the Tenant's right to terminate the Lease does not apply in case of destruction or damage occasioned by the act or omission or alleged act or omission of the Tenant its servants, agents or lawful visitors.

18.2 No obligation to rebuild

Nothing contained or implied in the Lease will be deemed to impose any obligation on the Landlord to rebuild or reinstate the Premises or make the Premises fit for use and occupation if the Landlord believes it is impractical or undesirable to do so.

18.3 Termination not to affect rights

Any termination of this Lease will be without prejudice to the rights of either party in respect of any antecedent breach, matter or thing.

19. BANK GUARANTEE

19.1 Delivery to the Landlord

On or before the Commencement Date, the Tenant must deliver the Bank Guarantee to the Landlord.

19.2 Landlord may call on the Bank Guarantee

If the Tenant does not comply with any of its obligations under this Lease, whether this Lease is registered or not, then the Landlord may call on the Bank Guarantee without notice to the Tenant.

19.3 Replacement Bank Guarantee

If the Landlord calls on the Bank Guarantee, or the Rent is increased, then no later than 5 Business Days after the Landlord gives the Tenant a notice asking for it, the Tenant must deliver to the Landlord a replacement or additional Bank Guarantee so that the amount guaranteed is the amount in **Item 9 of Schedule 1**.

19.4 Return of the Bank Guarantee

The Landlord agrees to return the Bank Guarantee on the later of:

- (a) the date the Tenant has complied with all its obligations under this Lease; and
- (b) the Termination Date.

20. GOODS AND SERVICES TAX

20.1 Amounts otherwise payable do not include GST

Except where express provision is made to the contrary, and subject to this clause, the Consideration payable by the Tenant is exclusive of GST and represents the Value of the Taxable Supply for which payment is to be made.

20.2 Liability to pay GST

If the Landlord is liable by law for GST on a Primary Payment, the Tenant must pay to the Landlord the amount of the GST.

20.3 Time for payment

The Tenant must pay to the Landlord any amount in respect of GST that the Tenant is required to pay under this Lease:

- (a) at the same time; and
- (b) in the same manner.

as the Tenant is required to pay the Primary Payment in respect of which the GST relates.

20.4 Tax invoices

The Landlord must issue to the Tenant Tax Invoices in respect of Primary Payments as and when required by the GST Act.

20.5 Refunds

If the Landlord refunds to the Tenant an amount under this Lease, the Landlord must also refund to the Tenant at the same time any amount paid by the Tenant under **clause 20.3** with respect to the refunded amount.

20.6 Exclusion of Input Tax Credit items

For the purposes of this **clause 20**, a Primary Payment excludes any outgoing or other expense to the extent that the Landlord is entitled to an Input Tax Credit for the outgoing or expense.

20.7 Default GST

Where an amount required to be paid by the Tenant under this **clause 20** is not so paid when due, the Tenant must also pay to the Landlord:

- (a) Any Default GST payable by the Landlord in relation to the particular Taxable Supply for which the amount was required to be paid; and
- (b) Interest at the rate specified in **clause 14** on the amount unpaid from the due date for payment until payment.

For the purposes of this clause, it shall not be a defence to a claim against the Tenant for payment to the Landlord of Default GST that the Landlord has failed to mitigate the Landlord's damages by paying an amount of GST when it fell due under the GST Act.

21. NOTICES

21.1 Method of Giving Notices

A notice which is required or permitted to be given by one Party to another under this document must be in writing and be:

- (a) delivered by hand to that other Party's address;
- (b) sent by pre-paid mail to that other Party's last known address; or
- (c) transmitted by facsimile to that other Party's last known facsimile number.

21.2 Time of Receipt

A notice given to a Party in accordance with this clause is treated as having been duly received:

- (a) when delivered (in the case of it being left at that Party's address);
- (b) on the third (3rd) Business Day after posting (in the case of it being sent by pre-paid mail);
- (c) on the day of transmission (if a Business Day) or, if not a Business Day, on the next Business Day, if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise.

21.3 Address of Parties

For the purposes of this clause, the address of a Party is the address set out in this document or another address of which that Party may from time to time give written notice to each other Party.

22. GENERAL

22.1 Default Costs

Any Party in default under any provision of the Lease, on demand will pay all reasonable solicitors costs and expenses incurred by any other Party arising out of that default or from the exercise of any remedy exercisable as a result of that default.

22.2 Amendment

A variation or waiver of, or any consent by a Party to any departure from, a provision of this Lease is only effective if it is in writing and signed by the Parties. That variation, waiver or consent is effective only to the extent for which it is made or given.

22.3 Waiver

The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Lease does not operate as a waiver of that power or right. Any single exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under this Lease.

22.4 Moratorium not to Apply

Unless application is mandatory by law any statute, proclamation, order, regulation, or moratorium present or future will not apply to this Lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, privileges, remedies or discretions given or accruing to the Landlord.

22.5 Entire Agreement

This Lease constitutes the sole and entire agreement between the Parties concerning the subject matter hereof. A warranty, representation, guarantee or other term or condition of any nature relating to that subject matter, that is not contained, recorded, or referred to in this Lease, has no force or effect.

22.6 Severance

If any provision of this Lease or the application of that provision to any person or circumstance is or becomes invalid or unenforceable, then the remaining provisions of this Lease are not affected and are valid and enforceable to the fullest extent permitted by law. This clause has no effect if the severance alters the basic nature of this Lease.

22.7 Registration of Lease or Lodging of Caveats

- (a) The Tenant must not register this Lease or lodge a caveat against the Land or any part of the Land other than a subject to claim caveat to protect its interests under the Lease.
- (b) The Tenant must withdraw any caveat lodged by the Tenant at its expense at the end of the Lease.
- (c) The Tenant irrevocably constitutes and appoints the Landlord (and if the Landlord is a corporation each and every one of the officers of the Landlord jointly and severally) as the agent and attorney of the Tenant to surrender and withdraw any registration of this Lease or any caveat at the end of this Lease. For this purpose, the Landlord may sign any withdrawals, surrenders and any other instruments and documents and do all acts, matters and things as may be necessary or expedient for carrying out the powers granted in this clause.
- (d) The Tenant ratifies and confirms and allows the Landlord to do all acts permitted to be done under or by virtue of **clause 22.7** the cost of which will be borne and paid by the Tenant.

22.8 Further Assurance

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party to effectively carry out and give full effect to this Lease and the rights and obligations of the Parties under it.

22.9 Counterparts

This Lease may be executed by more than one (1) counterpart and all of those counterparts taken together constitute one (1) and the same instrument.

22.10 Attorneys

Where this Lease is executed by an attorney on behalf of a Party, that attorney by executing declares that he has:

- (a) the necessary and appropriate authority to execute this Lease for and on behalf of the Party; and

- (b) no notice of the revocation of the power of attorney under the authority of which he executes this Lease on behalf of that Party.

22.11 Landlord Not Liable to Third Parties

The Landlord is not responsible for loss, damage or injury to any person or property or effects of the Tenant or any other person in or about the Premises unless it arises from any wilful or negligent act or omission by the Landlord, its servants, contractors or employees.

22.12 Landlord May Act by Agent

All acts and things which the Landlord is required or empowered to do under the Lease may be done by the Landlord or any solicitor, agent, contractor or employee of the Landlord.

22.13 Additional Terms

The additional terms, covenants and conditions (if any) set out in **Item 10 of Schedule 1** are incorporated in the Lease as if fully set out in the Lease. If there is any inconsistency with the term, covenants and conditions of the Lease, the terms, covenants and conditions set out in **Item 10 of Schedule 1** prevail.

22.14 Governing Law and Jurisdiction

This Lease is governed by, and is to be construed in accordance with the law for the time being of Western Australia. The Parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia.

22.15 Compliance with Laws

In the performance of their obligations under this Lease, the Parties must comply with all applicable laws, rules regulations and by-laws of the Commonwealth, the State of Western Australia and any other jurisdiction and with all lawful orders and directions of any competent governmental body or government authority of the Commonwealth, the State or any other jurisdiction.

22.16 Time of the Essence

Time is of the essence of this Lease in all respects in so far as they relate to the Tenant.

22.17 Remedies cumulative

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

22.18 Approvals and Consents

Where this Lease provides for a Party to give its approval or consent, the Party may give it conditionally or unconditionally or withhold it, unless this Lease otherwise provides.

22.19 Payments

A Party liable to make a payment under this Lease is to make the payment without set off, counterclaim or deduction. The Party to whom a payment is to be made need not make a demand for payment unless a demand is expressly required.

22.20 Indemnities

In relation to each of the indemnities in this Lease:

- (a) the indemnity is a continuing obligation, separate and independent from the other obligations of a Party and survives the expiration or earlier termination of this Lease;
- (b) it is not necessary for a Party to incur expense or make a payment before enforcing a right of indemnity conferred by this Lease; and
- (c) a Party is liable to pay to the Party to be indemnified an amount equal to any loss suffered or incurred by an employee, officer or agent of that Party.

23. BEED ACT

The Tenant agrees to assist the Landlord in obtaining and maintaining a Building Energy Efficiency Certificate (BEEC) or NABERS rating, including but not limited to the following:

- (a) giving access to the Premises to Landlord and/or assessors to facilitate the gathering of information and data for the purposes of a BEEC or NABERS rating;
- (b) provide information and data regarding energy efficiency and energy consumption to the Landlord and/or assessor.

24. TRUSTEE PROVISIONS

24.1 If the Tenant is a trustee, it represents and warrants in favour of the Landlord that:

- (a) it has power under the relevant trust deed to enter into and perform its obligations under this Lease.
- (b) the trust was validly created and is in existence and it was validly appointed as and is the sole trustee of the trust.
- (c) it has unrestricted right of indemnity out of the trust's assets.
- (d) no part of the trust's assets have been re-settled or set aside.
- (e) there has been no capital distribution from, and no beneficiary has been allowed to use or occupy, the trust's assets.
- (f) it has not blended or mixed the trust's assets.
- (g) it is not in default of any provision of the relevant trust deed.

24.2 The Tenant agrees not to do each of the following:

- (a) Default under the relevant trust deed.
- (b) Allow its right of indemnity or subrogation to be restricted and must on demand from the Landlord exercise its rights of indemnity and subrogation against the trust's assets.

24.3 Otherwise than in the ordinary course of business:

- (a) allow the compromise of any claim relating to the trust's assets.
- (b) part with possession of any of the trust's assets.

24.4 Allow any capital distribution under the trust, exercise any power of determination, revocation, appropriation or advancement, or permit any settlement, setting aside, abandonment or transfer to other trusts of funds of the trust except the distribution of trust income in terms of the relevant trust deed or so as not to infringe the law against perpetuities or relating to accumulation.

24.5 Retire as trustee of the trust, permit the appointment of another trustee or allow the trust deed to be varied.

- 24.6 Blend or mix the trust's assets.
- 24.7 The Tenant acknowledges and agrees that this Lease will bind it both personally and in its capacity as trustee.

25. STRATA TITLES

25.1 Landlord's right to sub-divide

The Tenant:

- (a) agrees that the Landlord may at any time:
- (i) subdivide the Land whether or not pursuant to the Strata Titles Act;
 - (ii) execute easements or restrictive covenants in respect of the Land;
 - (iii) amalgamate the Land with any other land; or
 - (iv) mortgage the Land;
- (b) will if required by the Landlord for any of those purposes, withdraw at its cost each caveat lodged by the Tenant and on the completion of the registration by the Landlord of all relevant documents, the Tenant may lodge a new subject to claim caveat against the title to the land; and
- (c) in consideration of the Landlord having granted this Lease irrevocably appoints the Landlord and each of the directors and other officers of the Landlord individually to be the attorney of the Tenant to withdraw each caveat not withdrawn by the Tenant and to sign all withdrawals and other instruments and do all acts and things necessary or expedient for that withdrawal, agrees to ratify all act of the Landlord under this clause and undertakes to pay on demand all costs incurred by the landlord in respect of those matters.

25.2 Strata Titles Act

If at any time during the Term the Premises comprise or are part of a strata lot, the following provisions apply:

- (a) this Lease is subject in all respects to all easements, rights, reservations and powers, mentioned in the Strata Titles Act;
- (b) The Tenant and all persons claiming under or through the Tenant will have the right in common with the Landlord, the registered proprietor of each other strata lot in the strata plan of which the Premises forms part and their respective assigns, employees, tenants, occupiers and invitees to use the common property in the strata plan subject to the by-laws of the strata company and to all rules and regulations made by the strata company;
- (c) the Tenant must punctually pay all contributions levied by the strata company on the Landlord and if the Premises comprise only part of a strata lot and the contributions are not separately assessed for the Premises, the amount payable will be the same proportion of the whole as the lettable area of the Premises bears to the lettable area of the strata lot of which the Premises forms part; and
- (d) the Lessee must comply with all by-laws, rules and regulations, made by the strata company but if there is any inconsistency between the by-laws, rules or regulations and the provisions of this Lease, the Lessor will direct the Lessee as to which binds the Lessee.

25.3 Insurance

- (a) If the Premises comprise a strata lot and the strata company has effected current insurance policies of the kind referred to in the definition of Operating Costs, the Landlord may elect for so long as the policies are in effect not to take out duplicate policies of insurance; and
- (b) if the cost of effecting the insurance policies is not included in the calculation of Operating Costs, the Tenant will pay all premiums, costs and expenses, incurred in that respect as a separate payment on demand.

SCHEDULE 1**ITEM 1 LAND:**

Lot 4 On Strata Plan 17436 and being the whole of the land comprised in **Certificate of Title Volume 1841 Folio 312.**

ITEM 2 PREMISES:

The Land and improvements situated at Unit 4, 4 – 10 Farrall Road, Midvale.

ITEM 3 TERM OF THIS LEASE:

Commencement Date: 1 July 2014

Termination Date: 30 June 2019

ITEM 4**(A) ANNUAL RENT IN THE FIRST YEAR OF THE TERM:**

\$36,000.00 (plus GST) payable by equal calendar monthly instalments in advance of \$3,000.00 (plus GST) per month on the first day of each month throughout the Term.

(B) DUE DATE FOR FIRST INSTALMENT OF RENT:

1 July 2014

(C) RENT REVIEW DATES:**(i) CPI Review Dates**

1 July 2015

1 July 2016

1 July 2017

1 July 2018

(ii) Market Review Dates

Nil

(iii) Fixed Review Dates

Nil

ITEM 5 OPTION FOR RENEWAL OF LEASE:**OPTIONS:**

One (1)

FIRST EXTENDED TERM:

Term: 5 years

Commencement Date: 1 July 2019

Termination Date: 30 June 2024

RENT REVIEW DATES:**(a) CPI Review Dates**

1 July 2020

1 July 2021

1 July 2022

1 July 2023

(b) Market Review Dates

1 July 2019

(c) Fixed Review Dates

Nil

ITEM 6 PERMITTED USE:

Offices

ITEM 7 INSURANCE:

PARTICULARS OF INSURANCE:

Public Liability

A Policy approved by the Landlord (such approval not to be unreasonably withheld) insuring against public liability for not less than \$20 million in respect of any one occurrence for the risks normally covered by a public insurance policy or nominated by the Landlord in writing. The Landlord may increase or decrease the minimum cover.

Plate Glass and Tenant's Fixtures

A Policy approved by the Landlord (such approval not to be unreasonably withheld) insuring against plate glass and the Tenant's fixtures and fittings at the Premises for not less than \$100,000 in respect of any one occurrence for the risks normally covered by an insurance office approved by the Landlord. The Landlord may increase or decrease the minimum cover.

ITEM 8 MANAGING AGENT:

Not Applicable

ITEM 9 BANK GUARANTEE:

Not Applicable

ITEM 10 ADDITIONAL CLAUSES:

Not Applicable

SCHEDULE 2

RENT REVIEW

1. DEFINITIONS

In this **Schedule 2**:

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

CPI Review Date means each date specified as CPI Review Dates in **Item 4(c)(i)** and **Item 5 of Schedule 1**;

Current CPI means in respect of a CPI Review Date:

- (a) the Consumer Price Index number last published prior to that CPI Review Date; or
- (b) if the Landlord appoints an actuary to determine an index under **Item 2 of Schedule 2**, the number certified by that actuary;

Current Market Rent means the annual current market rent of the Premises, calculated assuming that:

- (a) the Tenant has observed all of the terms of this Lease;
- (b) the Tenant will occupy the Premises on the terms of this Lease; and
- (c) if any part of an improvement has been damaged or destroyed, that part of the improvement has been reinstated;

and taking into consideration:

- (d) current rents in respect of:
 - (i) new tenancies of vacant premises;
 - (ii) rent reviews under current tenancies of premises; and
 - (iii) renewals of existing tenancies of premises, which are similar to the Premises;
- (e) any use to which the Premises may be lawfully put;
- (f) the value to the Tenant of remaining in the Premises;
- (g) the nature of the Rent as a "net rent"; and
- (h) any change between the trading hours at the time of the relevant market Review Date and the Current Trading Hours;

but ignoring:

- (a) any value attaching to:
 - (i) the goodwill created by the Tenant's occupation of the Premises; or
 - (ii) the Tenant's trade fixtures and fittings on the Premises;
- (b) any value attaching to any license or permit issued in respect of the Tenant's business;
- (c) the fact that part of the Term has elapsed at the Market Review Date;

- (d) any rent free period, financial contribution, allowance or inducement, whether in cash or kind, or other concession customarily or likely to be offered to tenants or prospective tenants; and
- (e) any temporary disturbance resulting from the Landlord's maintenance of any part of the Premises, the Landlord's property or the Landlord's exercise of any of its rights under **clauses 11.5 or 11.6** at any time;

Fixed Percentage Increase means N/A;

Fixed Review Date means each date specified as Fixed Review Dates in **Item 4 (c)(iii) and Item 5 of Schedule 1**;

Licensed Valuer means a valuer who:

- (a) is a full member of the Australian Property Institute (Inc) (WA Division) of not less than 5 years standing; and
- (b) has had not less than 5 years practical experience in Western Australia in the valuation of premises of similar type to the Premises;

Market Review Date means each date specified as Market Review Date in **Item 4 (c)(iii) and Item 5 of Schedule 1**;

President means the President or the person acting or deputising for President for the time being of the Australian Property Institute (Inc) (WA Division);

Previous CPI means in respect of a CPI Review Date:

- (a) the Consumer Price Index number last published before the date which is 12 months prior to that CPI Review Date; or
- (b) if an actuary is appointed by the Landlord under **Item 2 of Schedule 2** the number certified by that actuary;

Rent Dispute Notice means a notice given by the Tenant to the Landlord under **Item 7 of Schedule 2** disputing the Rent stated in a Rent Review Notice; and

Rent Review Notice means a notice given by the Landlord to the Tenant under **Item 5 of Schedule 2**.

2. DETERMINATION OF CURRENT OR PREVIOUS CPI

If:

- (a) in determining the Current CPI:
 - (i) the Consumer Price Index number is not published; or
 - (ii) in the opinion of the Landlord, there is a material change in the basis of assessment of the Consumer Price Index; or
- (b) in determining the Previous CPI, no Consumer Price Index number was published between 12 and 15 months prior to that CPI Review Date;

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

- (c) in respect of the Current CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan area at that CPI Review Date; or
- (d) in the case of the Previous CPI, an index number which reflects the prevailing levels of prices for the Perth metropolitan Area at a date 12 months prior to that CPI Review Date;

and:

- (e) the actuary's certificate will be:
 - (i) final and binding on the Landlord and the Tenant; and
 - (ii) used to determine the Current CPI or the Previous CPI as appropriate; and
- (f) the Landlord and the Tenant shall pay the actuary's costs and expenses in equal shares.

3. CPI RENT REVIEW

If on a CPI Review Date the Current CPI is higher than the Previous CPI, the Rent, on an annual basis, with effect from that date will be reviewed so that it is the Rent for the previous 12 months multiplied by the Current CPI and divided by the Previous CPI.

4. MARKET RENT REVIEW

On each Market Review Date the Rent, on an annual basis, with effect from that date will be reviewed so that it is the Current Market Rent on that date.

5. RENT REVIEW NOTICE

The Landlord may at any time not earlier than 3 months before a Market Review Date by notice in writing to the Tenant review and fix the Rent at an amount which in the opinion of the Landlord is the then Current Market Rent.

6. REVIEWED RENT PAYABLE FROM MARKET REVIEW DATE

The amount of the Rent stated in the Rent Review Notice is payable from the Market Review Date even if:

- (a) the Rent Review Notice was given up to 6 months after the Market Review Date; or
- (b) a Rent Dispute Notice is given.

7. RENT DISPUTE NOTICE

If the Tenant on receiving a Rent Review Notice is of the opinion that the Rent stated in the Rent Review Notice as the Current Market Rent is not the Current Market Rent, the Tenant may by Rent Dispute Notice within 10 Business Days of receiving a Rent Review Notice require the Current Market Rent to be determined by a Licensed Valuer.

8. DETERMINATION BY VALUER

If the parties do not agree on a Licensed Valuer to determine the Current Market Rent, either the Landlord or the Tenant may request the President to appoint a Licensed Valuer for this purpose on terms that:

- (a) the Licensed Valuer will determine the Current Market Rent within 21 Business Days of the appointment; and
- (b) the Licensed Valuer determines the Current Market Rent of the Premises as at the relevant Market Review Date and gives the Licensed Valuer's determination and the reason for it in writing to the Landlord and the Tenant;

and the Licensed Valuer's determination is binding on the Landlord and the Tenant.

9. VALUER APPOINTED IS EXPERT AND NOT ARBITRATOR

A Licensed Valuer appointed under **Item 7 or Item 8 of Schedule 2** will act as an expert and not as an arbitrator.

10. RENT DETERMINED DIFFERENT FROM THAT STATED IN RENT REVIEW NOTICE

On the amount of the Rent being agreed or determined:

- (a) The Landlord must refund to the Tenant any money which by reason of the agreement or determination constitutes an over payment of Rent; or
- (b) if the Rent as agreed or determined is higher than the Rent stated in the Rent Review Notice, the Tenant must immediately pay to the Landlord for the period from the Market Review Date to the date on which the reviewed Rent is paid the difference between the reviewed Rent and the amount stated in the Rent Review Notice.

11. PAYMENT OF COSTS

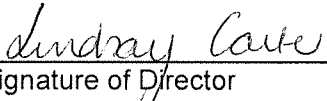
The Landlord and the Tenant must pay each one half of the Licensed Valuer's costs of determining the Current Market Rent unless the Current Market Rent determined is equal to or greater than the Rent stated in the Rent Review Notice, in which case the Tenant must pay all the Licensed Valuer's costs of determining the Current Market Rent.

12. FIXED RENT REVIEWS

On and from each Fixed Rent Review Date, the Rent will be the rent payable immediately before the fixed Review Date multiplied by the Fixed Percentage Increase.

EXECUTED AS A DEED


EXECUTED for and on behalf of
**CARTER WOODGATE PTY LTD (ACN 082
287 821) AS TRUSTEE FOR THE CARTER
WOODGATE UNIT TRUST** by authority of the
Directors in accordance with the requirements
of s.127 of the Corporations Act:



Signature of Director

LINDSAY RAYMOND CARTER

Name of Director



Signature of Director/Secretary

BRADLEY ROBERT WOODGATE

Name of Director/Secretary

EXECUTED for and on behalf of
**JETBLUE PTY LTD (ACN 078 515 349) AS
TRUSTEE FOR THE CARTER
SUPERANNUATION FUND** by authority of the
Directors in accordance with the requirements
of s.127 of the Corporations Act:




Signature of Director –
LEONIE GAYE CARTER

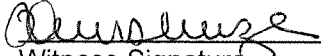


Signature of Director –
LINDSAY RAYMOND CARTER

SIGNED by
**BRADLEY ROBERT WOODGATE AS
TRUSTEE FOR THE LITTLE
BISCUITFACE SUPERANNUATION FUND**
in the presence of:



BRADLEY ROBERT WOODGATE



Witness Signature

TRACEY OAKES

Witness Name in Full

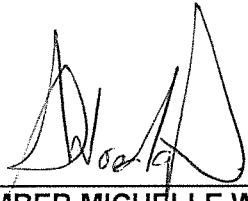
88 BANDALONE WAY HIGH WYCOMBE

Witness Address

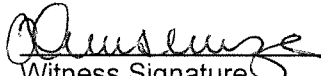
ACCOUNTANT

Witness Occupation

SIGNED by
**AMBER MICHELLE WOODGATE AS
TRUSTEE FOR THE LITTLE
BISCUITFACE SUPERANNUATION FUND**
in the presence of:



AMBER MICHELLE WOODGATE



Witness Signature

TRACEY OAKES

Witness Name in Full

88 BANDALONE WAY HIGH WYCOMBE

Witness Address

ACCOUNTANT

Witness Occupation