

# TASMANIAN LAND TITLES OFFICE

## MEMORANDUM OF LEASE

Section 64 Land Titles Act 1980.



THE LESSOR being the registered proprietor of an estate in fee simple, leases and THE LESSEE takes the land described for the term at a rent and on the terms and conditions specified herein.

DESCRIPTION OF LAND		
Folio of the Register		If part of land - describe part If easement created - describe easement
Volume	Folio	
136720	3	
136720	4	

Lessor:

**REBECCA VAN HOLST PELLEKAAN** and **DANIEL CORNELIS VAN HOLST PELLEKAAN** (jointly as between themselves) of sixty undivided 1/100 shares

**V.H.P. ENTERPRISES PTY LTD** (ACN 000 046 453) of forty undivided 1/100 shares

both c/- TTO Chartered Accountants, 234 Sturt Street, Adelaide SA 5000

Lessee:

**V.H.P. ENTERPRISES PTY LTD** (ACN 000 046 453) c/- TTO Chartered Accountants, 234 Sturt Street, Adelaide SA 5000

Date of Commencement of Lease:

1 July 2020

Term of Lease:

TEN (10) years

Rent:

Refer to Item 5 of Schedule 1 in Annexure A.

THIS LEASE is subject to the covenants and powers implied in leases by the Land Titles Act 1980 (unless hereby negated or modified) and also to the following covenants and conditions:- See Annexure B

See Annexure A for signing clauses

Land Titles Office Use Only

**L**

Version 1 (TOLD)

Duty

**THE BACK OF THIS FORM MUST NOT BE USED**

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ANNEXURE A

DATED.....

17/1/22

SIGNED as a deed

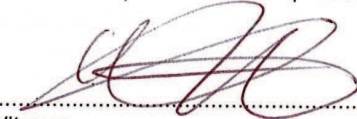
Lessor

SIGNED by REBECCA VAN HOLST PELLEKAAN  
as trustee for the VHP Super Fund in the presence  
of:



Signature of Rebecca van Holst Pellekaan

Signature of Witness



Print Name of Witness

CARLY TKACZ

SIGNED by DANIEL CORNELIS VAN HOLST  
PELLEKAAN as trustee for the VHP Super Fund in  
the presence of:



Signature of Daniel Cornelis van Holst  
Pellekaan

Signature of Witness



Print Name of Witness

CARLY TKACZ

SIGNED by V.H.P. ENTERPRISES PTY LTD (ACN  
000 046 453) as trustee for the VHP Family Trust in  
accordance with section 127(1) of the Corporations  
Act 2001:



Signature of Director/Secretary

Signature of Director

DC VAN HOLST PELLEKAAN

Print Name of Director

Print Name of Director/Secretary

Lessee

SIGNED by V.H.P. ENTERPRISES PTY LTD (ACN  
000 046 453) as trustee for the VHP Family Trust in  
accordance with section 127(1) of the Corporations  
Act 2001:



Signature of Director/Secretary

Signature of Director

DC VAN HOLST PELLEKAAN

Print Name of Director

Print Name of Director/Secretary

**NOTE:-**

1. Except for when an annexure (additional) page is required solely for execution(s) every annexed page must be signed by the parties to the dealing, or where the party is a corporate body, be signed by the persons who have attested the affixing of the seal of that body to the dealing;
2. All pages comprising this dealing must be pinned or stapled together.

**THE BACK OF THIS FORM MUST NOT BE USED**



## ANNEXURE B

### **PART A. PRELIMINARY**

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#### **1. Meanings**

In this Lease:

**Accounting Period** means (as applicable):

- (a) the period beginning on the Commencement Date and ending on the next 30 June;
- (b) each subsequent period of one (1) year starting on 1 July;
- (c) the period beginning on 1 July immediately before the end of the Lease and ending at the end of the Lease.

**Commencement Date** means the date the Lease commences as specified in Item 4(a).

**Corporations Act** means the *Corporations Act 2001*.

**CPI** means Consumer Price Index (All Groups) Hobart Index Number published by the Australian Bureau of Statistics. If the CPI no longer exists, or the basis for calculating it is changed substantially, it means the index that the President of the Australian Property Institute (Tasmanian Division) decides reflects changes in the cost of living in Hobart.

**Current Rent** means the Rent payable immediately prior to a Review Date.

**Item** is a reference to the relevant item in the Schedule.

**Landlord** means the person specified in Item 2.

**Landlord's Agents** means an agent, contractor, employee or invitee of the Landlord.

**Lease** means this Memorandum of Lease and includes the Schedule and any annexures and plan referred to in or annexed to this Lease.

**notice** means notice in writing given in a manner provided for in clause 68.

**Operating Expenses** means subject to the extent not specifically payable by the Tenant, all present and future outgoings, costs and expenses which are payable or assessed or otherwise reasonably incurred by the Landlord in respect of the Premises or in respect of the management of the Premises including without limitation:

- (a) all present and future taxes payable in respect of the Premises in respect of the Landlord's ownership or occupancy;
- (b) all rates, charges, assessments, duties, impositions, levies and fees charged imposed or assessed by any authority on or in respect of the Premises;
- (c) the cost of any insurance taken out by the Landlord in respect of the Premises including to insure the improvements on the Premises against loss and damage, insurance against consequential loss and loss of rent and any other insurance the Landlord reasonably takes out;
- (d) the expenses of the Landlord in providing any services to the Tenant at the Land;
- (e) the cost of providing cleaning, toilet requisites, garbage removal, lighting, gardening, landscaping and security services to the Land;
- (f) any costs, fees or charges payable under any maintenance and service contracts for plant and machinery on the Premises (including air-conditioning plant and equipment and lifts);

- (g) all costs of repairs, maintenance, servicing and replacements of and to the Premises including air-conditioning equipment other than work of a capital nature unless such work is to be undertaken due to the negligence or an act or omission of the Tenant or the Tenant's Agents;
- (h) all costs of management operation and administration of the Premises including all fees and expenses paid to any managing agent and for audit legal and valuation fees and expenses;
- (i) all costs in respect of the heating cooling and air-conditioning of the Premises including the operation, repair and replacements of and to all heating cooling and air-conditioning plant and equipment;
- (j) all costs in respect of the control and eradication of vermin and pests;
- (k) all costs in respect of the security of the Premises;
- (l) all costs of gardening and landscaping in respect of the Land;
- (m) all costs, fees and charges in respect of the repair maintenance replacement operation testing modification and servicing of all fire detection fighting and prevention plant and equipment including all charges and fees imposed by any relevant authority for attending at the Premises in respect of any perceived potential or actual fire;
- (n) all strata title and/or community title levies and fees (if applicable);
- (o) all costs and expenses associated with removing graffiti in or upon the Premises; and/or
- (p) all other outgoings assessed against the Premises or as previously notified to the Tenant,

but excluding any structural costs, capital replacements and/or improvement costs except to the extent caused or contributed to by the Tenant's wilful or negligent acts or omissions.

**Permitted Use** means the use described in Item 6.

**Premises** means all of:

- (a) the land described in Item 1 (and where the said land is a unit or part of a unit within a strata or community title plan, shall mean the whole of the land within such strata or community title plan);
- (b) the improvements on that land; and
- (c) the fixtures and equipment on that land.

**Quarter** means each three (3) month period ending 31 March, 30 June, 30 September and 31 December.

**Rent** means the annual rent specified in Item 5 as adjusted (from time to time) under this Lease.

**Review Date** means each date specified in Item 7.

**Schedule** means the Schedule 1 at the end of this Lease.

**Tenant** means the person specified in Item 3.

**Tenant's Agents** means an agent, contractor, employee, sub-tenant, licensee, customer or invitee of the Tenant or any other person under the control of the Tenant.

**Term** means the term of this Lease specified in Item 4 comprised of the Initial Period and any Extension Periods (see Part C).

**Valuer** means a valuer as agreed by the parties or failing agreement within five (5) days of a request by one party as nominated by the President of the Australian Property Institute (Tasmanian Division) with



the same being someone with at least ten (10) years experience in property related valuations in Tasmania. The Valuer will act as an expert and not as an arbitrator.

## **2. Interpretation**

2.1 In this Lease:

- 2.1.1 headings do not affect interpretation;
- 2.1.2 no rule of construction applies to the disadvantage of a party because that party put forward this Lease or any portion of it;
- 2.1.3 if a provision of this Lease would, but for this clause, be unenforceable then the provision must be read down to the extent necessary to avoid that result, and, if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Lease;
- 2.1.4 another grammatical form of a defined word has a corresponding meaning;
- 2.1.5 a reference to legislation includes:
  - (a) the legislation as amended;
  - (b) any substituted legislation;
  - (c) any sub-ordinate legislation or regulations under that legislation;
  - (d) any orders under that legislation;
- 2.1.6 neuter includes masculine and feminine and singular includes plural and vice versa;
- 2.1.7 a reference to a party if more than 1 means them jointly and each of them severally; and
- 2.1.8 a reference to a person includes a body politic or corporate, an individual and a partnership and vice versa;
- 2.1.9 a reference to a **month** means a calendar month;
- 2.1.10 a party must pay its own costs in doing anything required under this Lease unless otherwise expressly stated; and
- 2.1.11 should a body, association or government authority referred to in the Lease cease to exist, the Lease must be read as referring to any replacement for the same.

## **PART B. GENERAL RIGHTS**

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### **3. Possession and Enjoyment**

Subject to the Landlord's rights and while not in default the Tenant has:

- 3.1 exclusive possession of the Premises; and
- 3.2 quiet enjoyment of the Premises.

### **4. Strata and Community Title**

Where the Premises is or becomes a unit or part of a unit within a strata or community title plan under the relevant legislation:

- 4.1 the Tenant and the Tenant's Agents will observe and be subject to the rules and by-laws of the relevant strata or community corporation or authority from time to time;

- 4.2 the Tenant and the Tenant's Agents shall be permitted by the Landlord to enjoy a right in common with the Landlord and other owners and occupiers of units within the centre and land to use the areas set aside from time to time as common areas in the said plan;
- 4.3 if there is a defect, leakage or need for repair in the said building or land which adversely impacts upon the Tenant and the Landlord does not have authority to remedy, the Landlord must use its reasonable endeavours to cause the strata or community corporation to remedy it;
- 4.4 if the strata or community corporation is obligated by law to perform the subject matter of an obligation imposed on the Landlord under the Lease, the Landlord does not have to perform the obligation to the extent that the strata or community corporation is obliged by law to perform it. However the Landlord must take reasonable steps to cause the strata or community corporation to perform it; and
- 4.5 the Tenant will not be obliged to pay any amounts incurred arising or levied as a result of the Premises becoming a unit or part of a unit within a strata or community title plan.

#### **PART C. PERIOD OF TENANCY**

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##### **5. Initial Period**

The initial period of the Lease is stated in Item 4(a) (**Initial Period**).

##### **6. Extensions**

- 6.1 Subject to this clause the Lease may be extended on the same terms for the period stated in Item 4(b) (**Extension Periods**).
- 6.2 The Tenant may extend this Lease for a further term of the period of the Extension Period commencing on the day following the expiry of the Initial Term and Extension Period (as applicable) and on the same terms and condition as this Lease (save and except that this clause 6 giving the Tenant a right of extension shall be excluded) if:
- 6.2.1 between six (6) and three (3) months (both inclusive) before the date of the commencement of the relevant Extension Period the Tenant notifies the Landlord in writing that the Tenant wishes to extend this Lease for the period of the Extension Period; and
- 6.2.2 at the time of such notification and again on the last day prior to the start of the Extension Period:
- (a) the Tenant is not in default under this Lease for which the Landlord has given the Tenant notice of the default and a reasonable period within which to remedy the default; and
- (b) the Landlord is not otherwise entitled to give notice to terminate this Lease.
- 6.3 Upon the extension of Lease for the further period of the period of the Extension Period this clause 6 and Item 4(b) shall be amended to the extent necessary to reflect the extension.
- 6.4 To avoid doubt, the Tenant will have no further rights to extend this Lease on the expiration of the last of the Extension Periods, in which event this clause 6 shall be deleted.

#### **PART D. RENT**

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##### **7. Rent**

The Tenant will pay Rent as specified in Item 5 to the Landlord at its address or as otherwise directed by the Landlord in writing.



## 8. Review of Rent

- 8.1 On and from each Review Date as specified in Item 7(a), Rent will be increased by an amount equal to the higher of:

- 8.1.1 an amount represented by "NR" in the following formula:

$$NR = (A \times \frac{B}{C})$$

where:

**NR** is the Rent payable on and from each Review Date.

**A** is the Current Rent payable immediately prior to the Review Date (ignoring any abatement, concession, inducement, contribution, incentive or other value supplied by or on behalf of the Landlord to or on account of the Tenant).

**B** is the CPI prevailing on the Review Date.

**C** is the CPI published for the Quarter ended immediately before the previous Review Date or, if there was no previous Review Date, the Commencement Date; and

- 8.1.2 an amount equal to the Current Rent payable immediately prior to the relevant Review Date plus an amount equal to 2% of the Current Rent.

- 8.2 On and from each Review Date specified in Item 7(b), the Rent will be an amount agreed in writing between the Landlord and the Tenant but failing agreement not less than one (1) month before the Review Date specified in Item 7(b) the Rent will be a Rent determined by a Valuer who will be instructed to determine the current market rent for the Premises provided that such determination will be undertaken on the following basis:

- 8.2.1 upon the appointment the Valuer will notify the Landlord and the Tenant in writing of the fact of the appointment and the Valuer's acceptance of the same;
- 8.2.2 the Valuer will seek written submissions from the Landlord and the Tenant or their duly authorised representatives and will give reasonable consideration to such submissions before making a determination provided always that such submissions are made within the time or times nominated by the Valuer;
- 8.2.3 the Valuer must have regard to the current market rental of the Premises as if the Premises were unoccupied and offered for renting for the use to which the Premises may be put under this Lease;
- 8.2.4 the Valuer will exclude the value of any goodwill attributable to the Tenant's business and the value of the Tenant's improvements fixtures and fittings in the Premises and will also exclude any deleterious condition of the Premises if such condition results from any breach of any provision of this Lease by the Tenant;
- 8.2.5 the Valuer will have regard to all of the terms and conditions of this Lease and in particular to any liability on the part of the Tenant to pay the Operating Expenses under this Lease;
- 8.2.6 the Valuer will make his or her determination on the basis of a lease of the Premises on the same terms as this Lease (for the whole of the Term and not the residue of the Term);
- 8.2.7 the Valuer will take into account the value of all the Landlord's fixtures, fittings, plant and equipment in the Premises and the value of any fit-out or other tenancy works provided by the Landlord;

- 8.2.8 the Valuer will have regard to the current annual rental of premises comparable with the Premises;
- 8.2.9 the Valuer will take into account any increase in value of the Premises including without limitation any increase in value arising from any permanent improvements erected or installed at the expense of the Tenant or the Landlord or both of them and which the Tenant may not remove from the Premises;
- 8.2.10 the Valuer will not have regard to any fine, premium, cash payment, allowance, rent free period, suspension or abatement of rent or other incentive or assistance effected or given in respect of this Lease or in respect of comparable premises to induce a tenant to take a lease of or remain in such comparable premises;
- 8.2.11 the Valuer will not take into account:
- (a) any breach of this Lease by the Tenant or the Landlord (but without prejudice to any right of remedy for any such breach); nor
  - (b) any damage to or destruction of the Premises nor any consequential cessation or suspension of rent;
- 8.2.12 the Valuer will have regard to any other matters such Valuer reasonably considers relevant provided the same are not inconsistent with the foregoing;
- 8.2.13 the Valuer will make a determination as to the current market rent of the Premises within thirty (30) days of being appointed;
- 8.2.14 the costs and expenses of the Valuer will be borne equally between the Landlord and the Tenant; and
- 8.2.15 any determination made by the Valuer pursuant to the terms hereof will be final and binding on each of the Landlord and the Tenant.
- 8.3 If Rent has not been determined by the applicable Review Date the Tenant will continue to pay Rent at the rate applicable immediately prior to the Review Date and the Rent paid will be varied retrospectively with effect from the relevant Review Date on the Rent being reviewed under this clause 8 with any under payment of Rent being paid by the Tenant within two (2) Business Days of the Rent being reviewed and any overpayment of Rent being repaid by the Landlord within two (2) Business Days of the Rent being reviewed.
- 8.4 The failure or neglect of the Landlord to initiate or require a review of Rent under this clause 8 in respect of any Review Date will not prevent or restrict the Landlord from at any later time requiring such a review of Rent to occur and once reviewed Rent will be adjusted on and from the relevant Review Date.

## **PART E. UTILITIES AND OPERATING EXPENSES**

### **9. Utilities and Charges**

- 9.1 The Tenant must pay on time:
- 9.1.1 charges for gas, oil, electricity, telephones, communication services and water and all other utility services used or consumed on or in respect of the Premises;
  - 9.1.2 other charges for the supply of services in relation to the Premises including cleaning; and
  - 9.1.3 rates, taxes or assessments and other charges (including licence fees) imposed on the Premises or on the Tenant in relation to the Tenant conducting its business from the Premises.
- 9.2 The Tenant's obligation under clause 9.1 applies regardless of whether the invoice for such supplies is in the name of the Tenant or Landlord and where in the name of the Landlord the



Landlord will promptly forward the invoice to the Tenant and the Tenant must pay the invoice directly within the required time. The Tenant is liable for any fines or costs incurred by the Landlord because the Tenant is late in paying such invoices.

- 9.3 If required by the Landlord, the Tenant must at the Tenant's cost install any additional meters for any services supplied to the Premises.

#### **10. Electricity Supply**

- 10.1 The Tenant may purchase electricity from any reputable supplier of electricity approved by the Landlord (acting reasonably).
- 10.2 The Landlord is not liable to the Tenant for any interruption of the electricity supply to the Premises unless the interruption is caused by a deliberate or negligent act or omission of the Landlord or the Landlord's Agents.
- 10.3 If the Landlord supplies electricity to the Premises and the Tenant chooses to purchase electricity from the Landlord, the Tenant must purchase electricity from the Landlord at the rates agreed between the parties from time to time.
- 10.4 The Tenant acknowledges that the Landlord may in its absolute discretion at any time during the term of the Lease on giving sixty (60) days prior written notice to the Tenant terminate the supply of electricity to the Premises.
- 10.5 The Landlord acknowledges that the Tenant may in its absolute discretion at any time during the term of the lease on giving sixty (60) days prior written notice to the Landlord elect to purchase electricity to be consumed in the Premises from a licensed retailer of the Tenant's choice.
- 10.6 If the Tenant arranges its own supply of electricity to the Premises, (i) the Tenant agrees that any contract entered into between the Tenant and its retailer will include a provision requiring the retailer to provide the Landlord (and strata or community corporation, if applicable) with whatever information is reasonably required by the Landlord regarding the Tenant's electricity consumption; and (ii) the Tenant must install at its own cost all additional meters and other equipment required by the Tenant's electricity retailer.
- 10.7 If external network charges do not form part of the electricity charges payable to the Landlord by the Tenant, or the Tenant does not purchase electricity from the Landlord, then the Tenant must pay its share of external network charges as reasonably determined by the Landlord.
- 10.8 The Tenant must in any event comply with the terms and conditions applicable to the electricity network in the Land, as advised by the Landlord from time to time.

#### **11. Operating Expenses**

- 11.1 The Tenant must pay to the Landlord when due in respect of each Accounting Period, the Operating Expenses in accordance with this clause 11.
- 11.2 If the amount of any item comprised in the Operating Expenses relates to a period which does not coincide with an Accounting Period, the Operating Expenses payable in respect of the relevant Accounting Period will be calculated on a pro rata basis having regard to the number of days in the Accounting Period to which the item relates and the total period to which the item relates.
- 11.3 The Landlord will notify the Tenant of the Landlord's reasonable estimate of the Operating Expenses for a relevant Accounting Period. The Tenant will as directed by the Landlord pay to the Landlord the same by equal instalments in advance with the first instalment to be paid on the Commencement Date and thereafter on the 1st day of each and every succeeding month.
- 11.4 As soon as practicable after 30 June in each year, or otherwise as may be required by law, the Landlord will provide the Tenant with a statement giving reasonable details of the actual

Operating Expenses of the preceding Accounting Period and any adjustments for the purposes of this clause (**Statement**).

- 11.5 The Statement need not be audited unless the Tenant requests in writing.
- 11.6 If the Statement shows a difference between the estimated and actual Operating Expenses then:
  - 11.6.1 where the Landlord has received from the Tenant an amount exceeding the Operating Expenses, the Landlord will within one (1) calendar month from the date of the Statement either refund the excess to the Tenant or (with the consent of the Tenant) credit the excess against future liabilities of the Tenant in relation to Operating Expenses; or
  - 11.6.2 where the Landlord has not received from the Tenant the full amount of the Operating Expenses, the Tenant will on demand pay such deficiency to the Landlord.
- 11.7 To avoid doubt any Operating Expenses imposed on and directly paid by the Tenant will not be used in calculating any amount under this clause.

## 12. **Rates, Taxes and Outgoings**

The Landlord will pay when due (unless disputed by the Landlord) all Operating Expenses and other outgoings assessed or imposed in respect of the Premises except to the extent to which the same are assessed or imposed directly on the Tenant. In doing so the Landlord's right to recover Operating Expenses from the Tenant is not affected.

## **PART F. OTHER EXPENSES AND GST**

### 13. **Landlord's Costs**

- 13.1 The Tenant must pay one-half of all costs incurred by the Landlord in relation to:
  - 13.1.1 obtaining mortgagee consent and production fees; and
  - 13.1.2 preparing, negotiating and signing this Lease and any related disclosure statement.
- 13.2 The Tenant must pay all:
  - 13.2.1 stamp duty and registration fees on this Lease as required by law and all of the Landlord's reasonable costs (including legal costs) of and incidental to the certification and registration of this Lease);
  - 13.2.2 costs incurred by the Landlord in relation to a Tenant's request for the Landlord's consent or approval and any fees associated with the Tenant mortgaging this Lease; and
  - 13.2.3 the costs of preparation and registration of a suitable plan of the Premises where such a plan is necessary for any reason.
- 13.3 The Tenant must pay the Landlord's costs of any document varying, extending or surrendering this Lease.

### 14. **GST**

- 14.1 Unless expressly stated, the Rent and other amounts payable under this Lease are calculated or expressed exclusive of GST.
- 14.2 If GST is payable, the Tenant must pay that GST:
  - 14.2.1 to the Landlord;



- 14.2.2 if in respect of possession of the Premises, at the same time as the payment of Rent;
- 14.2.3 if in respect of any other supply of goods or services under this Lease, at the same time as the payment of the price or fee or other amount in respect of that supply is due; and
- 14.2.4 in addition to Rent and any other amount payable by the Tenant under this Lease.
- 14.3 On receiving payment from the Tenant under this clause, the Landlord must give the Tenant a tax invoice for that payment within a reasonable time of receipt of the Tenant's payment.
- 14.4 In this clause:
  - 14.4.1 **GST** means goods and services tax or any other similar tax imposed by reason of a supply of goods or services under this Lease; and
  - 14.4.2 **tax invoice** has the same meaning as that given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*.

## **PART G. USE AND MAINTENANCE**

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### **15. Permitted Use**

The Tenant must only use or permit the Premises to be used for the Permitted Use.

### **16. Nuisance**

The Tenant must not:

- 16.1 carry on or permit on the Premises any offensive, illegal, noisy or dangerous trade, business or occupation; or
- 16.2 cause a nuisance, interfere with or inconvenience the Landlord or any neighbouring or adjoining owners or occupiers.

### **17. Prohibited Matters and Environmental Issues**

- 17.1 The Tenant must not without the Landlord's consent bring on or allow to be brought onto the Premises any noxious, dangerous, toxic, explosive or volatile substances capable of causing damage to the Premises or which are hazardous or harmful to persons occupying or utilising the Premises or Land.
- 17.2 The Tenant agrees to indemnify the Landlord from and against all claims with respect to which the Landlord may become liable arising from a breach of clause 17.1 by the Tenant or the Tenant's Agents.

### **18. Maintenance of Premises**

- 18.1 The Tenant must keep the Premises in good condition and repair except where the repair:
  - 18.1.1 is required as a result of:
    - (a) reasonable wear and tear; or
    - (b) fire, lightning, storm, tempest, earthquake, explosion, riot, civil commotion, terrorist act, act of God or war;
  - 18.1.2 requires structural work or expenditure of a capital nature unless such work is to be undertaken due to the negligence or an act or omission of the Tenant or the Tenant's Agents.

18.2 The Tenant must:

18.2.1 make good any breakage, defect or damage to the Premises caused by:

- (a) want of care, misuse or abuse by the Tenant or the Tenant's Agents; or
- (b) any failure by the Tenant to comply with the Lease;

18.2.2 with reasonable speed replace in the Premises:

- (a) faulty power points, switches, lights and globes;
- (b) cracked, broken or severely damaged glass (including scratches and graffiti);
- (c) damaged doors, windows or locks;
- (d) damaged or faulty lighting and electrical equipment,

18.2.3 service the Tenant's fixtures and fittings and the Landlord's fixtures and fittings installed for the sole use of the Tenant, including electric roller doors, sliding doors, gutters and downpipes, hot water services, fire protection, lighting and electrical fit-out and internal plumbing of the Premises.

18.3 The Tenant must carry out any work under this Lease:

18.3.1 in a proper and workmanlike manner;

18.3.2 using materials of an appropriate standard; and

18.3.3 in accordance with any reasonable direction given by the Landlord.

**19. Cleaning and Rubbish**

The Tenant must at its cost:

19.1 cause the Premises to be cleaned regularly in a proper and workmanlike manner, and as often as is necessary to maintain the Premises in a professionally clean and tidy state;

19.2 keep the Premises clean and free from dirt and rubbish; and

19.3 ensure that all rubbish is placed in appropriate bins and that all rubbish is regularly collected and removed from the Premises.

**20. Air-conditioning**

20.1 The Tenant must comply with the Landlord's reasonable directions about the use of air-conditioning equipment supplied by the Landlord.

20.2 The Tenant must service and maintain the air-conditioning equipment on and servicing the Premises which is supplied by the Landlord to ensure its good reliability, repair and condition and to procure the same the Tenant must at its cost enter into a service agreement with a reputable air-conditioning maintenance provider.

**21. Painting**

The Tenant must paint in colours which the Landlord approves all interior painted surfaces (including walls and ceilings) of the Premises when reasonably directed by the Landlord (having regard to the condition of such surfaces and provided that the Tenant will not be required to do so more than once within any five (5) year period) and at the expiry or termination of this Lease.



**22. Compliance with Laws**

- 22.1 The Tenant must at its cost comply with laws affecting use of the Premises (**legal requirement**).
- 22.2 If notice of a legal requirement is given to the Tenant, the Tenant must give a copy of the notice to the Landlord within two (2) days.
- 22.3 The Landlord may comply with the legal requirement itself and if the Landlord does so the Tenant must on receipt of an account from the Landlord reimburse the Landlord for the cost.
- 22.4 This clause 22 does not require the Tenant to make or pay for structural alterations to the Premises or incur any capital costs if the legal requirement to make the alterations is unrelated to:
  - 22.4.1 the Tenant's use of the Premises;
  - 22.4.2 the Tenant's act neglect or default;
  - 22.4.3 the number or sex of the Tenant's employees; or
  - 22.4.4 an express requirement to do structural work in this Lease.

**23. Pests**

The Tenant must exterminate any rats, mice or other vermin or pests on the Premises.

**24. Clean Pipes and Drains**

The Tenant must at all times keep clean and free all drains, grease, traps and waste pipes on or in the Premises.

**25. Notice of Defects**

The Tenant must give the Landlord prompt notice in writing of any circumstances which the Tenant should reasonably be aware might cause any danger, risk or hazard to the Premises or any person on the same.

**26. No Signs Blinds or Awnings**

- 26.1 The Tenant must not without the prior consent of the Landlord:
  - 26.1.1 install any window, blinds, windscreens or awnings on the Premises; or
  - 26.1.2 erect, display, affix or exhibit on the Premises any permanent sign, advertisement or notice (whether illuminated or not) (**Signs**).
- 26.2 The Tenant will on the expiry of the Term or on the termination of the Lease remove any Signs on the Premises and will make good any damage caused by the same.

**27. Alterations and Installations**

- 27.1 The Tenant will not without the consent of the Landlord:
  - 27.1.1 make any alteration or addition in or to the Premises including construction works;
  - 27.1.2 install or alter any partition, equipment (other than unfixed furnishings or unfixed business equipment) or other installation on the Premises; or
  - 27.1.3 paint or decorate the Premises so that its appearance is significantly altered.

- 27.2 Ownership of any works undertaken by the Tenant will remain the property of the Tenant and may be removed by the Tenant during the Term of this Lease or upon the expiry or termination of this Lease. If the Tenant fails to remove such works, then the Landlord may remove them at the Tenant's expense or retain them as the Landlord's property as part of the Premises without any liability to the Tenant for their cost or value or for any compensation. The Tenant is liable for reinstating the Premises to its original state and making good any damage to the Premises through the removal of works by the Tenant.
- 27.3 If on the request of the Tenant, the Landlord agrees to upgrade or make alterations to the electrical, communication or other services to the Premises the Tenant will pay to the Landlord on demand the entire cost to the Landlord of such alterations (inclusive of consultants' fees).

## **28. Carrying out Works**

- 28.1 Where this Lease requires or (with or without the Landlord's consent) allows the Tenant to carry out any fitout, refurbishment, alteration, addition, construction, maintenance, repair or other works in relation to the Premises the Tenant must carry out that work:
- 28.1.1 at its cost (unless otherwise stated in this Lease or agreed in writing);
  - 28.1.2 at its risk and in a manner and at times to minimise any disturbance to other occupiers of the Land;
  - 28.1.3 having first obtained any planning or other governmental approval required for the work and performing such work in compliance with applicable laws (including laws about health and safety) and any applicable Australian Standard;
  - 28.1.4 in compliance with and not extending beyond plans, drawings, specifications and construction program for the work (including any change to the existing service infrastructure, the Land, services, plant or equipment that results) given by the Tenant to the Landlord and approved by the Landlord before work commences; and
  - 28.1.5 in a proper workmanlike manner, by qualified tradesmen, using items and material of an appropriate standard and in conformity with any reasonable written directions given by the Landlord as to quality, appearance, finishes or placement and under the supervision of an architect, engineer or qualified person the Landlord may engage at the Tenant's costs. The Tenant will provide a certificate of compliance for the work.

## **29. Overloading and Electrical Interference**

The Tenant will:

- 29.1 not permit any weight or stress to be placed upon any part of the floor, walls or ceiling of any building erected on the Premises which is reasonably likely to cause damage to the structure of such building;
- 29.2 not install or permit the installation of any electrical or electronic equipment in the Premises which may overload the electrical services to the Premises; and
- 29.3 comply with any notice from the Landlord requiring the Tenant to fit effective suppressors to any electrical or other equipment of the Tenant in the Premises which is causing electromagnetic interference.

## **PART H. ACCESS**

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### **30. Landlord's Access and Entry**

31. The Landlord may upon providing seven (7) days' written notice:
- 31.1.1 inspect the Premises;



- 31.1.2 inspect, install, maintain, alter or remove any wires, ducts, pipes or drains in, under or over the Premises;
- 31.1.3 pass and run water, air, electricity, drainage, gas and other services through wires, ducts, pipes or drains;
- 31.1.4 inspect, repair, paint and use the exterior walls or the roof of the Premises as it wishes; and
- 31.1.5 enter the Premises at any reasonable time for these purposes,
- 31.1.6 except in the event of an emergency where no notice is required for the Landlord to exercise the rights in this clause 31.

32. The Landlord must:

- 32.1.1 exercise these powers with minimum disturbance or damage to the Tenant; and
- 32.1.2 make good any resulting damage to the Premises.

### 33. **Re-Letting and Sale**

- 34. In the last three (3) months of the Term the Tenant must allow the Landlord to:
  - 34.1.1 affix notices in or to the Premises that the Premises are for Lease; and
  - 34.1.2 enter the Premises at any reasonable time with prospective tenants.
- 35. At any time the Tenant must allow the Landlord to:
  - 35.1.1 affix notices in or to the Premises that the Premises is for sale; and
  - 35.1.2 enter the Premises at any reasonable time with prospective purchasers.

## **PART I. INSURANCE AND RISKS**

### 36. **Insurance**

- 36.1 The Tenant must insure during the Term:
  - 36.1.1 plate glass in the Premises against breakage and other severe damage (including scratches and graffiti) for full replacement value;
  - 36.1.2 the Tenants fixtures, chattels, plant, stock and equipment within the Premises for their full insurable value against loss or damage by fire, burglary, theft, lightning, explosion, tempest, earthquake, riot, impact of vehicles, earthquake, damage by aircraft, water damage;
  - 36.1.3 against damage or loss from burglary or theft;
  - 36.1.4 against damage or loss arising by fire; and
  - 36.1.5 for public liability risk in respect of the Premises for at least \$20,000,000 per claim.
- 36.2 An insurance policy of the Tenant taken under this clause must be with an insurer approved in writing by the Landlord and must note the Landlord's interest and any other party the Landlord reasonably nominates.
- 36.3 If required by the Landlord, the Tenant must produce for inspection in respect of any insurance policy, taken under this clause a certificate of currency and a copy of any insurance policy and any cover notes within seven (7) days.

- 36.4 The Tenant must not do anything that might prejudice a claim under an insurance policy or increase the premium payable on an insurance policy of the Landlord for the Premises.

**37. Release**

- 37.1 The Tenant occupies the Premises at its own risk.
- 37.2 Unless the Landlord or the Landlord's Agents deliberately, negligently, by omission or default cause harm, the Tenant releases the Landlord and each of the Landlord's Agents from any liability due to loss, death, damage or injury occurring in the Premises.

**38. Exclusion of warranties**

The Landlord does not warrant, represent, or give other assurance:

- 38.1 the Premises will, for the duration of the Term, be structurally suitable for the business of the Tenant;
- 38.2 the Premises can be lawfully used for the Permitted Use;
- 38.3 the Premises or any facilities or services are suitable for any purpose;
- 38.4 as to the nature and quality of any of the Landlord's fittings, plant, equipment or accessories and any facilities or services to be provided; or
- 38.5 of any thing else except to any extent set out expressly in this Lease or implied by applicable law.

The Tenant acknowledges that it is the Tenant's responsibility to ascertain from the relevant authorities that the intended use of the Premises is permitted by those authorities and to obtain all necessary approvals from those authorities to use the Premises for the Tenant's intended use and this Lease is not subject to those approvals. The Tenant hereby indemnifies the Landlord in respect of any claim, loss or damage suffered by the Landlord due to the Tenant's failure to observe and satisfy this obligation.

The Tenant further acknowledges that it leases the Premises on an as is basis as at the Commencement Date and that no promise, representation, warranty, assurance or undertaking has been given by the Landlord in respect of the area size of the Premises.

**39. Tenant's Indemnity**

The Tenant indemnifies the Landlord and the Landlord's Agents jointly and also severally against:

- 39.1 loss of or damage to property of the Landlord or a Landlord's Agent including to the Premises;
- 39.2 all claims, demands, actions, proceedings, judgments, orders, damages, costs, losses and expenses of any nature whatsoever against the Landlord or a Landlord's Agent in respect of personal injury, death and/or loss of or damage to property,

caused by or in connection with the Tenant or (so far as can be applicable) the Tenant's Agents:

- 39.3 entering, leaving, occupying or using the Premises;
- 39.4 bringing on, installing or using in the Premises any fixtures, plant or equipment of the Tenant;
- 39.5 failure to observe or perform this Lease; or
- 39.6 negligence or wilful conduct.

**40. Liability**

Except to the extent provided by law or due to the Landlord or the Landlord's Agents deliberate act, negligence, omission or default, the Landlord has no liability whether in contract, tort or otherwise in respect of the use of the Premises by the Tenant including liability for any loss or damage due to:



- 40.1 interruption of water, gas or electricity supply;
- 40.2 defective telephone, air-conditioning, fire prevention, security or other services; and
- 40.3 blocked or defective plumbing or similar items.

#### **PART J. DEFAULT AND DAMAGES**

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##### **41. Notice to Remedy**

- 41.1 If the Tenant is in default, the Landlord may give notice to the Tenant requiring remedy of the default within a reasonable period (**Notice**).
- 41.2 The Tenant must comply with the Notice.
- 41.3 The Landlord may give the Notice and also pursue any other remedy for the default.

##### **42. Costs of Default**

The Tenant must reimburse the Landlord for costs incurred by the Landlord due to the Tenant's default including costs to remedy the default.

##### **43. Interest**

Without prejudice to the rights, powers and remedies of the Landlord under this Lease the Tenant will pay to the Landlord on demand interest on any money due and payable by the Tenant to the Landlord under this Lease calculated on a daily basis from the end of the due date until the day on which it is paid at a rate equal to two percent (2%) greater than the prime lending rate then charged by the Landlord's bank on overdraft facilities of \$100,000 or more, on any rent or other monies due and payable by the Tenant to the Landlord on any account whatsoever.

##### **44. Recovery of Damages**

Subject to this Lease, the Landlord is entitled to recover losses, damages, reasonable costs and expenses it incurs from the Tenant's repudiation or breach of the Lease during the Term or in any holding over period.

##### **45. Recovery as Rent**

The Landlord may recover as unpaid Rent:

- 45.1 any money due to the Landlord; and
- 45.2 damages for breach of this Lease.

#### **PART K. TERMINATION AND END OF TENANCY**

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##### **46. Termination by Landlord**

- 46.1 The Landlord may terminate this Lease immediately on notice if:
  - 46.1.1 the Tenant breaches this Lease and fails to remedy the same within fourteen (14) days' notice from the Landlord requiring such remedy;
  - 46.1.2 Rent and any other charges payable under this Lease remain outstanding and the Tenant fails to remedy the same within fourteen (14) days' notice from the Landlord requiring such remedy;
  - 46.1.3 where the Tenant is a corporation:
    - (a) a resolution is passed or taken to be passed under the Corporations Act that the Tenant be wound up;

- (b) proceedings are started for voluntary or compulsory winding up of the Tenant;
- (c) an *administrator* within the meaning of section 9 of the Corporations Act is appointed to the Tenant or acts are taken to appoint the same; and/or
- (d) a *controller* within the meaning of section 9 of the Corporations Act is appointed over any of the property of the Tenant or acts are taken to appoint the same;

46.1.4 the Tenant:

- (a) is *insolvent under administration* within the meaning of section 9 of the Corporations Act;
- (b) gives notice to any of its creditors that it has suspended, or is about to suspend, payment of debts (within the meaning of section 40 of the Bankruptcy Act); and/or
- (c) is unable to pay its debts as they become due;
- (d) the Tenant is convicted of an offence punishable by imprisonment; and/or
- (e) the Tenant does not discharge any judgement or debt due and payable within fourteen (14) days after a court order to do so.

46.2 If this Lease is terminated, the liabilities of the Tenant that accrued before, or arise on, termination are not affected.

#### 47. Recovery of Money Payable

If the Landlord re-enters or takes possession of the Premises then the Landlord may recover all money payable by the Tenant under the Lease until the expiry date.

#### 48. Mitigation and Liability

- 48.1 If the Tenant vacates the Premises (with or without the Landlord's consent) the Tenant is liable to the Landlord for payment of all future Rent.
- 48.2 If the Tenant vacates the Premises, the Landlord will be obliged to take reasonable steps to mitigate its damages.
- 48.3 The Landlord's conduct in attempting to mitigate its damages will not constitute an acceptance of the Tenant's breach, repudiation or surrender by operation of law.

#### 49. Termination on Damage and Abatement

- 49.1 If the Premises is situated in are wholly or substantially damaged or destroyed then the Landlord may at its option terminate this Lease by giving the Tenant fourteen (14) days' prior notice.
- 49.2 If the Premises are damaged or destroyed so as to make the Premises wholly or substantially unfit for use or inaccessible by the Tenant and the Landlord gives the Tenant a notice that the Landlord in its sole discretion considers that it is impracticable or undesirable to repair the Premises then either the Landlord or the Tenant may terminate this Lease by giving the other not less than fourteen (14) days' prior notice.
- 49.3 If the Lease is not terminated under clauses 49.1 or 49.2 and the Landlord fails to commence to effect repairs to the damage within a reasonable time after the Tenant gives the Landlord notice to do so (provided that the Landlord will not be obliged to effect the repairs) then the Tenant may terminate this Lease by giving the Landlord fourteen (14) days' prior notice to that effect.



- 49.4 Subject to clause 49.6, where this Lease is terminated under clause 49.1, 49.2 or 49.3 neither party will have any claim for or right to recover any compensation or damages by reason of such termination but without prejudice to the rights of either party for any antecedent breach or default or any claim by the Landlord against the Tenant for compensation or damages in respect of the damage or destruction.
- 49.5 If the Premises are rendered wholly or partially unfit for use or inaccessible as a result of damage or destruction then a just proportion (if any) of the Rent and contribution to Operating Expenses payable by the Tenant will be reduced having regard to the nature and extent that the Premises have been rendered unfit for use or inaccessible until the Premises are useable and accessible. If the portion of the above reduction cannot be agreed between the Tenant and Landlord the same will be determined by a Valuer.
- 49.6 Notwithstanding anything in this clause if the damage or destruction results from the wrongful act or negligence of the Tenant or the Tenant's Agents no proportion of the Rent and Operating Expenses will cease and the Tenant will not be entitled to terminate this Lease.

## 50. Tenant's Obligations

- 50.1 When this Lease ends:
- 50.1.1 the Tenant must give the Landlord possession of the Premises in good condition subject to fair wear and tear and having regard to the condition of the Premises as at the Commencement Date, and in a clean and tidy state;
  - 50.1.2 all the Landlord's plant and equipment must be left in full and proper working order;
  - 50.1.3 if required and to the extent notified in writing by the Landlord, the Tenant must restore the Premises to the condition as existed as at the Commencement Date (subject to fair wear and tear) and remove the Tenant's fixtures, fittings and moveable property from the Premises (and make good any damage caused by such removal) and if the Tenant fails to do so the Landlord may do so at the Tenant's cost.

## 51. Holding Over

- 51.1 If the Tenant occupies the Premises with the Landlord's consent after this Lease ends, the Tenant is a monthly tenant of the Landlord.
- 51.2 Either party may terminate the monthly tenancy on thirty (30) clear days written notice.
- 51.3 The provisions of this Lease apply, with necessary variations, to the monthly tenancy.
- 51.4 The obligations under this clause survive the expiry of the Lease.

## 52. Abandoned Goods

- 52.1 At least two (2) days after the Landlord takes possession of the Premises the Landlord may remove and dispose of or destroy any:
- 52.1.1 perishable goods; and
  - 52.1.2 goods which are not worth removing storing and selling,
  - 52.1.3 otherwise the Landlord must store the goods safely for at least sixty (60) days.
- 52.2 Within seven (7) days of storage the Landlord must:
- 52.2.1 notify the Tenant or other interested person; and
  - 52.2.2 publish a notice in a State newspaper,

of the fact that the goods are stored.

- 52.3 If the Tenant or other interested person claims the goods then they must pay the Landlord for removal and storage costs.
- 52.4 If the goods are not claimed within sixty (60) days then the Landlord must sell the goods by public auction.
- 52.5 Out of the proceeds of sale the Landlord may keep removal and storage costs and any amounts due to Landlord. The Landlord must pay the balance to the Tenant.

### 53. **Abandoned Fixtures**

- 53.1 For fixtures, fittings or other items not covered by clause 52 the Landlord may remove any such items left on the Premises after the end of this Lease and store them in a place the Landlord wishes.
- 53.2 The Landlord may by written notice to the Tenant require the Tenant to remove such items within seven (7) clear days.
- 53.3 Any such items not so removed are treated as abandoned in favour of the Landlord.

### 54. **Power of Attorney**

- 54.1 If the Landlord is entitled to re-enter and take possession of the Premises or to terminate the Lease the Tenant irrevocably appoints the Landlord as the attorney of the Tenant for the purposes of:
  - 54.1.1 doing anything the Tenant is obliged to do under this Lease;
  - 54.1.2 giving full effect to such termination, surrender, re-entry and re-possession (including signing any document); and
  - 54.1.3 doing anything which may be required or proper to give full effect to such surrender under any law.
- 54.2 The Landlord may do any thing on the Tenant's behalf that the Tenant can lawfully do by an attorney in respect of the Premises and this Lease.
- 54.3 The Tenant must:
  - 54.3.1 do anything reasonably required by the Landlord to give effect to the power of attorney under this clause including so the same can be registered at the Lands Titles Office;
  - 54.3.2 remunerate the Landlord as its attorney; and
  - 54.3.3 ratify the exercise of any power by the Landlord as its attorney.
- 54.4 This clause 54 only applies where the Tenant does not comply with all reasonable directions or requirements of the Landlord where the Landlord is entitled to re-enter and take possession of the Premises or to terminate the Lease the Tenant.

### 55. **Vacation of Premises**

Without limiting any other rights of the Landlord under this Lease including rights of termination, if the Tenant vacates the Premises :

- 55.1 the Landlord may:
  - 55.1.1 accept the keys from the Tenant;
  - 55.1.2 enter the Premises to inspect, maintain or repair the Premises; and/or



- 55.1.3 show the Premises to prospective tenants or purchasers,  
without this being re-entry or a waiver of the Landlord's rights to recover Rent and other money payable under this Lease;
- 55.2 this Lease continues until a new tenant takes possession of the Premises unless the Landlord:
  - 55.2.1 accepts a surrender of the Lease; or
  - 55.2.2 notifies the Tenant in writing that a breach by the Tenant is being treated as a repudiation of the Lease; or
  - 55.2.3 ends the Lease by re-entry.

## **PART L. DEALINGS WITH INTERESTS**

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### **56. Assignment**

- 56.1 The Tenant must not without the Landlord's consent assign or dispose of in favour of a third party their interest in this Lease.
- 56.2 The Tenant is taken to assign their interest in this Lease:
  - 56.2.1 if the Tenant disposes in favour of a third party any of their legal or beneficial interest in this Lease; or
  - 56.2.2 if the Tenant is a company (but not a listed corporation or subsidiary of a listed corporation) (all within the meaning of *Corporations Act 2001* s. 9) and there is after the date of this Lease a change of control as applied to that company (for which purpose **control** has the same meaning as in s. 50AA of that Act and a **change of control** means:
    - (a) if any person who controls, or any number of persons who together control, such company at the date of this Lease (or the date such company becomes bound by this Lease, if later) subsequently ceases or together cease, to control such company; or
    - (b) if any person acquires, or any number of persons together acquire, control of that company.
- 56.3 A request for the Landlord's consent to an assignment of this Lease must:
  - 56.3.1 be made in writing by the Tenant;
  - 56.3.2 must provide the Landlord with information the Landlord reasonably requires about the use to which the proposed assignee proposes to put the Premises; and
  - 56.3.3 provide the Landlord such information in relation to the proposed assignee as the Landlord reasonably requires to form an opinion as to whether or not the proposed assignee has the requisite financial standing and business experience to meet the financial obligations of the Tenant under the Lease; and
  - 56.3.4 if the proposed assignee is a corporation, confirm that each director and shareholder of the proposed assignee will as a precondition to the assignment execute a guarantee and indemnity in relation to the obligations of the Tenant under this Lease in a form acceptable to the Landlord.
- 56.4 Before requesting the consent of the Landlord to a proposed assignment of this Lease, the Tenant must furnish the proposed assignee with a copy of any disclosure statement given to the Tenant in respect of this Lease together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the Tenant, being changes in respect of which the Tenant is aware or could reasonably be expected to be aware.

- 56.5 The Landlord must deal expeditiously with a request for consent and is taken to have consented to the assignment if the Tenant has complied with clause 56.3 and the Landlord has not within forty-two (42) days after the request was made given notice in writing to the Tenant either consenting or withholding consent.
- 56.6 The Landlord is entitled to withhold consent to the assignment of this Lease in any of the following circumstances (but shall not be entitled to withhold consent in any other circumstances):
- 56.6.1 if the proposed assignee proposes to change the use to which the Premises are put;
  - 56.6.2 if in the reasonable opinion of the Landlord the proposed assignee is unlikely to be able to meet the financial obligations of the Tenant under this Lease;
  - 56.6.3 if in the reasonable opinion of the Landlord the proposed assignee's retailing skills are inferior to those of the Tenant; or
  - 56.6.4 if the Tenant has not complied with the procedural requirements for obtaining the Landlord's consent as specified above.
- 56.7 The Tenant will be liable for all costs reasonably incurred by the Landlord in providing its consent pursuant to this clause 56.
- 56.8 If this Lease is assigned or transferred by the Tenant any payment or repayment in accordance with clause 11.6 shall be made to or by the Landlord by or to the person who is actually the tenant under this Lease at the time when such payment or repayment becomes payable.

#### 57. Other Dealings by Tenant

- 57.1 The Tenant may with consent of the Landlord (not to be unreasonably withheld):
- 57.1.1 sub-let, sub-lease or licence for the whole or part of the Premises;
  - 57.1.2 part with possession of the whole or part of the Premises; and
  - 57.1.3 mortgage its interest in this Lease.
- 57.2 The Landlord's consent to the Tenant mortgaging its interest in the Lease must be subject to the Tenant and the mortgagee entering into a deed with the Landlord which states that:
- 57.2.1 any rights created in accordance with the mortgage are subject always to the Landlord's rights under this Lease; and
  - 57.2.2 the Landlord's rights will not be limited by any provision of the Conveyancing and Law of Property Act 1884.
- 57.3 In this clause 57 **mortgage** includes a charge or any other encumbrance and **mortgagee** includes a chargee or encumbrancee as the case may be.

#### 58. Dealings by Landlord

- 58.1 If the Landlord transfers or sells its interest in the Premises, then upon completion:
- 58.1.1 the transferee succeeds to all the rights and liabilities of the Landlord under this Lease; and
  - 58.1.2 the Landlord is released from all future obligations under this Lease.
- 58.2 The Tenant must execute any deed prepared by the Landlord to give effect to clause 58.1 at or before completion and the Landlord will reimburse the Tenant all reasonable costs and



expenses (including legal costs) reasonably incurred by the Tenant in connection with any such deed.

## **PART M. FAIR TRADING – RETAIL TENANCIES**

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### **59. Code – Retail Tenancies**

The parties agree that this Lease, as at the Commencement Date, is not subject to the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998*.

## **PART N. GENERAL**

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### **60. No Implied Terms**

- 60.1 This Lease is the whole agreement between the parties about the Premises.
- 60.2 The only terms implied in this Lease are those implied by the mandatory operation of law.
- 60.3 This Lease supersedes any prior agreements or obligations between the Landlord and the Tenant about the Premises.
- 60.4 This Lease does not create a partnership or joint venture between the Landlord and the Tenant, and unless expressly provided, make either party a fiduciary or agent of the other.

### **61. No Warranty**

- 61.1 No representation, warranty or undertaking has been made to the Tenant about the Premises or the Land.
- 61.2 The Tenant has not relied on any representation, warranty or undertaking by the Landlord or the Landlord's Agents about the Premises or related matters and the suitability of the Premises for any purpose.

### **62. Waiver**

The Landlord may only waive a breach of this Lease by written notice.

### **63. Landlord's Consent or Approval**

Unless stated otherwise, the Landlord may not unreasonably withhold or delay its consent or approval required by the Tenant under this Lease. Any such consent or approval or refusal to provide the same must be in writing.

### **64. Cost**

Unless stated otherwise, where this Lease requires action of the Tenant, such action is to be undertaken at the Tenant's cost.

### **65. Landlord's Agent**

The Landlord may appoint a managing agent of the Premises or any other representative to exercise any power of the Landlord.

### **66. Landlord as Trustee**

If the Landlord enters this Lease as a trustee, the Landlord:

- 66.1 must state in Item 8 that it has entered into this Lease as a trustee; and
- 66.2 warrants that it has properly entered into this Lease in accordance with the terms of the trust.

**67. Lease a Deed**

This Lease is a deed.

**68. Notice**

68.1 Notice can only be in writing signed by the party or its agent.

68.2 Notice can only be given to a party:

68.2.1 personally;

68.2.2 by post to the party's last known place of business or registered office (notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post); or

68.2.3 by email to the last known email (notice by email is deemed to be received at the time of sending so as long as no sending error is received within 48 hours of sending).

68.3 If there are 2 or more Tenants, notice to one is effective notice to all.

**69. Confidentiality**

This Lease including negotiations and discussions leading to this Lease is confidential between the parties and will not, without the prior written consent of the other party, be disclosed by either party to any other person or body and neither party is permitted to disclose confidential information including information which the recipient ought to know is confidential except (i) as may be necessary for either party to carry out its obligations under this Lease; (ii) as required by the mandatory operation of law; (iii) to its associated entities or professional advisors (bankers, accountants, lawyers) for a proper purpose; or (iv) with the other party's prior written consent.

**70. Security**

The Tenant agrees with the Landlord;

70.1 to use the Tenant's reasonable endeavours to protect and keep safe the Premises and any property contained in it from theft or vandalism and to keep all doors, windows and other openings closed and locked when the Premises are not in use;

70.2 to comply with the Landlord's reasonable requirements in respect of the security of the Premises;

70.3 to pay to the Landlord the cost of all security cards, keys or other security devices which the Tenant requests that the Landlord issue to the Tenant or its employees after the Commencement Date and to immediately notify the Landlord if any keys or security cards for the Premises are lost or stolen;

70.4 not without the consent of the Landlord (which consent will not be unreasonably withheld) to install any security equipment or system in or to the Premises nor to alter or modify any existing security equipment or system; and

70.5 all such equipment, systems and installations (except where they are Landlord's fixtures or fittings) will remain the property of the Tenant who must pay all costs associated with the purchase, installation, alteration or modification of any new (and if applicable existing) equipment, systems or installations and all maintenance and monitoring of it.

**71. No unauthorised caveat**

The Tenant agrees with the Landlord

71.1 not to lodge or cause or permit to be lodged:



- 71.1.1 any absolute caveat on the Certificate of Title for the Land; nor
  - 71.1.2 any permissive caveat containing terms that require the caveatee to obtain the consent of the Tenant to register any future dealing by the Landlord with its interest in the Premises; and
- 71.2 to indemnify the Landlord against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Landlord may incur in respect of the lodgement, removal or withdrawal of any such caveat which breaches the requirements of this clause.

## **72. Land Division**

- 72.1 The Landlord reserves the right at any time during the Term to make an application for the division of the Premises and the issue of separate certificates of title for separate allotments representing portions of the Premises (**Land Division Application**).
- 72.2 Upon receipt of a request in writing from the Landlord to do so, the Tenant shall provide all written consents required for the Land Division Application and will execute and perform such deeds, acts and matters as may be required to enable the deposit of the Land Division Application.

## **73. Trust - Tenant**

- 73.1 If the Tenant enters into this Lease as trustee of a trust, the Tenant:
  - 73.1.1 warrants that it properly enters into this Lease in accordance with the terms of the trust;
  - 73.1.2 warrants that the trust has and will have sufficient resources to satisfy its obligations under this Lease;
  - 73.1.3 warrants that the Tenant's right of indemnity against the assets of the trust is unlimited; and
  - 73.1.4 is bound by this Lease both as trustee and in its private capacity.
- 73.2 If any liability of the Tenant is not satisfied, the Landlord is subrogated to any rights of indemnity that the Tenant has against beneficiaries of the trust or trust property.

## **74. Governing Law**

This Lease is governed by the laws of Tasmania and the courts of Tasmania or the Federal Court of Australia (Hobart registry) have non-exclusive jurisdiction in connection with this Lease.

## **75. Exclusion of Statutory Provisions**

The covenants powers and provisions otherwise implied by virtue of the Land Titles Act 1980 (Tas) shall not apply or be implied in this Lease except to the extent that they are included in the covenants contained in this Lease.

**SCHEDULE 1**  
**COMMERCIAL TERMS**

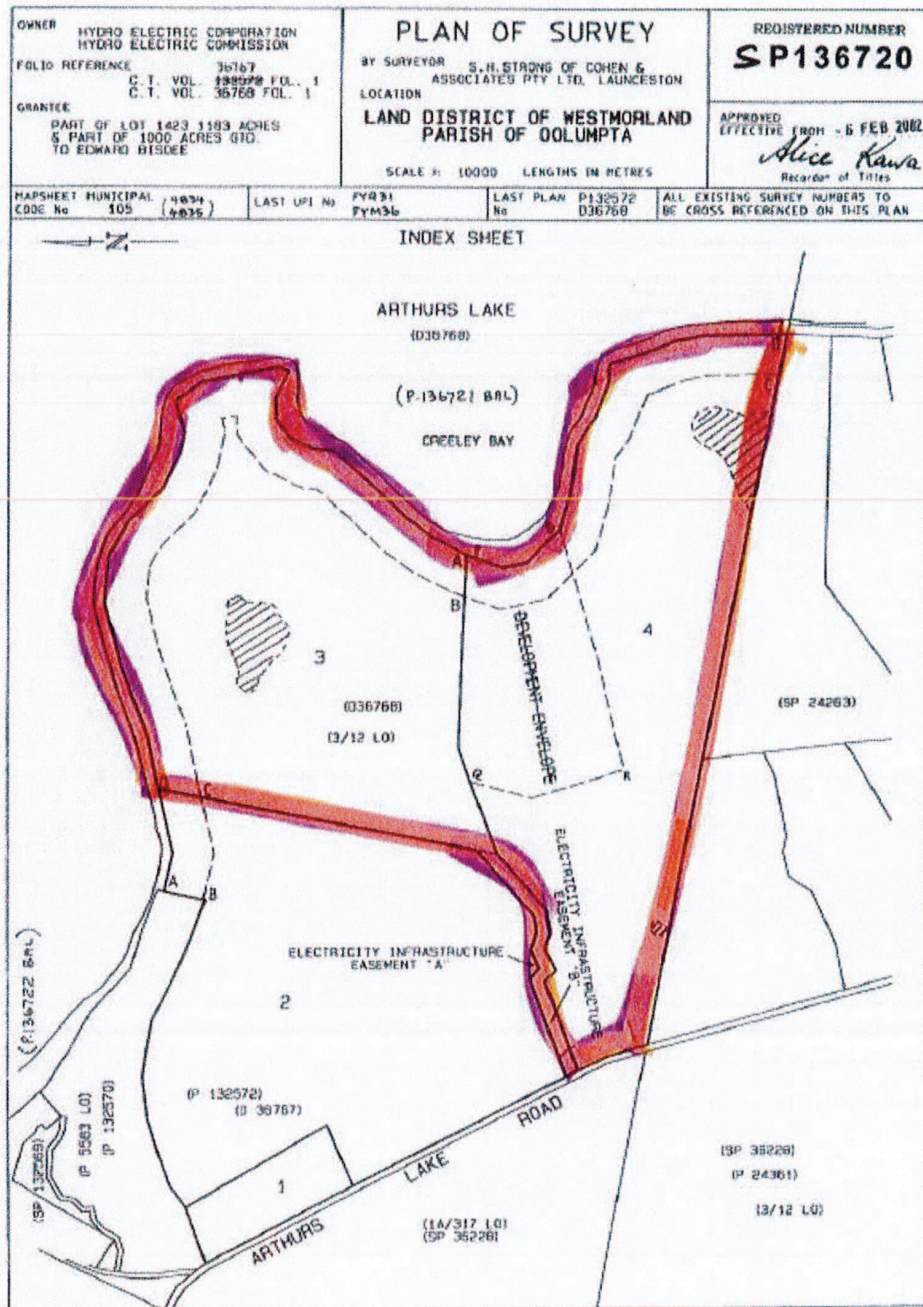
<b>Item 1</b> Certificates of Title Being Leased	The whole of the portion of the land comprised in CTs 136720/3 and 136720/4 situated at and known as 169 and 171 Arthurs Lake Road, Arthurs Lake, Tasmania 7030 being the area of land delineated in red in the plan set out in Schedule 2
<b>Item 2</b> Lessor Full name and address	<b>REBECCA VAN HOLST PELLEKAAN</b> and <b>DANIEL CORNELIS VAN HOLST PELLEKAAN</b> (jointly as between themselves) as trustees for the VHP Super Fund of sixty undivided 1/100 shares  <b>V.H.P. ENTERPRISES PTY LTD</b> (ACN 000 046 453) as trustee for the VHP Family Trust of forty undivided 1/100 shares  both c/- TTO Chartered Accountants, 234 Sturt Street, Adelaide SA 5000
<b>Item 3</b> Lessee Full name and address	<b>V.H.P. ENTERPRISES PTY LTD</b> (ACN 000 046 453) as trustee for the VHP Family Trust c/- TTO Chartered Accountants, 234 Sturt Street, Adelaide SA 5000
<b>Item 4</b> Term of Lease and Renewal	(a) <b>Initial Period:</b> ten (10) years  (i) Commencing on 1 July 2020  (ii) Expiring on 30 June 2030  (b) <b>Extension Period:</b>  (i) One (1) right of renewal of five (5) years commencing immediately after the expiry of the Initial Period ( <b>First Renewal Period</b> ).  (ii) One (1) right of renewal of five (5) years commencing immediately after the expiry of the First Renewal Period ( <b>Second Renewal Period</b> ).  (iii) One (1) right of renewal of five (5) years commencing immediately after the expiry of the Second Renewal Period ( <b>Third Renewal Period</b> ).  (iv) One (1) right of renewal of five (5) years commencing immediately after the expiry of the Third Renewal Period ( <b>Fourth Renewal Period</b> ).
<b>Item 5</b> Rent and Manner of Payment (or Other Consideration)	(a) An amount equal to \$9,900.00 per annum exclusive of GST (subject to review under the Lease), being the total of:  (i) in respect of the land comprised in CT 136720/3, an amount equal to \$4,950.00 per annum exclusive of GST (subject to review under the Lease); and  (ii) in respect of the land comprised in CT 136720/4, an amount equal to \$4,950.00 per annum exclusive of GST (subject to review under the Lease).  (b) Unless otherwise agreed, the Rent shall be payable from the Commencement Date by equal consecutive calendar monthly instalments equivalent to one twelfth of the Base Rent always in advance the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and thereafter on the first business day of each and every month.



<b>Item 6</b> Permitted Use	Tourism/Accommodation
<b>Item 7</b> Rent – Review Date(s)	<p>(a) Each anniversary of the Commencement Date other than as set out in paragraph (b) below.</p> <p>(b) Market Review: The date of the commencement of the First Renewal Period, the Second Renewal Period, the Third Renewal Period and the Fourth Renewal Period.</p>
<b>Item 8</b> Landlord as Trustee	<p><b>REBECCA VAN HOLST PELLEKAAN</b> and <b>DANIEL CORNELIS VAN HOLST PELLEKAAN</b> (jointly as between themselves) as trustees for the VHP Super Fund</p> <p><b>V.H.P. ENTERPRISES PTY LTD</b> (ACN 000 046 453) as trustee for the VHP Family Trust</p>

## SCHEDULE 2

### SITE PLAN





SEARCH OF TORRENS TITLE

VOLUME 136720	FOLIO 3
EDITION 5	DATE OF ISSUE 27-Aug-2013

SEARCH DATE : 10-Dec-2021

SEARCH TIME : 03.59 PM

DESCRIPTION OF LAND

Parish of OOLUMPTA, Land District of WESTMORLAND  
Lot 3 on Sealed Plan 136720  
Derivation : Part of 1000 Acres Gtd. to Edward Bisdee & part  
of 1183 Acres Gtd. to Edward Bisdee  
Prior CT 36768/1

SCHEDULE 1

M424907 TRANSFER to REBECCA VAN HOLST PELLEKAAN and DANIEL  
CORNELIS VAN HOLST PELLEKAAN (jointly as between  
themselves) of sixty undivided 1/100 shares and VHP  
ENTERPRISES PTY LTD of forty undivided 1/100 shares  
as tenants in common Registered 27-Aug-2013 at 12.  
01 PM

SCHEDULE 2

Reservations and conditions in the Crown Grant if any  
SP 136720 EASEMENTS in Schedule of Easements  
SP 136720 COVENANTS in Schedule of Easements  
SP 136720 FENCING COVENANT in Schedule of Easements  
SP 136720 COUNCIL NOTIFICATION under Section 83(5) of the  
Local Government (Building and Miscellaneous  
Provisions) Act 1993.

UNREGISTERED DEALINGS AND NOTATIONS

No unregistered dealings or other notations

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