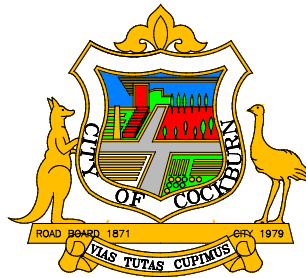


CITY OF COCKBURN



SPECIAL COUNCIL MEETING

AGENDA ATTACHMENTS **ITEM 9.2**

FOR

MONDAY, 4 AUGUST 2014

LEASE

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
That part of Lot 406 on Deposited Plan 400928 as is depicted on interest only Deposited Plan [insert number]	WHOLE	2835	30

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (Note 2)

H988067 Easement to City of Cockburn, L761798 Caveat by Commonwealth of Australia

ESTATE AND INTEREST

FEE SIMPLE

LESSOR (Note 3)

City of Cockburn of PO Box 1215 Bibra Lake

LESSEE (Note 4)

Cockburn GP Super Clinic Limited (ABN 64 152 568 477) of PO Box 3057, Success

TERM OF LEASE (Note 5)

Twenty (20) years

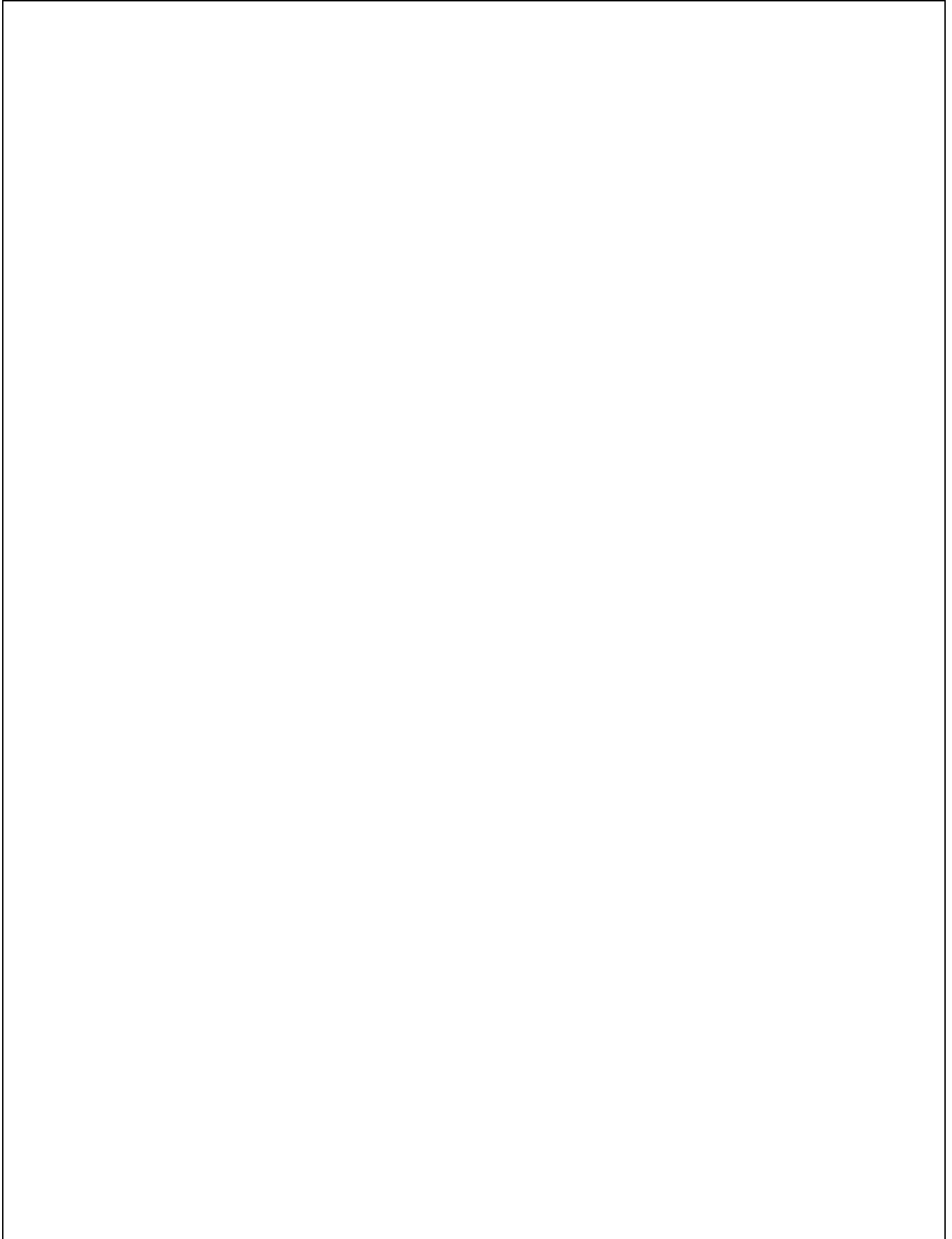
Commencing from the day of 2014

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the encumbrances as shown hereon (Note 6)

for the above term for the clear yearly rental of (Note 7) See the within Lease payable (Note 8)

subject to the covenants and powers implied under the *Transfer of Land Act 1893* as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the lessee are to be construed according to section ninety-four of the *Transfer of Land Act 1893* as amended (Note 9)



LEASE

**Part of the Cockburn Integrated Health and
Community Facility**

City of Cockburn
(Lessor)

and

Cockburn GP Super Clinic Limited
(Lessee)

JACKSON McDONALD
Lawyers
140 St Georges Terrace
PERTH, Western Australia 6000

Tel: 9426 6611 Fax: 9481 8649
Ref: RZC:7145881

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THIS LEASE made the day of 2014

BETWEEN:

The person described in Item 1 of the Second Schedule (**Lessor**);

and

The person described in Item 2 of the Second Schedule (**Lessee**);

and

The person described in Item 3 of the Second Schedule (**Guarantor**).

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Lease, the expression:

“Access Card” means a security access key or card or other security access device.

“Accountant” means a member of either the Institute of Chartered Accountants of Australia or the Australian Society of Certified Practising Accountants.

“Approved Insurer” means an insurance company authorised to carry on business under the *Insurance Act 1973* (Cth) and, with respect to insurances to be taken out by the Lessee, as approved by the Lessor without being unreasonable.

“Assessment” means an assessment, charge or levy issued by an Authority in respect of Rates and Taxes.

“Authority” means any government, statutory, public or other authority or body having jurisdiction over the Building or any matter or thing relating to it including those assessing or imposing local authority or municipal rates, water rates and land tax and metropolitan region improvement tax and those providing or supplying services and utilities to the Building or the Premises.

“Bank Guarantee” means an irrevocable and unconditional undertaking by an Australian bank as defined in the *Banking Act 1959* (Cth) to pay on demand the amount (if any) specified in Item 18 of the Second Schedule, which must:

- (a) be in favour of the Lessor;
- (b) guarantee the performance of the Lessee's Obligations;
- (c) not contain an expiry date; and
- (d) be on terms acceptable to the Lessor.

“Building” means all the buildings and improvements on the Land from time to time and includes all the Lessor's Fixtures in the Building and the Building Services.

“Building Procedures and Regulations” means the procedures and regulations contained in the First Schedule as from time to time varied or amended by the Lessor under clause 12.7.

“Building Services” means all services supplied to or in the Premises including gas, water, drainage, fresh air, exhaust systems, electricity, sprinkler systems, heating, lighting, lift services, electrical services, electrical power supply, hydraulic services, mechanical services, the air conditioning system and includes the Lessor’s Fixtures.

“Business Day” means a day, not being a Saturday, Sunday or public holiday in the State.

“Car Park Licence” means the car park licence (if any) relating to car bays in the Building or on the Land to be entered into contemporaneously with this Lease between the Lessor as licensor and the Lessee as licensee.

“Car Park” means all those parts of the Building or the Land which at any time are set aside for the parking of motor vehicles.

“Certificate of Practical Completion” means a certificate given by the Lessor’s Architect to the Lessor, certifying that the Lessor’s Works have been practically completed.

“Claim” means any claim, demand, legal proceedings or cause of action including any:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or in equity; or
- (d) under any Law arising from a breach of warranty, representation, covenant under, or term of, this Lease.

“Commencement Date” means the date specified in Item 8 of the Second Schedule.

“Common Areas” means an area within or adjacent to the Building that is intended for use by the general public or for use in common by the Lessor and the Lessor’s employees, agents, contractors, tenants, customers, visitors, licensees, invitees and any other person authorised by the Lessor in connection with the conduct of business at premises in the Building and includes all stairways, escalators, elevators, malls, walkways, trafficways, the Car Park, toilets, restrooms, gardens and fountains intended for common use.

“Consumer Price Index” means the Consumer Price Index (All Groups Index - Perth) as published by the Australian Bureau of Statistics.

“Corporations Act” means the *Corporations Act 2001* (Cth).

“CPI Rent Review Date” means each date specified as a CPI rent review date in Item 12 and Item 16 of the Second Schedule, as applicable.

“Current CPI” means the Consumer Price Index most recently published before the relevant CPI Rent Review Date.

“Curtin Premises” means the area marked “Curtin Premises” on the Premises Plan.

“Date of Practical Completion” means the “Date of Practical Completion” as defined in the Existing Funding Agreement.

“Deed of Consent” means a deed of consent pursuant to which the Lessor consents to the grant of a sublease in the form annexed in Annexure J.

“Default Rate” means 15% per annum.

“Department” means the Commonwealth Department of Health and Ageing.

“Existing Funding Agreement” means the agreement made between the Department and the Lessor dated 28 June 2011 a copy of which is annexed in Annexure G.

“Event of Default” means each event described in clause 14.1.

“Expert Determination Process” means the process and procedure for expert determination of disputes arising under this Lease as set out in Annexure A.

“Final Period” means the period from and including the 1st day of July immediately preceding Termination up to the date of Termination.

“Fire Fighting Equipment” means all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers or other fire prevention equipment in or serving the Building and, where used in relation to the Premises, refers to so much of the Fire Fighting Equipment as is contained in the Premises.

“Fixed Increase Percentage” means the percentage specified as the fixed increase percentage in Item 12 and Item 16 of the Second Schedule, as applicable.

“Fixed Increase Rent Review Date” means each date specified as a fixed increase rent review date in Item 12 and Item 16 of the Second Schedule, as applicable.

“Further Term” means the further term or terms (if any) specified in Item 15 of the Second Schedule.

“Further Term Rent Review Date” means each date specified in Item 16 of the Second Schedule.

“GPSC Deed of Indemnity” means the deed of indemnity made between the Lessor and Lessee on or about the date of this Lease.

“GPSC Director Deed of Indemnity” means any deed of indemnity made between the Lessor and any director or officer of the Lessee from time to time.

“Guarantor” means the person specified in Item 3 of the Second Schedule and that person’s successors and personal representatives and assigns.

“Handover Date” means the later of:

- (a) the day after the date of the issue of the Certificate of Practical Completion; and
- (b) the day after the date when the last Lease Condition is satisfied.

“Hazard” means any thing occurring on or emanating from the Premises that may result in injury to a person or harm to the health of a person.

“Insolvency Event” means:

- (1) In the case of a corporation:
- (a) an application is made to a court for an order or an order is made that the corporation be wound up;
 - (b) an application is made to a court for an order appointing a liquidator or provisional liquidator of the corporation or one is appointed, whether or not under an order;
 - (c) a meeting is convened or a resolution is passed to appoint an administrator of the corporation;
 - (d) the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them, except if done to reconstruct or amalgamate while solvent, on terms approved by the Lessor;
 - (e) the corporation proposes to or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors without the consent of the Lessor;
 - (f) a resolution is passed to wind up or dissolve the corporation;
 - (g) the corporation is dissolved;
 - (h) the corporation is insolvent within the meaning of that expression in section 95A(2) of the Corporations Act or any event mentioned in paragraphs (a) to (f) inclusive of section 459C(2) of the Corporations Act occurs in respect of the corporation;
 - (i) the appointment of an administrator or a controller, as defined by the Corporations Act, in respect of the corporation, or a receiver, or manager, or receiver and manager of the whole or part of the assets and undertaking of the corporation; or
 - (j) anything analogous or having a substantially similar effect to any event specified above happens under the Law of any applicable jurisdiction; and
- (2) In the case of an individual:
- (a) the individual proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of the individual's creditors or any class of creditors;
 - (b) the individual commits an "act of bankruptcy" as that term is defined in the *Bankruptcy Act 1966* (Cth); or
 - (c) anything analogous or having a substantially similar effect to any event specified above happens under the Law of any applicable jurisdiction.

"Insurable Risks" means:

- (a) the risk of:

- (i) loss or damage to the Building from all insurable causes;
 - (ii) breakdown of plant and machinery;
 - (iii) sprinkler leakage and water damage; and
 - (iv) loss of Rent or Variable Outgoings Contribution following the occurrence of the events described in paragraphs (i) to (iii);
- (b) the risk of an event which would be covered by Lessor's public liability insurance;
 - (c) the risk of liability under workers compensation Claims and statutory liability in respect of employees of the Lessor employed at the Building; and
 - (d) any other risk related to the Lessor's interest in the Building or the Land that would be held by a lessor acting reasonably.

"Insurance Premiums" means the premiums for all insurance effected by the Lessor for the Insurable Risks.

"Insured Amount" means the amount specified in 0 of the Second Schedule.

"Land" means the land specified in Item 4 of the Second Schedule and any other parcels of land either abutting or in the vicinity of the Land which the Lessor may from time to time by notice in writing to the Lessee nominate as part of the Land.

"Laws" means all statutes, rules, regulations, proclamations, ordinances or by-laws present or future of the State and, where applicable, the Commonwealth, and any amendment or re-enactment of them for the time being in force.

"Lease" means this deed as amended, varied or supplemented from time to time including any schedule or annexure, however it is not limited to the legal estate created on registration but also includes any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises, including a tenancy for a fixed term, a periodic tenancy or a tenancy at will.

"Lease Condition" means each condition in Annexure F.

"Lease Condition Deadline" means, in relation to each Lease Condition, the date specified in Annexure D.

"Lease Year" means:

- (e) the Preliminary Period;
- (f) each consecutive period of 12 months from and including the 1st day of July in each year during the Term; and
- (g) the Final Period.

"Lessee" means the person specified in Item 2 of the Second Schedule and that person's successors, executors, administrators and permitted assigns and, where not contrary to the context, includes any sub-lessee.

“Lessee’s Obligations” means the several obligations contained or implied in this Lease and the Car Park Licence and on the part of the Lessee (or, in the Car Park Licence, on the part of the licensee) to be observed or performed.

“Lessor” means the person specified in Item 1 of the Second Schedule and that person’s successors, executors, administrators, assigns and transferees and includes the person entitled to possession of the Premises at Termination.

“Lessor’s Fixtures” means the fixtures, fittings, furnishings, plant and equipment belonging to the Lessor from time to time located or contained in the Premises, including floor coverings and window treatments.

“Lessor’s Works” means the building works described in the Plans and the Specifications.

“Licence Fee” means the licence fee payable from time to time under the Car Park Licence.

“Local Government Laws” means the *Local Government Act 1995 (WA)*, the *Local Government (Miscellaneous Provisions) Act 1960 (WA)* and the Planning Scheme.

“Managing Agent” means the person (if any) appointed under clause 15.13.

“Market Rent Review Date” means each date specified as a market rent review date in Item 12 and Item 16 of the Second Schedule, as applicable.

“month” means a calendar month.

“NABERS” means the National Australian Built Environment Rating System, being the national initiative managed by the New South Wales Office of Environment and Heritage.

“National Program Guide” means the GP Super Clinics National Program Guide 20120 and addenda published by the Department as annexed in Annexure I and as amended from time to time.

“Net Lettable Area of the Building” means the aggregate of all areas in the Building designated from time to time for leasing by the Lessor and measured under the applicable PCAL method of measurement for lettable area, 1997 edition.

“Net Lettable Area of the Curtin Premises” means the floor area of the Curtin Premises whether contained on one or more levels measured under the applicable PCAL method of measurement for lettable area, 1997 edition.

“Net Lettable Area of the Premises” means the floor area of the Premises whether contained on one or more levels measured under the applicable PCAL method of measurement for lettable area, 1997 edition.

“Normal Hours” means 7am to 10pm or as varied by the Lessor by Notice to the Lessee acting reasonably during the Term.

“Notice” means a notice complying with clause 15.12.

“OSH Incident” means:

- (a) an actual or suspected breach of any requirement under OSH Legislation by the Lessor, the Lessee or any Permitted Person;

- (b) an incidence of personal injury or harm caused to a person at the Premises;
- (c) an event that gives rise to a risk to the safety and health of a person, whether or not that event is required to be reported under OSH Legislation;
- (d) the issue of any notice or direction by an authorised person under the OSH Legislation to the Lessor, the Lessee or any Permitted Person which directly or indirectly relates to the use of the Premises; and
- (e) the commencement of any inquiry or investigation undertaken by an authorised person under the OSH Legislation which directly or indirectly relates to the use of the Premises.

“OSH Legislation” means all Laws regarding work health and safety that apply to the Premises from time to time, including:

- (a) all Australian Standards or Codes of Practice referred to or made under those work health and safety Laws; and
- (b) all licenses, terms or conditions issued to or imposed on the Lessor, the Lessee or any Permitted Person by an Authority pursuant to those work health and safety Laws.

“Party” means the Lessor, the Lessee or the Guarantor according to the context.

“PCAL” means the Property Council of Australia Limited ACN 008 474 422.

“Permitted Person” means any employee, agent, contractor, customer, invitee, licensee or visitor of the Lessee.

“Permitted Purpose” means the purpose specified in Item 13 of the Second Schedule.

“Planning Scheme” means the City of Cockburn Local Planning Scheme No .3 or such other ‘Planning Scheme’ (as that term is defined in the *Planning and Development Act 2005 (WA)*) as is in force in respect of the Land from time to time.

“Plans” means the Lessor’s drawings and plans attached as Annexure B and signed by the Lessor and Lessee and each amendment to them that is approved under this Lease.

“PPSA” means the *Personal Property Securities Act 2009 (Cth)*.

“Preliminary Period” means the period commencing at midnight on the day preceding the Commencement Date and expiring at midnight on the next 30th June.

“Premises” means the premises described in Item 5 of the Second Schedule and shown on the Premises Plan and situated in the Building extending vertically from the upper surface of the floor slab to the under surface of the ceiling above the floor slab on each floor level of those premises and extending horizontally on each such floor level to and including the internal surfaces of external walls, the mid or centre line of adjoining or inter tenancy walls or partitions and to the internal surfaces of external windows, and including all Building Services in those premises and the Lessor’s Fixtures.

“Premises Plan” means the plan of the Premises in the Third Schedule.

“Previous CPI” means the Consumer Price Index most recently published before the Rent Review Date, if there was one, immediately preceding the relevant CPI Rent Review Date, or the Commencement Date, if there was no previous Rent Review Date.

“Program Objectives” means the *“Program Objectives”* as defined in the Existing Funding Agreement;

“Rates and Taxes” means the aggregate in each Lease Year of all:

- (a) council rates and charges payable to the relevant Authority including charges for rubbish removal;
- (b) water drainage and sewerage rates payable to the relevant Authority for the supply of water including meter fees and charges for the disposal of storm water and sewerage and charges for water consumption where not separately metered and paid for by any other tenant of the Building;
- (c) land tax and charges (State or Commonwealth) and Metropolitan Region Improvement Tax calculated on the basis of the Land being the only property owned by the Lessor in the State; and
- (d) any other rate tax or imposition,

levied, charged or assessed in respect of the Premises, the Curtin Premises, the Building or the Land, or the ownership or occupation of them.

“Related Body Corporate” has the meaning given in section 9 of the Corporations Act as at the date of this Lease.

“Rent” means the rent under this Lease which as at the Rent Commencement Date is the amount specified in Item 10 of the Second Schedule.

“Rent Commencement Date” means the date specified in Item 11 of the Second Schedule.

“Rent Review Date” means each date specified in Item 12 of the Second Schedule.

“Requirements” means every condition of approval or consent, requirement, notice, order or direction of any Authority.

“Security Deposit” means the amount (if any) specified in Item 14 of the Second Schedule.

“Security Interest” has the meaning given to that term in the PPSA.

“Special Conditions” means the terms and conditions (if any) specified in Item 17 of the Second Schedule.

“Specified Use” means each use specified in Annexure F.

“Specifications” means the Lessor’s specifications attached as Annexure C and signed by the Lessor and Lessee and each amendment to them approved under this Lease.

“State” means the State of Western Australia.

“Strata Titles Act” means the *Strata Titles Act 1985 (WA)*.

“Term” means the term of this Lease specified in Item 9 of the Second Schedule and where the context permits includes any Further Term, any other renewal of this Lease and any period of holding over.

“Termination” means the expiry by passage of time or the sooner determination of the Term or any Further Term.

“Valuer” means a person who:

- (a) is licensed under the *Land Valuers Licensing Act 1978* (WA); and
- (b) has not less than 5 years experience in the valuation of rental for commercial premises (including not less than 2 years experience in the State); and
- (c) is a member of the Australian Property Institute (Inc) (Western Australia Division).

“Variable Outgoings” means every amount reasonably expended or provided by the Lessor for the Building or the Land including:

- (a) cleaning the Premises;
- (b) Insurance Premiums, any excess for any insurance Claim, and removal of debris, provided the claim was not caused by the Lessor;
- (c) cleaning and keeping pest-free all Common Areas including all windows, the Car Park and all signs under the control of the Lessor;
- (d) lighting all Common Areas including the Car Park and all signs under the control of the Lessor;
- (e) internal and external gardening landscaping and reticulation expenses including street verges abutting the Land;
- (f) caretaking, general maintenance and preservation of security of the Building, employing security personnel and agents, hire and maintenance of all security equipment and security call out for after hours access to the Building;
- (g) removal of garbage and trade waste including wet waste and food garbage from the Land;
- (h) repair and maintenance of the Building (including any repairs required under clause 12.10);
- (i) fire service, fire alarm and Fire Fighting Equipment inspection, maintenance and replacement of fire alarms and Fire Fighting Equipment installed by the Lessor serving the Building and fire and emergency evacuation training;
- (j) administration, operation and management of the Building including Managing Agent’s fees and expenses, administrative and other costs and expenses, audit fees, bank fees, stationery and postage;
- (k) electricity and any other source of power used, associated with the running maintenance and repair of air-conditioning, ventilation, heating or cooling plant and equipment, lifts or escalators, or goods hoists installed by the Lessor in the Building, and fees or premiums payable to consultants and specialist contractors and direct wages paid by and cost of materials and parts purchased by the Lessor for the maintenance and servicing of that plant and equipment;

- (l) installing, running, maintaining and repairing background music public address and other entertainment systems and equipment throughout the Building;
- (m) salaries, wages and direct overheads applicable to the day-to-day operation and maintenance of the Building as a whole;
- (n) hire, replacement and maintenance of planters;
- (o) sanitation, including toilet requisites;
- (p) electricity, gas or other services incurred for the Building;
- (q) replacement Access Cards (less any user - pays reimbursements);
- (r) if designated or included by the Lessor, the Rates and Taxes;
- (s) any audit of the Variable Outgoings by the Lessor's auditor as is required under this Lease; and
- (t) any other expenditure reasonably and properly incurred in all or any of the preservation, operation, maintenance, upkeep, repair, servicing, inspection, administration and management generally of the Building or the Land.

"Variable Outgoings Contribution" has the meaning specified in clause 6.1.

"Works Conditions" means that:

- (a) the works must be:
 - (i) at the Lessee's cost (including the Lessor's reasonable costs incurred in connection with the works, which include the Lessor's reasonable administrative and other reasonable costs of giving consent and the reasonable fees of any architect or other consultant used by the Lessor in connection with the works);
 - (ii) in a proper and workmanlike manner, in accordance with all relevant Australian Standards and to the satisfaction of the Lessor, acting reasonably;
 - (iii) by a contractor:
 - A. nominated by the Lessee and approved by the Lessor, acting reasonably; and
 - B. who has provided evidence to the Lessor that it carries a policy covering public liability with a level of cover acceptable to the Lessor and appropriate contract construction risk, workers compensation and other usual insurances, which note the interest of the Lessor;
 - (iv) under the supervision of a person nominated by the Lessee and approved by the Lessor, acting reasonably;
 - (v) in accordance with all Laws and Requirements;
 - (vi) in accordance with plans and specifications approved by the Lessor (which approval must not be unreasonably withheld) and subject to

- any conditions that the Lessor imposes on its consent (which conditions (if any) must be reasonable);
- (vii) in accordance with and only after obtaining the approvals of all relevant Authorities;
 - (viii) only after providing copies to the Lessor of all approvals from relevant Authorities in relation to the works before carrying out the works; and
 - (ix) in accordance with the then current fitout manual (if any) for the Building; and
- (b) once the works are complete the Lessee must:
- (i) provide as-built drawings for the Premises layout and services to the Lessor; and
 - (ii) provide copies of all certificates of compliance from relevant Authorities in relation to the works within a reasonable period as nominated by the Lessor (but in any event within 40 Business Days after completion) to the Lessor.

1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (a) The singular includes the plural, a gender includes every other gender and words importing persons include corporations.
- (b) “including” means “including, but not limited to”.
- (c) “person” means a person, partnership, joint venture, unincorporated association, corporation and a government or statutory body or an Authority.
- (d) A covenant entered into by more than one person is deemed to be entered into by them jointly and each of them severally.
- (e) If the date on or by which any amount is payable or any act or thing must be done under this Lease is not a Business Day, the payment must be made or the act or thing must be done on or by the next Business Day.
- (f) The Lessee’s Obligations are binding on, and enforceable against the Lessee as defined in this Lease and any occupier of the Premises from time to time.
- (g) The headings and an index have been inserted for convenience only and are not to be taken into account in interpreting this Lease.
- (h) Reference to a clause is a reference to a clause or sub-clause of this Lease and a reference to a paragraph is a reference to a paragraph of the clause or sub-clause in which the reference occurs.
- (i) A reference to a schedule or annexure means a schedule or annexure to this Lease.
- (j) Where a word or expression is defined in this Lease, another part of speech or grammatical form of that word or expression has a corresponding meaning.

- (k) Reference to a body, organisation or rating tool includes, if it has ceased to exist or to be relevant, that body, organisation or rating tool's successor or replacement, or, if none, the body, organisation or rating tool that is most appropriate, as determined by the Lessor acting reasonably.

1.3 Lessor's Limitation of Liability

The Lessee acknowledges and agrees that, subject to the provisions of this Lease, the covenants on the part of the Lessor will bind the person entitled to be the registered proprietor of the Land for the time being but will not render the Lessor personally liable in damages for any breach except in the case of the Lessor's own acts or defaults of those of its employees, contractors, agents, invitees, licensees and visitors while the Lessor is registered proprietor of the Land.

2. COMPLETION OF BUILDING

2.1 Construction

The Lessor will:

- (a) cause the Lessor's Works to be carried out:
 - (i) in a proper and workmanlike manner;
 - (ii) in accordance with the Plans and the Specifications; and
 - (iii) in accordance with all consents of and complying with the requirements of all relevant Authorities;
- (b) use reasonable endeavours to complete the Lessor's Works by no later than the date set out in Item 6; and
- (c) issue a copy of the Certificate of Practical Completion to the Lessee as soon as practicable after having received it from the Lessor's Architect.

2.2 Lessor's Works

The Lessee acknowledges and agrees that the Lessor's Works may not be completed before the date set out in Item 6 and that the Lessee will not be entitled to any compensation if the Lessor's Works are not completed by that date.

2.3 Alterations to Plans and Specifications

- (a) The Lessor may make any alterations to the Plans and the Specifications required from time to time any relevant Authority and Lessee is not entitled to make any objection, requisition or claim for compensation in respect of those alterations.
- (b) The Lessor may otherwise make any alterations to the Plans and the Specifications that it considers desirable, provided that the location within the Building, the shape or the dimensions of the Premises are not, in the Lessor's view, substantially or materially altered and the Lessee is not entitled to make any objection, requisition or claim for compensation in respect of those alterations.
- (c) If the Lessor wishes to make any alterations to the Plans and the Specifications that will have the effect of substantially or materially altering the location of the Premises within the Building, the shape or the dimensions of

the Premises the Lessor must first obtain the Lessee's consent to those alterations (which consent cannot be unreasonably withheld) and irrespective of whether or not the Lessee consents to the alterations, the Lessee is not entitled to make any objection, requisition or claim for compensation.

2.4 Delays in Construction

If the Lessor's Works are delayed by reason of bad weather, the unavailability of labour or materials, or any other reason that is beyond the control of the Lessor, the date set out in Item 6 will be extended by the period of the delay. A certificate from the Lessor's Architect will be conclusive evidence of the reason for the delay and the length of the period of the delay.

2.5 Termination of this Agreement

If the Certificate of Practical Completion has not been issued on or before the date set out in Item 7, the Lessor may at any time after that date (but before the issue of the Certificate of Practical Completion) terminate this Agreement by notice in writing to the Lessee, and the Lessee will not have any claim against the Lessor for any costs, damages or expenses of any kind which might otherwise have arisen by virtue of this Agreement.

2.6 Certificate of Practical Completion

- (a) A Certificate of Practical Completion must only be issued by the Lessor's Architect when the Lessor's Works in relation to the Premises are practically complete under the Lessor's building/construction contract.
- (b) The Parties acknowledge and agree that components of the Lessor's Works of a minor nature may remain incomplete at the time that the Certificate of Practical Completion issues.

2.7 Variations

The Lessee acknowledges and agrees that the Lessor may change the Lessor's Works:

- (a) at the Lessor's absolute discretion;
- (b) if required by the Department of Health and Ageing (Commonwealth);
- (c) if required by any Law or any approval of any Appropriate Authority; or
- (d) if the Parties agree in writing to a variation,

and that the Lessee will not be entitled to any compensation if the Lessor's Works are changed.

3. BACKGROUND

- (a) The Lessee has been established by the Lessor to set up, operate and run a healthcare facility within the Building to provide community health care options and support for the residents of the City of Cockburn and surrounding areas (Super Clinic).
- (b) The Building has been constructed by the Lessor with partial Commonwealth government funding to provide a community Healthcare Centre and community facilities..

- (c) The Lessor acknowledges that the Lessee has been instructed to secure the tenancies of a range of healthcare professionals for the Premises.
- (d) The Lessee's primary source of income will be from the rent received from Sub-lessees of the Premises.
- (e) It is anticipated that the Lessee will have significant operating costs to maintain and secure the operation of the Super Clinic as a general healthcare provider.
- (f) In the circumstances, any Rent and Variable Outgoings paid by the Lessee to the Lessor under this Lease will have to come from the balance of the rental income received by the Lessee (as Sub-Lessor) from the Sub-Lessees and all other income, after the Sub-Lessor has paid all of its Operating Costs.
- (g) The Parties must have regard to the financial circumstances of the Lessee when determining the Rent, with effect from the Rent Commencement Date and when determining any adjustments to the Rent during the course of this Lease and the Lessor must ensure that any Rent determined under the provisions of this Lease will not exceed the difference between:
 - (i) the Lessee's rental income from the Sub-Lessees per annum, plus all other income, plus cash or current assets on hand or cash in any bank account belonging to the Lessee; and
 - (ii) the Lessee's Operating Costs per annum less a provision for contingencies of 15% of Operating Costs per annum.
- (h) The Lessee agrees to act in a financially prudent way consistent with businesses of a similar nature and to minimise the Lessee's Operating Costs and to prioritise the payment of its Variable Outgoings Contribution.

4. GRANT AND TERM

4.1 Grant

The Lessor leases the Premises to the Lessee and the Lessee takes a lease of the Premises:

- (a) for the Term;
- (b) at the Rent; and
- (c) subject to the terms of this Lease,

together with the right for the Lessee and its employees, customers and invitees to use and enjoy the Common Areas.

4.2 Commencement Date

This Lease commences on the Commencement Date.

4.3 Completion of the Lease

Upon completion of the Lessor's Works, the Lessee authorises the Lessor's solicitors to complete this Lease by the insertion of:

- (a) the then current title reference of the Land;
- (b) the then current description of the Premises;
- (c) the Commencement Date;
- (d) the date of Termination as defined in the Lease;
- (e) the up to date Premises Plan replacing the previous version of the Premises Plan contained in the Third Schedule; and
- (f) any other details as may be necessary to complete the Lease and ensure that this Lease is in registrable form and in compliance with all Laws.

5. RENT AND RENT REVIEW

5.1 Rent

The Lessee must pay the Rent which will be subject to determination and review as is provided in this Lease.

5.2 Payment of Rent

- (a) The Rent accrues from day to day and is payable by equal monthly instalments in advance with the first instalment to be apportioned on a daily basis in respect of periods less than a month and paid on or before the Rent Commencement Date and subsequent payments to be made on the first or other agreed day of each month after that.
- (b) The Rent must be paid:
 - (i) subject to paragraph 5.2(b)(ii), to the Lessor at its address stated in this Lease or at any other address as may be notified in writing to the Lessee; and
 - (ii) if requested by the Lessor, by direct debit from the Lessee's bank account into a bank account nominated by the Lessor.

5.3 Determination of Rent payable from the Rent Commencement Date

- (a) As soon as practicable before the Rent Commencement Date, the Parties must meet with a view to agreeing on the Rent to apply from the Rent Commencement Date.
- (b) The Parties must act promptly, diligently and in good faith and must each use their best endeavours to reach agreement on the Rent to apply from the Rent Commencement Date as soon as practicable before the Rent Commencement Date by applying the provisions of clause 5.5 (b) (ii) below.
- (c) If the Parties have not reached agreement on the Rent to apply from the Rent Commencement Date by the date which is 14 days before the Rent Commencement Date then:
 - (i) the Lessor may give a Lessor Notice in accordance with clause 5.3(c)(i); and
 - (ii) if the Lessor gives a Lessor Notice then the Rent review process in clause 5.5 will apply.

- (d) Upon:
- (i) the Rent to apply from the Rent Commencement Date being agreed by the Parties in accordance with this clause 5.3; or
 - (ii) the Rent to apply from the Rent Commencement Date being determined in accordance with the process in clause 5.5,
 - (iii) the Lessee authorises the Lessor's solicitors to insert the Rent amount in 10 of the Second Schedule.

5.4 Rent Review (CPI)

- (a) The Rent will be reviewed on each CPI Rent Review Date to determine the rent (in this clause 5.4, the "**New Rent**") to be paid from that CPI Rent Review Date until the next following Rent Review Date, if there is one, or Termination. The New Rent will be the Rent payable immediately before the relevant CPI Rent Review Date, multiplied by the Current CPI and divided by the Previous CPI.
- (b) If, during the Term, the Consumer Price Index is discontinued or ceases, in the Lessor's opinion, to reflect the increase in the cost of living for the City of Perth, the index to be used in place of the Consumer Price Index for the purpose of this Lease will be that stipulated by the President of the Institute of Chartered Accountants as an index which reflects the increase in the cost of living for the City of Perth.
- (c) Any determination of the New Rent under the provisions of this clause must be made subject to the provisions of clause 5.5 below and the Rent will not be increased unless it is determined that the Lessee is able to pay the New Rent plus the Variable Outgoings.

5.5 Rent Review

- (a) The Lessor acknowledges and agrees that:
 - (i) the Lessee's primary source of income will be the rental generated by the Sub-leases to be entered into by the Lessee (as Sub-lessor) with various health professionals in relation to the occupation of the Premises;
 - (ii) the maximum amount that the Lessee will be able to pay the Lessor on account of Rent and Variable Outgoings for the Premises will be determined by the amount of rental income earned by the Lessee (as Sub-lessor) from time to time plus all other sources of income plus cash or current assets on hand or cash in any bank account belonging to the Lessee, making allowance for the fact that the Lessee will need to meet all of its Lessee's Operating Costs out of the proceeds of the rental income and other sources of income derived annually and the Lessee will also have to have an allowance of 15% of Operating Costs per annum for contingencies.
- (b) The Rent will be reviewed on each Rent Review Date (and on each occasion when the Lessee calls for a review of the Rent and Variable Outgoings as a consequence of any fluctuation in the Lessee's income and Lessee's Operating Costs or any other occurrence that may affect the Lessee's ability to pay the Rent and Variable Outgoings) (in this clause referred to as the

Rent Review Date) to determine the rent (in this clause 5.5, the “**New Rent**”) to be paid from the relevant Rent Review Date until the next Rent Review Date, or Termination, in the following manner:

- (i) The Lessor may before the relevant Rent Review Date (but without time being of the essence) give to the Lessee a notice specifying what the Lessor believes to be the New Rent (“**Lessor Notice**”). If the Lessee agrees with the rent specified in the Lessor Notice and gives notice to the Lessor within 10 Business Days after service of the Lessor Notice (time being of the essence) that the Lessee agrees to accept the proposed New Rent, then the Lessee will be deemed to have accepted the amount specified in the Lessor Notice as the New Rent;
- (ii) If the Lessee fails to give the Lessor notice within 10 business days after receipt of the Lessor Notice that the Lessee accepts the proposed New Rent, or if the Lessee gives the Lessor notice that the rent specified in the Lessor Notice is not acceptable to the Lessee (Lessee’s Notice of Objection), then the New Rent will be determined by the accountant of the Lessee and the accountant of the Lessor, acting together in good faith by having regard to the matters referred to in clause 5.5 (a) above and by having regard to all of the Lessee’s income and expenditure, including:
 - A. the Lessee’s anticipated rental income for the period in question from the Lessee’s Sub-lessees (and all other income, e.g. interest earned and grants for the period in question);
 - B. the Lessee’s anticipated Operating Costs; and
 - C. any other anticipated costs and expenses incurred or likely to be incurred by the Lessee during the course of the period between the current Rent Review Date and the next Rent Review Date.
 - D. The New Rent to be determined by the accountants of the Lessor and Lessee as provided for will be:

New Rent = Lessee’s anticipated rental income plus all other anticipated income for the period in question plus all other sources of income plus cash or current assets on hand or cash in any bank account belonging to the Lessee **minus** the anticipated Lessee’s Operating Costs for the period in question (**minus** any other anticipated costs and expenses as referred to in paragraph C above), **minus** 15% of the Lessee’s anticipated Operating Costs for the period in question (for contingencies).

- E. If the Lessor’s accountant and the Lessee’s accountant cannot agree on the determination of the New Rent as provided for above within 20 Business Days after being requested to do so, then, in the absence of agreement between the parties within 5 days as to the appointment of an independent chartered accountant of not less than 5 years standing (Valuer) to determine the New rent applying the formula set out above and

the provisions of this clause, either the Lessor or the Lessee may request the President of the Australian Property Institute (Inc) (Western Australia Division) to appoint a Valuer to determine the New Rent applying the formula set out above and the provisions of this clause. The Valuer agreed on or so appointed must use their best endeavours to determine the New Rent of the Premises as at the relevant Rent Review Date within 20 Business Days after being appointed and will give the Valuer's determination (which will be a determination in writing) to the Lessor and the Lessee.

- (iii) In this Lease "**Lessee's Operating Costs**" means all of the anticipated costs and expenses incurred by the Lessee operating and running the Super Clinic, which includes all of the anticipated costs and expenses of the operation and administration of all of the Sub-leases, including the Lessee's own rental costs, outgoings, insurance, wages, salaries and superannuation, and anything related to any of those expenses, and without limitation includes also all Rent and Variable Outgoings payable by the Lessee under this Lease, it being the intention parties that every expense incurred or payable by the Lessee in determining its income and expenses must be brought to account for the purposes of determining the New Rent for the Premises (and any other payment to be made by the Lessee to the Lessor under or in connection with this Lease).
- (c) The Lessee and Lessor must, within 3 Business Days of request, or as soon as practicable thereafter, provide the accountants and any Valuer with any information that is required by the accountants or Valuer, acting reasonably, to determine the New Rent.
- (d) The New Rent, if not agreed, or deemed to be agreed, will be the new Rent determined under this clause.
- (e) The Lessee and Lessor must each pay their own costs of their respective accountants and in the case of the appointment of a Valuer they must pay equally the costs of the determination of the New Rent by the Valuer.
- (f) If the new Rent payable by the Lessee after the relevant Rent Review Date has not been determined (or agreed) by the Rent Review Date, then the Lessee must pay Rent monthly in accordance with the provisions of this Lease at a rate that is equal to one 12th of the amount calculated by reference to Lessee's rental income **minus** the Lessee's Operating Costs **minus** 15% of that amount, as specified by the Lessee in the Lessee's Notice of Objection, until the determination of the New Rent has been made.
- (g) Within 5 Business Days after the determination of the New Rent payable from the relevant Rent Review Date, an adjustment will be made between the Lessor and the Lessee in respect of any under or over payment of Rent, with effect from the date when the next Rent payment is due. Subject to clause 5.5 (b), any inability of the Lessee to pay a lump sum adjustment may be satisfied by paying the amount of Rent underpaid in 12 equal instalments together with the monthly Rent payment.
- (h) The Lessor will not be prevented from reviewing the Rent if the Lessor gives a notice under paragraph 5.45.4(a) after the relevant Rent Review Date.

- (i) If at any time between any Rent Review Dates the rental (or any other) income being received by the Lessee is reduced for any reason, including that any of the Lessee's Sub-leases is terminated or any Sub-Lessee fails to pay any rent due to the Lessee (as Sub-lessor) for more than one month, the Lessee may by notice to the Lessor seek an immediate interim adjustment of the (New) Rent previously determined, or of the Rent that is being paid at the time, to take into account the reduced rental (or other) income being received by the Lessee, applying the same criteria and calculations as set out above.
- (j) Notwithstanding anything to the contrary in this Lease, any Rent payable by the Lessee must be adjusted from time to time as requested by the Lessee, so that the Lessee is able to meet its day to day Lessee's Operating Costs.

6. VARIABLE OUTGOINGS

6.1 Variable Outgoings Contribution

- (a) The Lessee must pay to the Lessor the whole of the Variable Outgoings separately expended or provided in respect of the Premises and the Curtin Premises, or if not so separately expended or provided, a proportion (this proportion and those of the Variable Outgoings as are separately expended or provided are referred to as "Variable Outgoings Contribution") of the Variable Outgoings being equal to the proportion which the Net Lettable Area of the Premises plus the Net Lettable Area of the Curtin Premises bears to the Net Lettable Area of the Building from time to time.
- (b) Where only a particular part of the Building enjoys or shares the benefit resulting from a Variable Outgoing, the Lessor must apportion that Variable Outgoing to that part of the Building and if the Premises and the Curtin Premises are within the part of the Building to which the Variable Outgoing is apportioned, the Variable Outgoings Contribution will be the proportion which the Net Lettable Area of the Premises plus the Net Lettable Area of the Curtin Premises bears to the Net Lettable Area of that part of the Building to which the Variable Outgoing is apportioned.
- (c) The Variable Outgoings Contribution for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods less than 12 months.
- (d) If a particular amount included in the definition of Variable Outgoings is not contributed to by all the tenants of the Building or the part of the Building to which the Variable Outgoings relates, the Lessor may make a separate calculation as to the Lessee's contribution to it, and the Lessee's contribution will be calculated as the proportion of that particular amount that the Net Lettable Area of the Premises plus the Net Lettable Area of the Curtin Premises bears to the net Lettable Area of the part of the Building leased to the tenants of the Building who contribute to that particular amount of the Variable Outgoings.

6.2 Payment by Instalments

The Variable Outgoings Contribution must be paid in the following manner:

- (a) Before the Commencement Date and before 30 June in each Lease Year or as soon as practicable after that date the Lessor must notify the Lessee in writing of:

- (i) the estimate of the amount of the Variable Outgoings for the next Lease Year; and
 - (ii) the estimate of the Variable Outgoings Contribution payable by the Lessee for the next Lease Year.
- (b) The Lessee must make payments to the Lessor on account of the estimated Variable Outgoings Contribution for the next Lease Year by equal monthly instalments in advance the first of which is to be paid on or before the Commencement Date and then on the first day of each month after that.
- (c) As soon as practicable after 30 June in each Lease Year the Lessor's Accountant will certify the actual amount of the Variable Outgoings and the Variable Outgoings Contribution for the Lease Year before that 30 June and a copy of the Lessor's Accountant's certificate will be given to the Lessee. If the actual amount of the Variable Outgoings Contribution (as evidenced by the Lessor's Accountant's certificate) is:
- (i) greater than the amount paid on account of Variable Outgoings Contribution, the Lessee must pay the difference to the Lessor within 10 Business Days after receipt of the certificate; or
 - (ii) less than the amount paid on account of Variable Outgoings Contribution, the Lessor will credit the Lessee with the difference and the Lessee may deduct that difference from the next due payment or payments on account of the Variable Outgoings Contribution. If the Lease has then expired or otherwise determined the Lessor must make any credit to the Lessee within 30 days after the issue of the Accountant's certificate.
- (d) In calculating the estimate of the Variable Outgoings Contribution for the Final Period, the Lessor may add 10% to the amount otherwise calculated under this clause.

6.3 Rates and Taxes

The Lessee is liable proportionately for its share of the applicable Rates and Taxes in each Lease Year, which are to be included as part of the Variable Outgoings, and which must be calculated and paid as part of the Lessee's Variable Outgoings Contribution as provided for in clause 6.2(b) above, including the Curtin Premises.

The Lessee's portion of Rates and Taxes for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods less than 12 months.

6.4 Outgoings Separately Assessed

If a Variable Outgoing is expended or provided by the Lessor in respect of the Premises only or the Curtin Premises only, that amount must be included in the calculation of the Variable Outgoings Contribution, or estimate of it, to be paid by the Lessee to the Lessor as provided for in clause 6.2 above.

7. OTHER PAYMENTS

7.1 Services

- (a) The Lessee must pay to the relevant Authority on or before the date specified by it for payment, all charges and meter rentals for all utilities and services including electric power, gas, water and excess water consumed on or for the

Premises and the Curtin Premises and electricity consumed by any air conditioning plant used for the Premises and the Curtin Premises.

- (b) If required by the Lessor, the Lessee will purchase from the Lessor all the Lessee's requirements for electric energy or gas to be used by the Lessee in or for the Premises and the Curtin Premises and will pay to the Lessor the amount which the relevant Authority would require the Lessee to pay for that energy, if supplied by the relevant Authority direct to the Lessee, and the Lessee must comply with the general terms and conditions of supply which may be prescribed by the Lessor from time to time, including the installation of separate meters to monitor the supply of electric energy or gas to the Premises and the Curtin Premises.
- (c) Despite any other term of this Lease, the Lessor will not be liable to the Lessee for any failure (either total or partial) in the supply of electric energy or gas resulting from:
 - (i) failure of the relevant Authority to supply electric energy or gas to the Lessor or the Lessee except to the extent that failure is due to the Lessor's default;
 - (ii) war, riot, Act of God, force majeure or accident or interference with or breakdown from a cause arising in any part of the relevant Authority's or the Lessor's electrical or gas installations or equipment;
 - (iii) wrongful or improper use of electrical or gas equipment by the Lessee; or
 - (iv) any other cause beyond the Lessor's reasonable control.

7.2 Insurance

The Lessee must pay to the insurer on or before the date specified by it for payment, all premiums as and when owing for the insurance policies taken out and maintained by the Lessee under the Lessee's Obligations.

7.3 Charges and expenses arising through default etc

The Lessee must pay to the Lessor on demand by it, all legal and Managing Agents' and other costs charges and expenses for which the Lessor is liable in connection with:

- (a) any Event of Default by the Lessee including all costs, charges and expenses, solicitors costs and surveyors fees incurred by the Lessor for the purpose of the preparation and service of a notice under section 81 of the *Property Law Act 1969 (WA)* or otherwise and requiring the Lessee to remedy an Event of Default and even if forfeiture for the Event of Default is avoided otherwise than by relief granted by a Court;
- (b) the exercise or attempted exercise of any power right or remedy of the Lessor under this Lease arising from any Event of Default by the Lessee;
- (c) obtaining or attempting to obtain payment of the Rent or any other money to be paid under this Lease; and
- (d) any Claim concerned with any matter referred to above or any other matter in connection with this Lease, including legal costs and disbursements calculated on the greater of a solicitor and own client basis or an indemnity basis, which the Lessor has paid or pays to any other person provided they

are of a reasonable amount and have been reasonably incurred, however this clause will not apply if the Lessee is awarded costs as against the Lessor in any Claim, or if the Lessor discontinues its Claim for any reason.

7.4 Interest on arrears

If any money is owing by the Lessee to the Lessor but is unpaid in breach of the provisions of this Lease, the Lessee must pay interest to the Lessor on the outstanding money at the Default Rate calculated daily on the money from the due date for payment until actual payment of the money and interest on it.

7.5 GST Liability

- (a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act.
- (b) Any amount referred to in this Lease which is relevant in determining a payment to be made by a Party to another is exclusive of any GST unless indicated otherwise.
- (c) The Parties agree that:
 - (i) GST is payable in respect of any taxable supply made under this Lease;
 - (ii) In respect of any taxable supply made under this Lease, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Lease. The GST liability for any taxable supply is:
 - A. where the consideration is exclusive of GST, the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - B. where the consideration is inclusive of GST, the amount determined in accordance with the GST Act;
 - (iii) If a Party is entitled to be reimbursed for an expense or outgoing incurred in connection with this Lease, the amount of the reimbursement will be net of any input tax credits which may be claimed by the Party being reimbursed or the representative member of the GST Group in which that Party is a member in relation to that expense or outgoing;
 - (iv) The supplier must issue:
 - A. a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - B. any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply; and
 - (v) Any review or adjustment of any consideration payable for a taxable supply must take into account that this clause requires an adjustment

of that consideration and must take account of any adjustment to that consideration which has already been or is required to be determined, under the provisions of this clause.

8. INDEMNITY AND INSURANCE PROVISIONS

8.1 Lessee's Indemnity

- (a) Except to the extent caused by any act, neglect, default or omission of the Lessor, its employees, contractors, agents, invitees, licensees and visitors the Lessee indemnifies the Lessor against all Claims which the Lessor may incur in connection with:
- (i) the loss of life, or personal injury, or damage to any property;
 - (ii) illness of or injury to any person; or
 - (iii) any inquiry, investigation, notice, direction, order, proceeding or prosecution instituted under or in relation to the OSH Legislation or the *Coroners Act 1996 (WA)*,

arising out of any occurrence at the Premises or the use by the Lessee of the Premises to the extent occasioned by any act, neglect, default or omission by the Lessee or by a Permitted Person

- (b) The Lessee indemnifies the Lessor against all loss and damage to the Premises and to any other part of the Building caused by the negligent use or misuse, waste or abuse of water, gas or electricity supplied to the Premises or to the Lessee in connection with the Premises or the use of the Premises or by faulty sanitary, water, gas or electric pipes, or wire, or fittings, or fixtures fixed or installed in the Premises by the Lessee or by a Permitted Person.

8.2 Indemnity Policy

The Lessee must, before the Commencement Date, take out and at all times keep in force to the satisfaction of the Lessor with an Approved Insurer, on behalf of the Lessee and the Lessor and for their respective rights and interests, a public liability policy on a "losses occurring basis" with a cover for any one occurrence of not less than the Insured Amount or a greater amount as the Lessor may reasonably require.

8.3 Insurance against fire and other risks

- (a) The Lessee must, before the Commencement Date, take out and at all times keep in force on a "losses occurring basis" to the satisfaction of the Lessor with an Approved Insurer, on behalf of the Lessee and the Lessor and for their respective rights and interests:
- (i) a policy of insurance to cover all additions to the Premises carried out by the Lessee and all the Lessee's fixtures, fittings, equipment and furnishings and stock against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, impact by vehicles, sprinkler leakage, water damage, aircraft and articles dropped from aircraft and other risks against which in the opinion of

the Lessor a tenant may and does ordinarily insure in the full replacement value; and

- (ii) a policy of employer's indemnity insurance.
- (b) In case of destruction of or damage to any property referred to in paragraph (a) from any cause covered by the insurance effected by the Lessee under paragraph (a) the Lessee must expend all money received from the insurance in re-instating or replacing it and make up any deficiency out of the Lessee's own money (provided that if the Building is substantially damaged or destroyed at the same time as the destruction of or damage to any property referred to in paragraph (a) then the Lessee is only required to expend the moneys in accordance with this clause 8.3(b) if the Lessor elects to reinstate the Building).
- (c) The Lessee acknowledges and agrees that in relation to any claim the Lessee makes on any policy of insurance the Lessee is required to maintain under this Lease, regardless of:
- (i) whether the Lessee's insurance policies respond or not; and
 - (ii) the reason why the insurance policies respond or fail to respond,
- the Lessee is not released (in whole or in part), from any of its obligations under any of the indemnities set out in this Lease, or generally.

8.4 Lessor's rights

If the Lessee does not take out and keep in force any policy of insurance in accordance with clauses 8.2 and 8.3, the Lessee:

- (a) irrevocably appoints the Lessor its attorney to do all things and sign all documents necessary to give effect to this clause, at the Lessee's cost; and
- (b) assigns to the Lessor all its rights and benefits under the policy of insurance, including the right to any money received by the Lessee, to secure the Lessee's obligations under clauses 8.2 and 8.3.

8.5 Lessor's Insurances

The Lessor must effect and at all times keep in force in respect of the Building and all Common Areas with an Approved Insurer all insurances usually effected by landlords of comparable buildings in the Perth metropolitan area, and must provide the Lessee with reasonable evidence of compliance with this obligation within 30 days after demand.

8.6 Produce policies and receipts for premiums

The Lessee must, before the Commencement Date, produce to the Lessor certificates of currency issued by an Approved Insurer, and at any time on demand the original of, any policies of insurance required to be taken out by the Lessee under this Lease and the receipts relating to the payment of premiums on them and on demand produce annual certificates of renewal for them and on demand produce certificates of currency for them.

8.7 Increase in Lessor's fire insurance premium

- (a) The Lessee must not bring onto or keep in the Premises any thing of a flammable, dangerous or hazardous nature other than items generally used in connection with the Permitted Purpose and not without the written consent of the Lessor bring onto or keep any thing or do any act in the Premises which may increase the rate of the Insurance Premiums.
- (b) If the Lessee or a Permitted Person brings onto or keeps in the Premises any thing of the nature described in paragraph (a) or does any such act in the Premises, then without limiting any other rights of the Lessor, the Lessee must, on demand, pay to the Lessor the amount of any increased premium.
- (c) If the Lessee or a Permitted Person does or permits to be done any act which has the effect of invalidating or avoiding any policy of insurance taken out by the Lessor, then without limiting any other right of the Lessor, the Lessee will be responsible for, and must pay and discharge on demand, any damage or loss which the Lessor suffers as a result.

8.8 Insurance

Each Party must pay to the insurer before the date specified by it for payment, all premiums as and when owing for the insurance policies to be taken out and maintained by that Party under this Lease.

9. REPAIR AND MAINTENANCE BY LESSEE

9.1 Repair and Maintain

- (a) Subject to paragraph (b), the Lessee must at the Lessee's own expense repair and maintain the Premises so that it remains in at least the same condition as at the Commencement Date.
- (b) The obligations of the Lessee under paragraph (a) do not:
 - (i) require the Lessee to repair and make good any damage or disrepair caused by an Insurable Risk except to the extent that the damage arises out of the neglect or default of or misuse of the Premises by the Lessee, or a Permitted Person, or the Lessor's insurance against that damage is invalidated by an act, neglect or omission of the Lessee;
 - (ii) extend to repairs due to fair wear and tear consistent with normal use; or
 - (iii) extend to repair of structural damage unless caused by:
 - A. an act or omission of the Lessee or a Permitted Person; or
 - B. the Lessee's use of the Premises for the Permitted Use.

9.2 Make good damage

The Lessee must make good, or at the discretion of the Lessor, reimburse the Lessor for the repair of any breakage, defect or damage to the Premises, or to the Common Areas, or to any adjoining premises, or to any facility or appurtenance of them, caused by want of care, misuse or abuse on the part of the Lessee or a Permitted Person, or otherwise caused by any Event of Default on the part of the Lessee.

9.3 Repaint

The Lessee must as often as is reasonably necessary and at least once during the last 3 months of the Term paint, colour, varnish and paper all parts of the inside of the Premises that have been previously or at that time are painted, coloured, varnished or papered, and all work is to be carried out in a good and workmanlike manner and with good quality and suitable materials in colours first approved by the Lessor.

9.4 Lessee's Further Obligations

The Lessee must at the Lessee's expense:

- (a) replace all damaged or non-operative light globes and tubes within the Premises;
- (b) take reasonable steps necessary to control any pest infestation occurring within the Premises and if reasonably required by the Lessor engage a pest exterminator reasonably approved by the Lessor;
- (c) repair or where appropriate replace heating, lighting, electrical or plumbing fittings installed in the Premises broken or damaged by the Lessee or a Permitted Person;
- (d) except to the extent that it is the responsibility of the Lessor under this Lease, and subject to the other provisions of this Lease, comply with all Laws affecting the Premises or any fixtures or fittings installed by the Lessee in the Premises; and
- (e) except to the extent that it is the responsibility of the Lessor under this Lease, and subject to the other provisions of this Lease, comply with any notice or order which may be given by any Authority in respect of the Premises or their use by the Lessee (whether addressed or given to the Lessor or the Lessee and without regard to the person liable by Law to comply with the notice or order) and keep the Lessor indemnified in respect of all such matters.

9.5 Clean

The Lessee must:

- (a) keep the Premises and immediate surroundings in a thorough state of cleanliness and in a condition that does not pose any risk to the health or safety of any person; and
- (b) not allow any rubbish, trade waste, cartons, boxes, containers, produce or accumulation of useless property within the Premises or in their vicinity and not leave rubbish bins or other containers outside the Premises except in areas from time to time designated for the purpose by the Lessor.

9.6 Keep drains in repair

The Lessee must:

- (a) keep and maintain the waste pipes, drains and conduits originating in the Premises or connected to them and the grease traps serving the Premises in a clean, clear and free flowing condition and employ licensed trades people approved by the Lessor (such approval not to be unreasonably withheld) to clear any blockages which may occur in them within the external boundaries of the Premises;

- (b) not without the prior consent of the Lessor interfere with any drainage or water supply facilities to or in the Premises or with any appurtenance to them; and
- (c) pay to the Lessor on demand by it the cost of clearing any blockages caused or contributed to by any neglect or default on the part of the Lessee or a Permitted Person which occurs in any waste pipe, drain or conduit referred to in this clause between the external boundary of the Premises and their point of entry into any trunk main.

9.7 Lessor's right to view

The Lessee must allow the Lessor its employees, agents and independent contractors to enter the Premises at all reasonable times and on reasonable notice to view the state of repair of the Premises.

9.8 Lessor's right to repair

If the Lessee fails to remedy any Event of Default as to repairs within 10 Business Days after the date of service of a notice on the Lessee requiring the Lessee to remedy the Event of Default, the Lessee must allow the Lessor, its employees, agents and independent contractors (but the Lessor is not under any obligation to do so) to enter the Premises at any time with all necessary materials and appliances and to execute all or any required repairs as the Lessor thinks fit and pay to the Lessor on demand the cost of the repairs.

9.9 Lessor's right to carry out emergency repair

In addition to the rights of the Lessor to enter after notice to the Lessee, the Lessee must allow the Lessor and the Lessor's employees, agents and independent contractors to enter the Premises at all times with all necessary materials and appliances and without previous notice to carry out any repairs which in the Lessor's opinion are of an emergency nature. If the Lessor carries out any repairs under this power which should under the Lessee's Obligations be carried out by the Lessee, then the Lessee must pay to the Lessor on demand the cost of the repairs.

9.10 Notice of damage

The Lessee must give to the Lessor prompt written notice of any accident to or defect in or damage to the Premises or the Building of which the Lessee is aware.

10. USE OF PREMISES BY LESSEE

10.1 No alterations or additions

- (a) The Lessee must not, without the Lessor's prior written consent, make or permit to be made any alterations or additions in the construction or arrangement of the Premises or cut, hole or damage any wall, partition, timber, door, floor or ceiling of them.
- (b) All alterations and additions must be done only in accordance with the Works Conditions.

10.2 Alterations to the Building

The Lessee must not:

- (a) make any alterations or additions to the Building; or

- (b) interfere with, alter or make any connection to the Building Services and the Lessor's Fixtures;

unless the Lessee:

- (c) obtains the Lessor's prior written consent, which:
 - (i) may be granted or withheld at the Lessor's discretion;
 - (ii) may be given conditionally or unconditionally in all cases; and
- (d) in undertaking any works, complies with the Works Conditions.

10.3 Comply with Laws and Requirements

- (a) The Lessee must use the Premises only for lawful purposes.
- (b) The Lessee must punctually comply with and observe at the Lessee's expense all present and future Laws and Requirements which relate to the Premises or their use or the number or sex of the people working in or from or at any time occupying or visiting the Premises, including any notice requiring the carrying out of any repairs or alterations to or the provision of Fire Fighting Equipment for the Premises.
- (c) To the extent that it may require structural alteration to the Premises or to the Building, the covenant in paragraph (b) applies only to Laws and Requirements that relate to the particular use to which the Premises are put by the Lessee or the number or sex of people working in or from or at any time occupying or visiting the Premises.
- (d) All works which the Lessee is required to carry out under this clause must be carried out in accordance with the Works Conditions.
- (e) If the Lessee does not comply with the requirements of paragraphs (a) to (d), the Lessee must allow the Lessor and the employees agents and independent contractors of the Lessor to enter the Premises at any time with all necessary materials and appliances for the purpose of complying with the Lessee's Obligations under this clause and pay to the Lessor on demand any expense incurred by the Lessor in doing so and indemnify the Lessor against any loss or liability incurred by the Lessor arising from the non-compliance.
- (f) The Lessee must at all times during the Term, observe perform and comply with all of the Lessor's reporting obligations under the Existing Funding Agreement, which will include providing such information and reports from time to time as may be reasonably required for that purpose.

10.4 Comply with Managing Agent

The Lessee must comply with any reasonable direction, order or request of the Lessor or the Managing Agent.

10.5 Lessee's Operational Obligations

The Lessee must during its occupation of the Premises:

- (a) advise the Lessor (or where applicable its Managing Agent) of the private address and telephone number of the Lessee or if the Lessee is a corporation of the manager or other responsible person employed by the Lessee and

must keep the Lessor or its Managing Agent informed of any change of this address or telephone number;

- (b) secure the Premises against unauthorised entry at all times when the Premises are left unoccupied;
- (c) take all necessary steps to prevent infiltration of air into the Premises and not do anything by which the work or efficiency of the air conditioning plant servicing the Building or the Premises may be detrimentally affected; and
- (d) comply with the Building Procedures and Regulations.

10.6 Restrictions on Use of Premises by Lessee

The Lessee must not:

- (a) use or permit to be used for other than their designed purposes any of the Lessor's Fixtures or Building Services;
- (b) sell any of the Lessor's Fixtures;
- (c) grant, or allow to arise, any Security Interest in the Lessor's Fixtures;
- (d) do or permit to be done on the Premises or in the Building anything which in the reasonable opinion of the Lessor may become a nuisance or disturbance obstruction or cause of damage whether to the Lessor or to other tenants or users of the Building or use the Premises in any noisy noxious or offensive manner;
- (e) obstruct or interfere with any entrance or Common Areas of the Building;
- (f) install any thing in the Premises that overloads the electrical Building Services or other cables, switchboards, circuits or sub-boards through which electricity is conveyed to or through the Premises;
- (g) install or place in the Premises any item, fixture or fitting which breaks, strains or damages by overloading of floors or by any cause the floors, walls, pillars and other parts of the construction of the Building; or
- (h) do or omit to do anything that has, or may have, a detrimental effect on the NABERS rating or the energy efficiency of the Premises or the Building.

10.7 Use of common areas

- (a) The Lessee must not enter on or use any part of the Building outside of the Premises except the Common Areas.
- (b) The Lessee must not do or omit to do anything which may cause or allow the Common Areas:
 - (i) to require maintenance except for fair wear and tear;
 - (ii) to be other than in a good clean sanitary and attractive state and condition; or
 - (iii) to be obstructed.

10.8 Use of Premises

The Lessee must use the Premises for the Permitted Purpose and for no other purpose.

10.9 Security Threats

The Lessee must:

- (a) notify the Lessor, or the Managing Agent, of any threat or demand, including bomb threats, received by the Lessee or a Permitted Person which relate to the Premises, or the Building, or to the safety of any person or property within the Premises or the Building, immediately on the threat or demand being received;
- (b) be familiar with and comply with, and ensure each Permitted Person is familiar with and comply with the Lessor's emergency evacuation procedures, including any requirement for people at the Premises to participate in emergency evacuation procedures and drills;
- (c) obey and cause each Permitted Person to obey any reasonable direction given by the Lessor or the Managing Agent, relating to the control of people within the Building and the evacuation or closure of any part of the Building, including the Premises, following the giving to any person of a threat or demand of the kind referred to in this clause, or in the event of any fire earthquake or other emergency and for practice exercises of any emergency; and
- (d) if any civil defence, fire or evacuation drill is conducted in the Building at any time, co-operate fully in the planning and control of and participation in them and to supply the Lessor with the names of the people responsible for carrying out all duties of civil defence planner and fire officer or warden in relation to the Premises and the person responsible on each floor level as applicable.

10.10 Security

The Lessee must:

- (a) use its best endeavours to protect and keep safe the Premises and any property in the Premises from theft or robbery and keep all doors windows and other openings closed and securely fastened when the Premises are not open for business; and
- (b) return to the Lessor on Termination all keys provided by the Lessor for locks on doors or other openings in or of the Premises and not permit the keys to come into the possession of any person other than the Lessee its employees or agents.

10.11 Occupational Safety and Health

- (a) From the earlier of the Commencement Date and the date on which the Lessee takes possession of the Premises, the Lessee has the day to day control of the Premises and must take all reasonable precautions to ensure the safety and health of each person who may be affected by the Premises and the Lessee's use of them.
- (b) The Lessee must, at all times during the Term:

- (i) comply with its obligations under OSH Legislation;
 - (ii) identify all Hazards and take all reasonable steps to maintain a safe working environment and to ensure the safety and health of each person who may be affected by the Lessee's use of the Premises, including any Permitted Person; and
 - (iii) assist the Lessor to comply with its obligations under OSH Legislation (if any).
- (c) The Lessee must immediately notify the Lessor of any Hazard which requires remediation by the Lessor.
- (d) The Lessee is responsible for the costs associated with rectifying any Hazard (subject to the Lessor's express obligations under this Lease).
- (e) The Lessor may direct the Lessee to take any action or refrain from taking any action, on the grounds of workplace health and safety.
- (f) If an OSH Incident occurs, the Lessee must:
- (i) immediately notify the Lessor of the OSH Incident;
 - (ii) ensure that no action is taken which may risk the safety and health of any person or damage the Premises;
 - (iii) do all things reasonably necessary to remedy and minimise the impact of the OSH Incident and to prevent a similar incident from recurring;
 - (iv) if requested by the Lessor:
 - A. conduct an investigation into the OSH Incident for the purpose of answering the Lessor's questions regarding the OSH Incident; and
 - B. provide to the Lessor the Lessee's written report expressly answering the Lessor's questions and recording all methods employed by the Lessee to obtain those answers;
 - (v) if requested by the Lessor, provide all information, materials and samples relating to the OSH Incident to the Lessor;
 - (vi) allow the Lessor access to the Premises to conduct its own investigation into the OSH Incident, including access to the Lessee's plant, equipment, goods and records;
 - (vii) cooperate with the Lessor in relation to the OSH Incident and any resulting investigations or inspections conducted by any Authority;
 - (viii) not disclose to any third party, so far as the Law permits, any information, documentation, reports or material that is owned or was created by the Lessor, unless expressly authorised by the Lessor in writing to do so; and
 - (ix) comply with any lawful and reasonable directions given by the Lessor as a result of the OSH Incident.

10.12 Lessor's Fixtures

The Lessee must, at the Lessee's expense, ensure that:

- (a) the Lessor's Fixtures are safe for their intended use and are adequately serviced, inspected and maintained throughout the Term;
- (b) the Lessor's Fixtures are used only by people who are competent to use them and who hold all necessary licences and qualifications required; and
- (c) it provides records of all repairs and maintenance and modification carried out on the Lessor's Fixtures, promptly after completion of those repairs, maintenance or modification.

11. ADDITIONAL COVENANTS BY LESSEE

11.1 No encumbrances

The Lessee must not mortgage, charge, encumber or grant any Security Interest in the Lessee's interest in this Lease, or any sublease granted pursuant to clause 13, or any of its fixtures, fittings or improvements in the Premises or agree so to do without the Lessor's prior written consent.

11.2 No absolute caveat

- (a) The Lessee must not lodge an absolute caveat over the Land to protect the interest of the Lessee under this Lease, but if any absolute caveat is lodged, in consideration of the Lessor granting this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and each and every one of the directors and other officers of the Lessor ("Officer") jointly and severally, the agents and attorney of the Lessee to sign and lodge a withdrawal of the absolute caveat, the cost of which is to be paid by the Lessee on demand.
- (b) A person, including the Registrar of Titles of Western Australia, who deals with the attorney or a person purporting to be the attorney under paragraph (a) is:
 - (i) entitled to rely on that person's execution of a document as conclusive evidence that:
 - A. the person is the Lessor or an Officer;
 - B. the power of attorney has come into effect;
 - C. the power of attorney has not been revoked;
 - D. the right or power being exercised or purportedly exercised is being properly exercised; and
 - E. the circumstances have arisen to authorise the exercise of that right and power; and
 - (ii) not required to make these enquiries about the attorney or the power.
- (c) The provisions of this clause do not prevent the Lessee lodging a caveat expressed to be subject to claim. The Lessee must at its cost withdraw any caveat on Termination.

- (d) The Lessee must withdraw any caveat lodged by it over the Land within 14 days after any request in writing from the Lessor, for the purposes of permitting any dealing with the Land or any part of it by the Lessor not adversely affecting the estate or interest of the Lessee in the Land subject to:
- (i) if the Lessor's dealing includes the lodgement of a new mortgage over the Land, or any part of it including the Premises, the new mortgagee must first consent in writing to this Lease (which consent may be given subject to reasonable conditions);
 - (ii) the Lessor meeting the reasonable costs of preparation of the withdrawal, the preparation of a fresh caveat in protection of the Lessee's interests under this Lease and the registration fees payable to Landgate with respect to the lodgement of the withdrawal and the fresh caveat.

11.3 Registration of Lease and mortgagee consent

- (a) The Parties agree that the Lease will be registered at Landgate and that:
- (i) the Lessor must seek consent to this Lease from each mortgagee of the Land (which consent may be given subject to reasonable conditions) at the Lessor's costs;
 - (ii) the Lessee must, if requested, promptly execute each mortgagee's standard form of mortgagee consent documentation or any other documentation reasonably required by any mortgagee as a condition of providing its consent; and
 - (iii) the Lessor must pay any Landgate registration fees payable in relation to the registration of the Lease;
 - (iv) the Parties must do all other things reasonably necessary to facilitate the registration of this Lease.
- (b) On or before Termination, the Lessee must provide the Lessor with a surrender of this Lease, in registrable form and properly executed by the Lessee but, if the Lessee fails to provide the surrender to the Lessor, in consideration of the Lessor granting this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and each and every one of the directors and other officers of the Lessor ("Officer") jointly and severally, the agents and attorney of the Lessee to sign and register a surrender of this Lease after Termination, the cost of which is to be paid by the Lessee on demand.
- (c) A person, including the Registrar of Titles of Western Australia, who deals with the attorney or a person purporting to be the attorney under paragraph (b) is:
- (i) entitled to rely on that person's execution of a document as conclusive evidence that:
 - A. the person is the Lessor or an Officer;
 - B. the power of attorney has come into effect;
 - C. the power of attorney has not been revoked;

- D. the right or power being exercised or purportedly exercised is being properly exercised; and
 - E. the circumstances have arisen to authorise the exercise of that right and power; and
- (ii) not required to make these enquiries about the attorney or the power.

11.4 Pass on notices

The Lessee must immediately give notice in writing to the Lessor of any notice received by the Lessee from any Authority relating to the Premises.

11.5 Permit intending tenants etc. to inspect

The Lessee must permit the Lessor and its servants and agents at all reasonable times to enter the Premises with, and exhibit the Premises to, prospective tenants or purchasers, and within the period of 6 months immediately preceding Termination, allow the Lessor to affix and exhibit where the Lessor thinks fit any usual "for sale" and any usual "to let" notice or sign (in each case with the name and address of the Lessor or its agent on it), and not remove them without the prior consent in writing of the Lessor.

11.6 Yielding up

The Lessee must at Termination yield and deliver up possession of the Premises to the Lessor, in good and substantial repair and condition and state of cleanliness and decoration as is consistent with the due performance by the Lessee of the Lessee's Obligations and surrender all Access Cards to the Lessor at its address for notice under this Lease, and inform the Lessor of all combinations of any locks, safes and vaults in the Premises.

11.7 Lessee's Make Good Obligations

- (a) The Lessee must before Termination:
- (i) remove from the Premises, the Building and the Land all:
 - A. fixtures and fittings, equipment, partitioning, signs and furnishings erected or installed by the Lessee (other than any fixtures and fittings equipment and furnishings which in the opinion of the Lessor form an integral part of the Premises or of the Building); and
 - B. Lessee's chattels;
 - (ii) make good to the satisfaction of the Lessor any damage caused to the Premises or the Building by that erection, installation or removal; and
 - (iii) re-instate any alterations made by the Lessee to the Premises so that the Premises are restored to their condition as at the earlier of the Commencement Date and the date on which the Lessee commenced its occupancy of the Premises (fair wear and tear excepted), unless the Lessor requests that those alterations remain.
- (together the "**Lessee's Make Good Obligations**").
- (b) The property in all fixtures and fittings, equipment and furnishings which under paragraph (a) the Lessee is not to remove from the Premises and

Lessee's chattels which the Lessee has not removed from the Premises (together "Lessee's Abandoned Property"), will immediately on Termination, pass to the Lessor and the Lessor will not be obliged to pay any consideration or compensation for that property.

- (c) The Lessee grants to the Lessor a Security Interest in the Lessee's Abandoned Property to secure the Lessee's Obligations.
- (d) Without limiting the effect of clause 11.1, the Lessee must not mortgage, charge, encumber or grant any Security Interest in the Lessee's Abandoned Property, or agree to do so, without the Lessor's prior written consent.

11.8 Payment in Lieu of Make Good

At the election of the Lessor, the Lessee must pay to the Lessor an amount agreed between the Parties, acting reasonably, as the cost of the Lessee carrying out the Lessee's Make Good Obligations (or any component of them) and on payment by the Lessee to the Lessor of the agreed amount, the Lessee will be released from its obligation to perform the Lessee's Make Good Obligations (or the relevant component of them). If the Parties are unable to agree on the amount payable by the Lessee under this clause the matter may be referred by the Lessor to the Expert Determination Process.

11.9 Building Services

The Lessee must utilise all the Building Services in accordance with the Building Procedures and Regulations.

11.10 Out of Hours Use

- (a) The Lessee can use the Premises outside Normal Hours for which the Building is open provided that the Lessee must comply with the conditions relating to after hours use as prescribed by the Lessor.
- (b) If the Lessee uses the Premises outside Normal Hours for which the Building is open:
 - (i) the Lessor may, acting reasonably, make an assessment of the Variable Outgoings incurred as a direct result of that use (and which would not otherwise have been incurred) including costs for additional staff and overtime; and
 - (ii) the Lessee must on demand pay the amount so assessed.

12. LESSOR'S COVENANTS AND RESERVATIONS

12.1 Quiet enjoyment

The Lessee duly paying the Rent and performing and observing the Lessee's Obligations, may peaceably and quietly hold and enjoy the Premises during the Term, without any interruption by the Lessor or any person claiming through, under or in trust for the Lessor.

12.2 No Right to grant other leases

- (a) The Lessor will not grant leases of other parts of the Building for the same purpose for which the Lessee is entitled to use the Premises.

12.3 No warranty

- (a) The Lessor warrants that at the Commencement Date the Premises fit for occupation and for the use permitted by this Lease and comply with all laws relating to the Premises; and
- (b) the Lessor covenants and undertakes that during the Term (subject to the other provisions of this Lease) that the Premises will remain fit for occupation and for the permitted use and will continue to comply with all applicable laws and that any fixture or fitting in them is or will remain in good working order and condition.

12.4 Lessor's right to install services

- (a) The Lessor reserves to itself and to the employees, agents and independent contractors of the Lessor the right:
 - (i) to enter the Premises at all reasonable times with all necessary materials and appliances to erect, make, excavate, lay or install in, on, over, through or under the Premises any posts, drains, pipes, conduits, ducts, cables, wires or other things required for any existing or future service to the Building including to pass running water, heat, oil, electricity and other power, telecommunications cables and conditioned air; and
 - (ii) to enter the Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relating to an existing or future service to the Building.
- (b) In each case mentioned in paragraph (a) the Lessor must cause as little inconvenience and damage to the Lessee as is reasonably practicable in the circumstances and must make good any damage so caused.
- (c) The Lessor must compensate the Lessee for any interruption to the Lessee's business and for any interference in the use or enjoyment of the Premises by the Lessee and its Sub-lessees.

12.5 Lessor's right to add to the Building

- (a) The Lessor reserves the right to add to the Building and build additional storeys on the Building, none of which will form part of the Premises.
- (b) The Lessor must ensure any works under paragraph (a) are carried out in a manner to cause as little inconvenience to the Lessee and damage to the Premises as is reasonably practicable in the circumstances and must make good any damage so caused.
- (c) The Lessor must compensate the Lessee for any interruption to the Lessee's business and for any interference in the use or enjoyment of the Premises by the Lessee and its Sub-lessee's as a result of any such works.

12.6 Control of the Building

The Lessor reserves to itself the right to use the outer face of all external walls and roofs within the Building for any purpose it may think fit, not inconsistent with the terms of this Lease, and the right to control and regulate the use of the Building and any person coming into it. Without limitation, the Lessor may:

- (a) construct, maintain and operate lighting facilities;

- (b) police the Building and provide for the:
 - (i) proper use, safety, care and cleanliness of the Building;
 - (ii) preservation of good order in the Building;
 - (iii) comfort of any person lawfully using the Building;
 - (iv) location and storage of garbage in the Building pending its removal; and
 - (v) policing and regulating of traffic and the parking of motor vehicles in the Building and including restricting the use of the Building by tenants and their employees and agents;
- (c) change the area, level, location and arrangements of the Car Park and other facilities or construct multideck parking facilities;
- (d) regularly close, lock off or otherwise control the Building, or any part of it, on reasonable notice to the Lessee, for the purpose of conducting maintenance or repairs to the Building that are deemed necessary or desirable by the Lessor, provided that in doing so the Lessor uses reasonable endeavours to minimise any interruption to the Lessee;
- (e) close all or any portion of the Building to the extent that, in the Lessor's opinion, is legally sufficient to prevent a dedication of the Building or the accrual of any rights to any person or the public in the Building;
- (f) close temporarily all or any portion of the Car Park or facilities for the purpose of repairs or like purposes;
- (g) close, lock off or otherwise control the Building from time to time and take all actions the Lessor deems necessary for any purpose mentioned in this clause, including preventing unauthorised person, and any person not intending to conduct business with or become customers of any occupant of the Building, from using the Car Park;
- (h) permit any person or organisation to hold any function or exhibition, or display any merchandise or organise any parade in the Building at those times and on those terms and conditions as the Lessor may in its absolute discretion think fit;
- (i) provide and install a public address system throughout the Building and play, relay or broadcast or permit any other person to play, relay or broadcast recorded music, or public announcements, or advertisements on that system; and
- (j) control the manner in which and the place where deliveries to and from the Premises may be made.

12.7 Lessor's rights to vary Building Procedures and Regulations

- (a) The Lessor may vary or amend from time to time the Building Procedures and Regulations by written notice given to the Lessee. No variation or amendment may derogate from the rights of the Lessee under this Lease. If there is any inconsistency between the provisions of this Lease and the Building Procedures and Regulations, the provisions of this Lease will prevail.

- (b) A certificate signed by any officer or agent of the Lessor or by the Managing Agent for the time being is conclusive evidence that the Building Procedures and Regulations have been duly made and are in force or have been repealed, amended or modified and that notice in writing of the Building Procedures and Regulations has been given to the Lessee on the date specified in the certificate.

12.8 Exclusion by Lessor

- (a) Despite any other provision of this Lease, the Lessor may exclude and restrain from being on any part of the Building any person other than a person who is acting in a bona fide manner.
- (b) Without in any way limiting the meaning of the term "bona fide" any person who has entered on the Building or made use of the Building in breach of the Building Procedures and Regulations and who, having been notified of that breach, commits a further breach of the Building Procedures and Regulations (whether of the like nature or not) is for the purpose of this clause deemed not to be bona fide.

12.9 Variable Outgoings and Rates and Taxes

The Lessor must pay the Variable Outgoings and Rates and Taxes not payable by any other person and must apply any amounts to be recovered from the Lessee by way of Variable Outgoings Contribution and Rates and Taxes contribution for their intended purpose.

12.10 Lessor's repair obligations

The Lessor must repair and maintain the Building including:

- (a) the Common Areas;
- (b) any lifts or air-conditioning in the Building;
- (c) parking areas;
- (d) windows and doors;
- (e) building exterior, roof and gutter; and
- (f) keeping the Building and the roof of the Building watertight,

unless the Tenant is responsible or liable for the repairs under the terms of this Lease.

13. ASSIGNMENT AND UNDERLETTING

13.1 Lessee not to assign

- (a) The Lessee must not assign or part with possession or occupation of the Premises, or any part of them, or this Lease, or any estate or interest in it without the Lessor's prior written consent, :

13.2 Lessee not to sublet

- (a) The Lessee must not sub-let the Premises, or any part of them, or this Lease, or any estate or interest in it without the Lessor's prior written consent.

- (b) The Lessor will not unreasonably withhold its consent to the subletting of part of the Premises if:
- (i) the proposed sub-lessee is a person who the Lessee has demonstrated to the satisfaction of the Lessor has the ability to meet the financial obligations of the Lessee under this Lease;
 - (ii) the Lessee has demonstrated to the satisfaction of the Lessor that the proposed sub-lessee's proposed use is a use within the Permitted Use that is not already being provided by another occupant or sub-tenant of the Premises;
 - (iii) the area being sub-let to the sub-lessee does not exceed 30% of the Net Lettable Area of the Premises;
 - (iv) the Lessee has otherwise obtained any other consents required by Law in relation to the grant of the sub-lease;
 - (v) prior to the Lessor giving its consent or the sub-lessee being given possession of the Premises, the Lessee executes and procures the execution of a sub-lease of this Lease and a Deed of Consent by the sub-lessee and by any guarantors as are required under this clause, in a form approved by the Lessor and delivers the sub-lease and Deed of Consent to the Lessor;
 - (vi) the Rent, Variable Outgoings Contribution, Rates and Taxes, service charges, and other money payable under this Lease are paid and there is not any existing unremedied Event of Default (provided that Events of Default which have been waived by the Lessor are deemed to be remedied, for the purpose of this paragraph) and the Lessee has lodged a deposit or given security to the satisfaction of the Lessor in respect of any estimated payment of its Variable Outgoings Contribution; and
 - (vii) the Lessee pays to the Lessor all reasonable costs, charges and expenses incurred by the Lessor for any enquiries which may be made by or on behalf of the Lessor to satisfy the Lessor that the proposed sub-lessee meets the criteria set out in paragraph (i) and for the preparation and approval of the form of sub-lease, whether or not the subletting proceeds.

13.3 Not Used

13.4 Lessee to remain liable

The covenants and agreements on the part of any sublessee in favour of the Lessor in any sublease are supplementary to those contained in this Lease and do not in any way relieve or are not deemed to relieve the Lessee from the Lessee's liabilities under this Lease.

14. DEFAULT PROVISIONS

14.1 Default provisions

If:

- (a) Subject to due allowance being made under the provisions of clause 3 and 5.5, the Rent, Rates and Taxes, Variable Outgoings Contribution, or any other payment, payable under this Lease, is at any time unpaid for 14 days after written demand;
- (b) Subject to due allowance being made under the provisions of clause 3 and 5.5, there is a breach or non-observance of any other Lessee's Obligations and the breach or non-performance continues after the expiration of 14 days' written notice to the Lessee to remedy the breach, or if that breach is not capable of being remedied within 14 days the Lessee fails to commence remedying the breach within the 14 day period and continues to do so until the breach has been remedied;
- (c) any execution is issued against the Lessee (whether being a corporation or person) and is not satisfied or withdrawn within 30 days after issuance;
- (d) any order is made or if there is any application made for an order or warrant under the *Civil Judgments Enforcement Act 2004* (WA) in relation to any property of the Lessee or any Guarantor;
- (e) any mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any property of the Lessee or any Guarantor;
- (f) an order is made under section 79 or 114 of the *Family Law Act 1975* (Cth) (or similar provision under the *Family Court Act 1997* (WA)) or if an injunction is granted under section 114 of the *Family Law Act 1975* (Cth) (or similar provision under the *Family Court Act 1997* (WA)) in relation to the property of the Lessee or any Guarantor or if an application is made for any such order or injunction;
- (g) the Premises are abandoned, deserted or vacated (other than for the purposes of normal vacation periods) or the Lessee is dispossessed of the Premises by process of Law;
- (h) any Insolvency Event occurs in respect of the Lessee;
- (i) the Lessor is required to make a payment under the GPSC Deed of Indemnity; or
- (j) the Lessor is required to make a payment under the GPSC Director Deed of Indemnity,

then in any such case, subject to the provisions of the *Bankruptcy Act 1966* (Cth), the Lessor may at its option re-enter on, occupy and resume possession of the Premises or any part of them in the name of the whole and this Lease and the Term will then cease and determine but without releasing the Lessee from the Rent and all other money accrued up to the time of the re-entry and without prejudice to the right of action of the Lessor in respect of any breach of the Lessee's Obligations.

14.2 Lessor's right to remedy

The Lessor may remedy any Event of Default under this Lease including the payment of any money payable by the Lessee under the provisions of this Lease and whenever the Lessor so elects all debts, costs and expenses incurred by the Lessor, including legal costs and expenses in remedying an Event of Default, must be paid by the Lessee to the Lessor on demand.

14.3 Damage for breach of essential term

- (a) The covenants by the Lessee:
- (i) to pay the Rent (clause 5.1), Variable Outgoings Contribution (clause 6.1), and Rates and Taxes (clause 6.3) at the times and in the manner provided respectively in this Lease;
 - (ii) to maintain the Premises in good condition (clause 9.1);
 - (iii) not to make any alterations or additions in the construction or arrangement of the Premises without consent (clause 10.1);
 - (iv) to use the Premises for only lawful purposes, to comply with all Laws, at all times during the Term (clause 10.3);
 - (v) to comply with clause 10.3(f);
 - (vi) not to use the Premises other than for the purpose permitted under this Lease (clause 10.8); and
 - (vii) not without the prior consent in writing of the Lessor to assign, sub-let or part with possession or occupation of the Premises or any part of them (clause 13.1),

are (subject to paragraph (b)) essential terms of this Lease and the breach, non-observance or non-performance of any one or more of those terms and conditions is deemed to be an Event of Default.

- (b) The presence of paragraph (a) in this Lease does not mean that there are no other essential terms of this Lease.
- (c) Should the Lessor terminate this Lease following a breach of an essential term of this Lease, then without prejudice to any other right or remedy of the Lessor contained or implied in this Lease, the Lessor is entitled to recover from the Lessee as and by way of liquidated damages for the breach:
- (i) the aggregate of the Rent and other money which would have been payable by the Lessee for the unexpired residue of the Term but for the termination;
- less
- (ii) the aggregate of the Rent and other money which the Lessor by taking proper steps to re-let the Premises obtains or could reasonably be expected to obtain by re-letting the Premises for the unexpired residue of the Term after the termination.
- (d) To the extent that the damages determined under paragraph (c) represent an acceleration of payments which would otherwise have been received over a period of time, the damages will be discounted accordingly at a rate of 6 percent per annum and the discount will be calculated with effect from the date on which those damages in full (less any discount) are received by the Lessor.

14.4 Conversion to Monthly Tenancy

In addition to any other right or remedy of the Lessor following an Event of Default, the Lessor may by notice in writing to the Lessee given at the time that the Lessor's right to terminate this Lease has arisen, elect to convert the Term into a tenancy from month to month. With effect from the date of service of the notice, this Lease will be determined and the Lessee will hold the Premises as a tenant from month to month at a monthly rental equal to one twelfth of the Rent payable under this Lease at the date of giving the notice (such rental being payable monthly in advance) together with the monthly payment on account of Variable Outgoings Contribution and otherwise on the terms and conditions of this Lease so far as they can be applied to a monthly tenancy.

15. GENERAL PROVISIONS

15.1 Damage to Premises

- (a) If:
- (i) the Premises or any part of them are destroyed or damaged so as to be unfit for occupation or use;
 - (ii) the destruction or damage does not occur in consequence (directly or indirectly) of some act or default of the Lessee or a Permitted Person; and
 - (iii) the policy of insurance effected by the Lessor for the Insurable Risks and covering the destruction or damage has not been vitiated or payment of the policy money refused in consequence of some act or default of the Lessee or a Permitted Person,

then a proportionate part of the Rent and Variable Outgoings Contribution according to the nature and extent of the damage sustained will be abated by the Lessor until the Premises are again rendered fit for occupation and use.

- (b) If a dispute arises as to an abatement under paragraph (a):
- (i) the dispute will be determined under the Expert Determination Process;
 - (ii) the full Rent and Variable Outgoings Contribution must be paid without any deduction or abatement until the date of any agreement or determination following which the Lessor must refund any part of them which according to the agreement or determination has been overpaid.
- (c) If:
- (i) the destruction or damage mentioned in paragraph (a) occurs in direct or indirect consequence of some act or default of the Lessee or a Permitted Person; or
 - (ii) the policy of insurance effected by the Lessor is vitiated or payment of the policy money refused in consequence of some act or default of the Lessee or a Permitted Person,

the Rent and Variable Outgoings Contribution will not be abated as provided in paragraph (a), nor will the Lessee be entitled to refer any abatement of them to the Expert Determination Process as provided in paragraph (b).

15.2 Destruction of Building

If a substantial part of the Building is destroyed or damaged:

- (a) to an extent so as to be unfit for occupation or use during the Term; and
- (b) is not re-instated by the Lessor within 6 months after the destruction or damage occurring,

then unless within that 6 month period the Lessor:

- (c) elects by notice in writing to the Lessee to reinstate the Building to its original design as nearly as practicable; and
- (d) commences such re-instatement,

the Lessor or the Lessee may (in the case of the Lessee, only if that damage or destruction is not caused by the Lessee or a Permitted Person) by notice in writing to the other Party determine this Lease as from the date of the giving of that notice without prejudice to the rights of the Lessor in relation to any previous Event of Default.

For the purposes of this clause the expression "a substantial part of the Building" means one third or more of the Net Lettable Area of the Building.

15.3 Liability for loss

- (a) The Lessor will not, in any circumstances, be liable to the Lessee for any loss, damage or injury suffered by the Lessee as a result of:
 - (i) the Lessee's occupation and use of the Premises;
 - (ii) the enjoyment of the Lessee's other rights with respect to the Building;
 - (iii) any malfunction or breakdown in, or interruption of or to:
 - A. the water gas or electricity services;
 - B. the air conditioning equipment;
 - C. the Fire Fighting Equipment; or
 - D. the lifts, elevators or any appurtenance,
 contained in the Premises or in the Building; or
 - (iv) the breakage, blockage, or overflow of any sewer, waste drains, conduits, cables, wires, gutters, down pipes or storm water drains from any cause,

except to the extent caused by any act, neglect, default or omission of the Lessor, or its agents or employees, and to the extent that its liability may be excluded at Law.

- (b) The Lessor will not be liable to the Lessee in respect of any loss or damage suffered by the Lessee by reason of or arising out of any act neglect or default of any other tenant or occupier of the Building.

15.4 Liability for Lessor and others

- (a) Subject to paragraph (c) below, the Lessor is not liable for any damage or loss that the Lessee may suffer by reason of the failure of the Lessor to repair any damage or defect to the Premises.
- (b) If the Lessee becomes aware of any defect or failure of the Lessor to repair any damage or defect in or to the Premises that has caused, or would reasonably be expected to cause, any loss or damage to the Lessee, or others, the Lessee must promptly deliver a notice to the Lessor (**Damage Notice**) providing reasonable details of the relevant damage or defect.
- (c) Paragraph (a) above will not apply to any damage or loss that the Lessee may suffer:
 - (i) if the Lessor was, or ought reasonably to have been, aware of the damage or defect that has caused, or would reasonably be expected to cause, any loss or damage to the Lessee, or others; or
 - (ii) before or at the time when the Lessee became aware that the relevant damage or defect had caused, or would reasonably be expected to cause, the Lessee (or others) damage or loss; and
 - (iii) in any event, if the Lessee has delivered a Damage Notice to the Lessor in accordance with paragraph (b) above.

15.5 Holding over provisions

If the Lessee continues to occupy the Premises with the agreement of the Lessor after Termination, then the Lessee will be a monthly tenant at a rent equal to one twelfth of the Rent payable immediately before Termination together with the monthly payment on account of Variable Outgoings Contribution and otherwise on the same terms and conditions (with appropriate changes made) as are contained or implied in this Lease excluding any option for a Further Term.

15.6 Moratorium

The application to this Lease of any present or future moratorium or Law having the effect of extending the Term or Further Term, reducing or postponing the payment of the Rent or any part of it or otherwise affecting the operation of the Lessee's Obligations or providing for compensation rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is excluded and denied so far as an exclusion and denial is lawful.

15.7 Jurisdiction

- (a) This Lease is governed by, and to be interpreted in accordance with, the Laws of the State and, where applicable, the Laws of the Commonwealth of Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State and the Courts of Appeal from them. Each Party waives any right it has to object to a Claim being brought in those

Courts including by alleging that the Claim has been brought in an inconvenient forum if those Courts do not have jurisdiction.

15.8 Severance

If any term or condition of this Lease or the application of them to any person or circumstances is invalid or unenforceable, the remaining terms and conditions are not affected and each other term and condition of this Lease is valid and enforceable to the fullest extent permitted by Law.

15.9 Consents and approvals

Except as otherwise specifically provided in this Lease any consent or approval which may be granted by the Lessor under this Lease may be granted or refused or granted subject to conditions in the reasonable discretion of the Lessor. A consent or approval given by the Lessor to an ongoing course of conduct, may be withdrawn at any time.

15.10 Effect of waiver

No consent or waiver express or implied by the Lessor or the Managing Agent to or of any Event of Default will be construed as a consent or waiver to or of any other Event of Default.

15.11 No Partnership

This Lease does not in any way or for any purpose constitute the Lessor a partner of the Lessee in the conduct of the Lessee's business or otherwise, or a joint venturer or a member of a joint enterprise with the Lessee.

15.12 Notices

- (a) Any notice, consent, approval, demand or other communication to be given or made under this Lease (unless otherwise provided):
 - (i) must be in writing;
 - (ii) must be signed by or on behalf of the Party giving or making it;
 - (iii) may be given in any of the following modes:
 - A. by facsimile transmission;
 - B. by pre-paid mail; or
 - C. by hand delivery; and
 - (iv) may be addressed, delivered or transmitted to the Party to receive it at its registered office or principal office for the time being, or at the address or facsimile number:
 - A. shown in this Lease; or
 - B. later notified to the other Party from time to time.
- (b) A notice sent by pre-paid post or facsimile is taken to be received:
 - (i) in the case of post, on the third Business Day after posting; and

- (ii) in the case of facsimile:
 - A. if transmitted before 5.00pm (Perth time) on a Business Day: on that Business Day;
 - B. if transmitted after 5.00pm (Perth time) on a Business Day: on the next following Business Day;
 - C. if transmitted on a day not being a Business Day: on the next day being a Business Day;
 - D. if, in any instance, the sender can produce a transmission report by the facsimile machine from which the facsimile was sent which indicates the time and date of transmission and that the facsimile was sent in its entirety to the facsimile number of the recipient.
- (c) The Lessor's solicitor or the Managing Agent may give or serve notice on the Lessee with the same effect as if it had been given or served by the Lessor.

15.13 Managing Agent

The Lessor may appoint a Managing Agent to manage the Building and any Managing Agent so appointed may represent the Lessor in all matters relating to this Lease.

15.14 Entire Agreement

The Parties acknowledge and agree that:

- (a) the terms and conditions set out in this Lease:
 - (i) contain the entire agreement as concluded between the Parties with respect to the Premises;
 - (ii) supersede any negotiations or discussions before the execution of this Lease; and
 - (iii) supersede anything contained in any brochure, market analysis, report or other document prepared by the Lessor or any of the Lessor's agents or consultants for submission to potential tenants of the Building; and
- (b) neither the Lessee nor the Guarantor has been induced to enter into this Lease by any or any alleged statement, representation, warranty or condition verbal or written made by or on behalf of the Lessor and or the Lessor's agents or consultants which is not contained in this Lease.

15.15 Trust Warranties

- (a) Where the Lessee or the Guarantor or both of them is or are now acting or in the future may act as trustee, the Lessee and Guarantor jointly and severally covenant with and warrant to the Lessor that the Lessee or the Guarantor or both of them (as the case may be) has or have or will have full powers pursuant to its memorandum and articles and its deed of trust (in this Lease generally and together (if more than one) called "the Trust") under which it purports to act when entering into this Lease, to enter into and give effect to this Lease.

- (b) The Lessee and the Guarantor further jointly and severally covenant that:
- (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of it have been properly executed;
 - (ii) the Trust is and throughout this Lease will remain unrevoked and not varied other than with the written consent of the Lessor, which must not be unreasonably withheld;
 - (iii) the assets of the Trust and the assets of the Lessee and of the Guarantor will at all times be available to satisfy the obligations of the Lessee under this Lease;
 - (iv) the consents or approvals of all Parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
 - (v) no one has taken or threatened nor is the Guarantor or the Lessee aware of any one who is likely to take action to have the Trust wound-up or otherwise administered or to charge the Lessee or the Guarantor or any person at any time connected with the Lessee or the Guarantor or acting on behalf or purportedly on behalf of the Lessee or the Guarantor with any breach of trust or misappropriation of trust money in connection with the Trust; and
 - (vi) no facts are known to the Lessee or to the Guarantor under which the Trust might be wound-up voluntarily or otherwise or the trustee of the Trust changed or the assets of the Trust vested in any other person or pursuant to which the Trust may cease to operate or be deprived of funds before the expiration of the Term.

15.16 Certificate to be Prima Facie Evidence

A certificate signed by or on behalf of the Lessor:

- (a) as to the amount of the Rent payable under this Lease; or
- (b) as to any other matter or thing arising under this Lease,

will be prima facie evidence of the facts stated in that certificate.

15.17 Special Conditions

Any Special Conditions are to be incorporated in and read as a part of this Lease and, to the extent that there is any inconsistency between the terms of this Lease and the Special Conditions, the Special Conditions will prevail.

15.18 Right to Lessor to create easements etc

The Lessor reserves the right for the purpose of:

- (a) providing public or private access to or egress from the Building, the Land, other buildings on the Land or other land adjacent to the Land ("**Adjacent Land**");
- (b) support of any viaduct constructed or to be constructed between the Land and Adjacent Land;

- (c) support of structures erected or to be erected on Adjacent Land;
- (d) provision of services (including water, drainage, gas, electricity, telephonic and electronic communications) to the Building, the Land or to Adjacent Land or to any viaduct,

to enter into any arrangements or agreements with any owner, lessee, tenant or occupier of Adjacent Land or any viaduct or with any Authority and for those purposes may dedicate, transfer, grant or create easements in favour of that person or Authority and on those terms and conditions as the Lessor thinks fit and the estate or interest of the Lessee under this Lease is held subject to any such arrangement or agreement.

15.19 Western Australian Planning Commission Consent

This Lease is subject to and is conditional on the granting of any consent of the Western Australian Planning Commission required to be obtained under the provisions of the *Planning and Development Act 2005* (WA).

15.20 Subordination

- (a) The Lessee agrees, to subordinate this Lease to any mortgage of the Lessor's interest in the Land, so as to give such mortgage priority over this Lease whether under the *Transfer of Land Act 1893* (WA) or otherwise if requested to do so by the Lessor at any time during the Term.
- (b) The Lessee must execute and deliver to the Lessor (without cost to the Lessee) on request by the Lessor, any document (including withdrawals of caveat) as are required to effect any subordination under paragraph (a), within 10 days after receipt from the Lessor.
- (c) If the Lessee fails to comply with paragraph (b), the Lessee, in consideration of the Lessor granting this Lease to the Lessee, irrevocably appoints the Lessor and each of its directors and officers jointly and severally the agents and attorney of the Lessee to execute any document on behalf of the Lessee that is required to effect any subordination under paragraph (a).
- (d) The Lessee will not be required to effect any subordination of this Lease under this clause, unless the mortgagee first agrees in writing that, so long as the Lessee is not in default under this Lease:
 - (i) the Lease will not be terminated or modified (except as provided in this Lease);
 - (ii) the rights of the Lessee under this Lease will not be terminated or modified (except as provided in this Lease); and
 - (iii) the Lessee's possession of the Premises will not be disturbed or interfered with by any sale or Claim under that mortgage.

15.21 Exclusion of Statutory Provisions and Severability

- (a) The covenants powers and provisions implied by virtue of sections 80 and 82 of the *Property Law Act 1969* (WA) and 92, 94 and 95 of the *Transfer of Land Act 1893* (WA) are excluded from, and do not apply to this Lease.
- (b) The use in this Lease of words in any form of words contained in the first column of Part II of the Twelfth Schedule of the *Transfer of Land Act 1893* (WA) do not imply any covenant under Section 94 of that Act.

- (c) To the extent permitted by Law the application to this Lease of any moratorium or other Law having the effect of extending the Term, reducing or postponing the payment of Rent, or otherwise affecting the operation of the terms of this Lease is excluded and negated.

15.22 Expert Determination

- (a) Subject to clause 15.22(b), if any difference arises between the Lessor and the Lessee as to the interpretation of the provisions of this Lease or concerning any act matter or thing to be performed or observed under this Lease and if there is no express provision contained in this Lease for resolving the difference, then the difference may be submitted by either Party to the Expert Determination Process.
- (b) The Expert Determination Process will not apply to any dispute arising pursuant to clause 2 and clause 5.5 of this Lease.

16. STRATA TITLES

The Lessee acknowledges and agrees that if the Lessor elects to register a Strata Plan in respect of the whole or part of the Land including the Premises the following provisions will apply:

- (a) the Lessee consents to the registration of the Strata Plan and will execute any consents required under the Strata Titles Act in order to register the Strata Plan;
- (b) subject to the Lessor preparing at the Lessor's cost a supplementary deed in respect of this Lease to identify the Premises in accordance with the Strata Plan, the Lessee will execute that deed on request by the Lessor;
- (c) as soon as possible on receiving a request to do so from the Lessor the Lessee must withdraw any caveat lodged by the Lessee and the Lessee irrevocably appoints the Lessor and each of its directors and officers jointly and severally to be the agent and attorney of the Lessee to sign and register a withdrawal of any such caveat;
- (d) if the Premises comprise the whole or part of a Strata Lot:
- (i) unless the context otherwise requires the words and expressions defined in the Strata Titles Act have the same meaning in this Lease and each of the following expressions mean:

"By-laws of the Company" means Parts I and II of the by-laws of the Company as adopted by the Company and includes any amendments to them;

"Common Property" means the common property comprised in the Strata Plan;

"Company" means the body corporate created on the registration of the Strata Plan;

"Strata Plan" means the Strata Plan to be registered pursuant to the provisions of the Strata Titles Act and all matters contained or endorsed on or annexed to the Strata Plan and includes any amendments to it;

- (ii) this Lease will, after registration of the Strata Plan, be subject in all respects to all easements rights reservations and powers mentioned in the Strata Titles Act except insofar as they are modified or denied by this clause 16;
- (iii) despite any other provisions of this Lease, any power right remedy or authority reserved or granted to the Lessor by the Lessee any consent or approval of the Lessor required by the Lessee to perform or do or permit the performance or doing of any act or thing by the Lessee any notice document or other writing required to be given by the Lessee to the Lessor and any indemnity to be given by the Lessee to the Lessor which relates to the Common Property or the Building or Buildings comprised in the Strata Plan will be deemed to be reserved, granted, required or given by the Lessee to or from either or both the Company and the Lessor as the circumstances require;
- (iv) this Lease will be subject to the covenants and powers implied in the Strata Titles Act so far as not expressly or by necessary implication denied or modified in this Lease;
- (v) subject to the By-laws of the Company the Lessee will have the non-exclusive licence for the Lessee and any Permitted Person to pass and repass over and across those parts of the Common Property giving access to and egress from the Premises and to use the communal toilets and washrooms (if any) in the Common Property in common with the Lessor and all others authorised (whether expressly or impliedly) by the Lessor and the registered proprietors (if any) of other lots comprised in the Strata Plan;
- (vi) to the extent that any item of expenditure comprised in the Variable Outgoings or Rates and Taxes is included in any contribution levied by the Company pursuant to paragraph (vii) the Lessee's liability to pay the Lessee's Variable Outgoings Contribution and Rates and Taxes in any Lease Year will be proportionately adjusted;
- (vii) the Lessee must pay on demand to the Company, or as the Company directs, that part of all contributions levied by the Company under section 36 of the Strata Titles Act;
- (viii) if no separate assessment issues for any of the contributions levied under paragraph (vii), the amount payable by the Lessee will be calculated by multiplying the ratio that the unit entitlement of the Premises bears to the aggregate of the unit entitlement of the lots comprised in the Strata Plan which are the subject of the assessment, by the total of the contribution;
- (ix) the Lessee must duly and punctually observe and comply with the provisions of the Strata Titles Act, the By-laws of the Company and all other by-laws for the time being in force in respect of the Premises the Common Property and the Building or buildings comprised in the Strata Plan. On registration of the Strata Plan the Lessor must furnish the Lessee with a complete copy of the By-laws of the Company and of any subsequent amendments to them; and
- (x) clause 14.1 of this Lease will be amended by the addition of the following, as an Event of Default:

“notification is lodged by the Company with the Registrar of Titles Perth under the Strata Titles Act or the Company institutes proceedings against the Lessee under section 38 of the Strata Titles Act”; and

- (e) subject to the preceding provisions of this clause, any reference in this Lease to a cost or expense to be met by the Lessee as being attributable to “the Building”, if the context permits and if that cost or expense would otherwise be irrecoverable against the Lessee, is to be read as a reference to “the Premises”.

17. SECURITY DEPOSIT

17.1 Pay Security Deposit

The Lessee must pay to the Lessor the Security Deposit to be held by the Lessor as and by way of bond and security for the performance by the Lessee of the Lessee’s Obligations. The Lessor does not hold on trust for the Lessee the Security Deposit or any interest earned on it.

17.2 Interest on Security Deposit

The Security Deposit must be held in an interest bearing bank account in the name of the Lessor. All interest earned on it will accrue to the Lessee but be retained in the account and, if not applied by the Lessor in accordance with the provisions of this clause, will be paid to the Lessee in accordance with clause 17.4.

17.3 Application of Security Deposit

- (a) The Security Deposit and any interest on it may at any time during the currency of this Lease or after Termination be applied by the Lessor, at the Lessor’s discretion, towards arrears of Rent, Variable Outgoings Contribution, Rates and Taxes, service charges, damages, losses or costs arising out of or relating to any Event of Default on the part of the Lessee and any and all costs related to this Lease. The Lessee is not entitled to require the Lessor to apply the Security Deposit or any interest on it against any of the Lessee’s Obligations.
- (b) Any application of the Security Deposit by the Lessor in accordance with the provisions of this clause will not prejudice the exercise by the Lessor of any and all rights which may accrue to the Lessor in respect of the matters calling for such application apart from the Lessor’s rights to recover the amounts received out of the Security Deposit.
- (c) The failure of the Lessor to apply the Security Deposit in respect of any matters which may call for its application will not in any way represent a waiver or estoppel or otherwise prejudice the right of the Lessor to take any action permitted by the provisions of this Lease including the application of the Security Deposit under the provisions of this clause.

17.4 Balance of Security Deposit

If the Lessee is not then in default under the terms of the Lease, the Lessor will within 20 Business Days after Termination pay to the Lessee the balance of the Security Deposit and any interest remaining after Termination.

17.5 Maintaining Security Deposit

- (a) If:

- (i) the Lessor applies the Security Deposit pursuant to this clause before the determination of this Lease; or
- (ii) as a result of a review of the Rent or Licence Fee or an increase in the Variable Outgoings Contribution the Security Deposit is for a sum less than the amount specified in Item 14 of the Second Schedule,

the Lessor may call on the Lessee by notice in writing to deposit further money into the Security Deposit to make the same equal to the full amount payable under this clause.

- (b) Any failure by the Lessee to comply with a notice given under paragraph (a) will be an Event of Default.

18. EXTENSION OF TERM

18.1 Option of Renewal

If the Lessee:

- (a) has duly and punctually paid the Rent and all other money payable by the Lessee to the Lessor under this Lease during the Term; and
- (b) has duly and punctually observed and performed the Lessee's Obligations at all times up to the expiration of the Term;

then the Lessee has the option exercisable by written notice to the Lessor given not more than 9 months nor less than 6 months before the expiration of the Term of taking a new lease for the Further Term on and subject to the same terms and conditions as are contained in or implied by this Lease except for:

- (c) this provision for renewal, unless there is more than one Further Term in which event the number of Further Terms will be reduced by the Further Term then exercised; or
- (d) any incentive or inducement to enter into this Lease or any waiver or abatement of Rent or Variable Outgoings or any other payment to the Lessee or any benefit given to the Lessee, which is expressly excluded and which will not apply to a Further Term.

18.2 Further Term Rent and Review

The commencing Rent for the Further Term is the Rent payable immediately before the commencement of the Further Term reviewed in the manner provided in this Lease. On each Further Term Rent Review Date the Rent will be reviewed to determine the Rent to be paid from that Further Term Rent Review Date until the next following Further Term Rent Review Date, if there is one, or Termination, in accordance with the terms of this Lease.

19. GUARANTEE

- (a) In consideration of the Lessor entering into this Lease, at the request of the Guarantor, as is testified by the execution by the Guarantor of this Lease, the Guarantor (and if more than one jointly and severally) for himself or herself or themselves and the Guarantor's personal representatives, guarantees to the Lessor the due performance and observance by the Lessee of all the Lessee's Obligations including the due payment of the Rent and other money payable under this Lease by the Lessee. The Guarantor acknowledges that:

- (i) no time, credit, forbearance, indulgence or concession which may at any time be granted by the Lessor to the Lessee;
- (ii) no release of, or compromise with, any one or more Guarantor by the Lessor;
- (iii) no variation of the provisions of this Lease;
- (iv) no extension or renewal or holding over of the Term or other continued occupation of the Premises by the Lessee;
- (v) no assignment of this Lease or sub-lease of the Premises or any part of them; and
- (vi) no Termination (whether by passage of time, re-entry, forfeiture, surrender or otherwise),

will prejudice or affect the liability of the Guarantor under this guarantee and this guarantee is irrevocable and continuing and extends to cover all of the Lessee's Obligations to the Lessor, and the Guarantor indemnifies the Lessor against all losses, costs, expenses and damages sustained or incurred by the Lessor in respect of any Event of Default on the part of the Lessee.

- (b) If the Lessee goes into compulsory or voluntary liquidation or becomes bankrupt or enters into any composition, arrangement with or assignment for the benefit of the Lessee's creditors or has appointed under any Law or instrument or by order of any Court, a manager or controller, or an administrator, or a trustee, or a receiver, or a receiver and manager, or liquidator in relation to any part of the Lessee's undertakings or assets or property:
 - (i) the Guarantor will not prove or claim in any such liquidation, bankruptcy, composition, arrangement or assignment or in respect of any appointment until the Lessor has received one hundred cents in the dollar of the money owing by the Lessee to the Lessor and the Guarantor will hold in trust for the Lessor such proof and claim;
 - (ii) without prejudice to any other rights of the Lessor the Guarantor indemnifies the Lessor against all losses, costs, expenses and damages sustained or incurred by the Lessor consequent on any disclaimer of this Lease by a liquidator or controller or trustee of the Lessee for the residue of the Term which would have remained if there had been no disclaimer.
- (c) If the leasehold estate created by this Lease is terminated by disclaimer by a trustee or controller or liquidator of the Lessee, the Guarantor must on being requested to do so in writing by the Lessor within 90 days after the date of the disclaimer, enter into a lease of the Premises for a term commencing from the date of the disclaimer to the end of the Term:
 - (i) at the cost of the Guarantor; and
 - (ii) on the terms and conditions of this Lease but without containing any provision for a guarantee of that lease.

20. BANK GUARANTEE

- (a) The Lessee must contemporaneously with the execution of this Lease or at such later date agreed between the Lessor and the Lessee, deliver to the Lessor the Bank Guarantee.
- (b) If the Lessee commits an Event of Default, then the Lessor may, pursuant to the Bank Guarantee, demand that the bank pay to the Lessor such amount of the sum guaranteed under the Bank Guarantee that in the reasonable opinion of the Lessor may be due to the Lessor as a result of the Event of Default on the part of the Lessee.
- (c) The liability of the Lessee to the Lessor under this Lease will not be and is not limited to the amount of the sum guaranteed under the Bank Guarantee.
- (d) Any demand made under paragraph (b) will not in any way be deemed to constitute a waiver by the Lessor of any Event of Default and will not prejudice any other right of the Lessor arising from that Event of Default.
- (e) If:
 - (i) any amount of the Bank Guarantee is appropriated or demanded from time to time by the Lessor as provided in this clause; or
 - (ii) as a result of a review of the Rent or Licence Fee or an increase in the Variable Outgoings Contribution the Bank Guarantee is for a sum less than the amount specified in Item 18 of the Second Schedule,

then the Lessee must within 14 days after demand by the Lessor deliver to the Lessor a further bank guarantee for the amount so appropriated or demanded (in a form acceptable to the Lessor) in order to reinstate or top up the amount of the Bank Guarantee to an amount at least equal in value to the amount specified in Item 18 of the Second Schedule and if the further bank guarantee is not provided, the failure to do so will be an Event of Default.
- (f) If the Lessor ceases to be the registered proprietor of the Land during the Term, the Lessee must on demand replace the Bank Guarantee with a fresh Bank Guarantee in favour of the new lessor (and the Lessor will, in exchange, return the original Bank Guarantee to the Lessee), unless the terms and conditions of the Bank Guarantee extend to, are for the benefit of, and may be called upon by any successor in title of the Lessor, and if the fresh Bank Guarantee is not provided within a reasonable time of the demand, the failure to provide the fresh Bank Guarantee will be an Event of Default.
- (g) The Lessor will return the Bank Guarantee to the Lessee within 3 months after Termination, subject to the Lessee vacating the Premises and otherwise complying with its obligations under this Lease.

EXECUTED by the Parties to this Lease as a Deed on the date specified on page 1.

FIRST SCHEDULE**Building procedures and regulations**

1. Any person using the Building may not:
 - (a) obstruct nor permit the obstruction of the pavements, entrances, arcades, vestibules, corridors, passages, halls, elevators, stairways, fire doors, or escape doors, in or about the Building nor use any of them for any purpose other than that for which they were constructed or provided;
 - (b) cover nor obstruct the floors, skylights, glazed panels, ventilators, or windows, which reflect or admit light or air into passageways or any other part of the Building nor cover nor obstruct any light or other means of illumination in the Building;
 - (c) inscribe, paint, display, nor affix, any sign advertisement, name, or notice, on or to any part of the Premises visible from the exterior of the Building or from the Common Areas within the Building except with the prior written consent of the Lessor and then only of the colour, size, and style, and in the place or places first approved by the Lessor, provided that the Lessor's consent and approval may not be unreasonably withheld. The cost of affixing the name and description of a person, firm, or company, on directory boards in the main foyer of the Building in standard design is to be paid by that person, firm or company;
 - (d) erect nor install any window blind, window screen, awning or floor covering, without the prior written approval of the Lessor;
 - (e) play any musical instrument in or about the Building except with the prior written consent of the Lessor and except background recorded music the volume of which is kept at a level which does not cause a nuisance or annoyance to users of the Building;
 - (f) keep any animal or bird in the Building except with the prior written consent of the Lessor;
 - (g) throw nor drop anything down any elevator shaft, passage, or stairway, nor deposit waste paper or rubbish anywhere except in proper receptacles nor place on any sill, ledge or other like part of the Building or the Common Areas any article or substance;
 - (h) use nor permit nor suffer to be used any method of lighting, cooling, or heating, other than as supplied by the Lessor or under special agreement made with the Lessor for the purpose;
 - (i) burn any rubbish or waste in the Building at any time except in a place approved by the Lessor in writing;
 - (j) conduct nor permit to be conducted any auction, bankrupt, or fire sale;
 - (k) use nor permit to be used the Common Areas for any business or commercial purpose or the display or advertisement of any goods or services nor generally for any purpose other than a purpose for which the same was intended or provided;

- (l) drive nails, screws, bolts, hooks or fastenings, into any part of the Building without the Lessor's prior written consent nor use any explosive power driven method of fixing articles to ceilings, walls or floors;
 - (m) except as authorised by the Lessor, enter nor go on the roof, any plant room, or any other part, of the Building other than the Common Areas except in the case of an emergency;
 - (n) except as permitted by the Lessor in writing, store within the Premises or any other part of the Building any chemical or flammable gas, fluid or substance;
 - (o) sleep in the Building;
 - (p) cook in the Building except in areas approved by the Lessor which have appropriate exhaust systems approved by the Lessor;
 - (q) use the lifts except for personal conveyance; or
 - (r) restrict or impede the Lessor from carrying out any works required to be conducted to maintain the NABERS rating or general energy efficiency of the Building.
2. Delivery or movement of any goods, wares, merchandise or other articles of bulk or quantity in the Common Areas may only be at times permitted by the Lessor (which permission may not be unreasonably withheld) and generally in compliance with all reasonable requirements of the Lessor.
 3. The hours of operation or use of the air-conditioning plant in the common areas are 7.00 am to 10.00 pm on every weekday excluding public holidays, Saturdays and Sundays, until further notice.
 4. The Lessor may direct all courier services or any other person making deliveries to the Building, to deliver and pick up packages for, to and from the Lessee from such areas and utilising such of the lifts as the Lessor in its absolute discretion designates from time to time for those purposes. In the absence of any other designation by the Lessor, all deliveries of packages must be made using the goods lift.
 5. The Lessor, from time to time, may designate the whole or parts of the Building (including the Premises) as areas where the smoking of tobacco products and other substances is not permitted. The Lessee must not smoke or permit any Lessee's Workers to smoke tobacco products or other substances in any areas so designated. If so required by the Lessor, the Lessee must direct the Lessee's visitors not to smoke in or about the Premises.
 6. Any person using the Building must:
 - (a) comply with all signs and directions posted in the Building by the Lessor or the Managing Agent;
 - (b) comply with all reasonable requests made by the Managing Agent in relation to the energy efficiency of the Building and maintaining the NABERS rating of the Building; and
 - (c) ensure that window blinds are at all times utilised to assist the energy efficiency of the Building.

SECOND SCHEDULE**Particulars**

- Item 1. Lessor:**
(the Parties)
- City of Cockburn (ABN 27 471 341 209)** of 9 Colville Crescent, Spearwood, Western Australia, 6163.
- Item 2. Lessee:**
(the Parties)
- Cockburn GP Super Clinic Limited (ABN 64 152 568 477)** of PO Box 3057, Success, Western Australia, 6964.
- Item 3. Guarantor:**
(clause 19)
- Not Applicable.
- Item 4. Land:**
(clause 1.1)
- Lot 406 on Deposited Plan 400928 being the whole of the land comprised in Certificate of Title Volume 2835 Folio 30.
- Item 5. Premises:**
(clause 1.1)
- That part of the Building comprising approximately 2487.5 m² as is shown on the Premises Plan.
- Item 6. Due Date for completion of Lessor's Works:**
(clause 2.1)
- 21 July 2014
- Item 7. Last date for completion of Lessor's Works:**
(clause 2.5)
- 31 December 2014
- Item 8. Commencement Date:**
(clause 4.2)
- The Handover Date being _____(to be inserted by hand in accordance with clause 4.3).
- Item 9. Term:**
(clause 4.2)
- Twenty (20) years.
- Item 10. Rent:**
(clause 5.1)

\$_____ per annum plus GST (to be inserted by hand in accordance with clause 5.3).

Item 11. Rent Commencement Date: The first anniversary of the Commencement Date (clause 5.1)

Item 12. Rent Review Date:
(clauses 5.3, 5.4 and 5.5)

Fixed Increase Rent Review Date:

Not Applicable.

Fixed Increase Percentage:

Not Applicable.

CPI Rent Review Date:

Each anniversary of the Commencement Date for the period of the Lease (and any extension of it) except where that date is also a Market Rent Review Date.

Market Rent Review Date:

The first anniversary of the Commencement Date (where the Rent will be determined in accordance with the process set out in clause 5.3).

The third anniversary of the Commencement Date.

The eighth anniversary of the Commencement Date.

The twelfth anniversary of the Commencement Date.

The seventeenth anniversary of the Commencement Date.

And on each occasion when the Lessee calls for a review of the Rent and Variable Outgoings.

Insured Amount (Public Liability Insurance):
(clause 8.2)

\$20,000,000.

Item 13. Permitted Purpose:
(clause 10.8)

The provision directly and by a series of sub-leases of:

- (a) any facet of health care services, including as outlined in the National Program Guide; and
- (b) the provision of any related services, including ancillary health care services.

Item 14. Security Deposit:
(clause 17.1)

Not Applicable.

Item 15. Further Term:
(clause 18)

Not Applicable.

Item 16. Further Term Rent Review Date:
(clause 18)

Fixed Increase Rent Review Date:

Not Applicable.

Fixed Increase Percentage:

Not Applicable.

CPI Rent Review Date:

Not Applicable.

Market Rent Review Date:

Not Applicable.

Item 17. Special Conditions:
(clause 15.17)

Item 20.1 Lease Conditions

- (a) All of the obligations under this Lease are subject to and conditional on the satisfaction of each Lease Condition on or before the applicable Lease Condition Deadline.
- (b) Both Parties must use their best endeavours to satisfy each Lease Condition on or before the applicable Lease Condition Date.
- (c) If a Lease Condition is not satisfied on or before the Lease Condition Deadline:
 - i. then either Party may by notice to the other party terminate this Lease; and
 - ii. from the date of that notice:
 - 1. the Lease is of no further force and effect; and
 - 2. neither party has any claim whatsoever against the other party under this Lease at law or in equity (except in respect of any prior breach by the Lessee of its obligations under clause 3).

Item 20.2 Inconsistency with Statutory Provisions

In the event of any inconsistency between:

- (a) an obligation, right or power of either the Lessor or Lessee under this Lease; and

- (b) an obligation, right or power of the Lessor (acting in its capacity as a local government established under the Local Government Act 1995) under the Local Government Laws,

then the obligation, right or power of the Lessor (acting in its capacity as a local government established under the Local Government Act 1995) under the Local Government Laws prevails.

Item 20.3 No fettering

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

- (a) diminishes the Lessor's rights and powers; or
 (b) fetters any discretion that the Lessor has,

(acting in its capacity as a local government established under the Local Government Act 1995) under the Local Government Laws.

Item 20.4 Not used

Item 20.5 Not used

Item 20.6 Not used

Item 20.7 Not used

i.

Item 20.8 CURTIN UNIVERSITY COLLABORATION AGREEMENT

- (a) **CA** means the collaboration agreement dated on or about the date of this lease made between the Lessee and Curtin University, a copy of which is annexed to this Lease.
- (b) The Lessee agrees to observe, perform and comply with all of the Lessee's obligations in relation to the CA.
- (c) The Lessee agrees to immediately notify the Lessor and to provide full details of any dispute or difference in relation to the CA and any claim by any party to the CA that any other party to the CA is in breach of the CA.
- (d) The Lessee agrees to immediately give to the Lessor copies of all material notices and material communications passing between the parties to the CA.
- (e) The Lessee agrees to respond to questions from the Lessor in relation to progress, performance and performance of the parties under the CA.

Item 18. Bank Guarantee:
 (clause 20)

Not Applicable.

THIRD SCHEDULE

Premises Plan

Executed by Lessor:

The common seal of the **City of Cockburn**
was hereunto affixed by authority of
a resolution of the Council
in the presence of:



.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Full Name (please print)

.....
Full Name (please print)

Executed by Lessee:

Executed by
Cockburn GP Super Clinic Limited
(ACN 471 341 209)
pursuant to Section 127
of the Corporations Act



.....
Director

.....
Director/Secretary

.....
Full Name (please print)

.....
Full Name (please print)

ANNEXURE A
EXPERT DETERMINATION PROCESS

1. EXPERT

1.1 Definitions

The following definitions apply for the purposes of these provisions:

“Dispute” means any dispute arising out of this Lease;

“Dispute Notice” a notice identifying the particulars of the Dispute;

“Expert” means an independent expert and being the most appropriate of either:

- (a) a legal practitioner of not less than 15 years experience in commercial office leasing in the Perth metropolitan area;
- (b) an Accountant of not less than 5 years' experience ;
- (c) a quantity surveyor of not less than 5 years' experience;
- (d) an architect of not less than 5 years' experience; or
- (e) any other person with suitable qualifications and experience nominated by the Lessor acting reasonably.

1.2 Dispute

If a Dispute arises between the Parties then either Party may give the other Party a Dispute Notice and the Parties are to discuss the Dispute in good faith and explore resolution of the Dispute. If for any reason the Parties have not resolved the Dispute within 5 Business Days after the Dispute Notice was given, then the Dispute will be dealt with as set out in this clause 1.

1.3 Expert Determination

- (a) Following service of a Dispute Notice and failure to agree a resolution within the 5 Business Day period referred to in clause 1.2, an Expert will be appointed at the request of either Party to determine the Dispute.
- (b) if the person is unavailable or unwilling to act or the appointed Expert:
 - (i) is declared of unsound mind or mentally ill;
 - (ii) is declared bankrupt; or
 - (iii) is prevented by illness or incapacity or death or by being unavailable to determine a Dispute following the issue of a Dispute Notice, from performing his or her obligations under this Lease,

and the Parties are unable to agree in writing within 3 Business Days after the issue of the relevant Dispute Notice on the appointment of another person to act as the Expert for the purposes of a determination following the issue of a Dispute Notice, then either Party may request the President of the Australian

Property Institute, Western Australia Division (or the President's nominee) to nominate an independent person to act as such Expert.

- (c) Unless the Parties agree otherwise, the Expert:
- (i) will act as an expert and not as an arbitrator;
 - (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;
 - (iii) must not be a former or current employee or representative of the Lessor or the Lessee;
 - (iv) must disclose fully to the Parties, before entering into an agreement to act as the Expert, any interest or duty which may conflict with his or her position; and
 - (v) will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and will endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined in this clause 1.
- (e) Each Party:
- (i) may be legally represented at any hearing before the Expert;
 - (ii) will be entitled to produce to the Expert any materials or evidence which that Party believes is relevant to the Dispute; and
 - (iii) will make available to the Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (f) The Expert will not be bound by the rules of evidence and, subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (g) Subject to the Expert abiding by the rules of natural justice the Expert is to determine the procedures to be followed in resolving the Dispute and the Parties must co-operate promptly with those procedures, but the Expert shall in any event:
- (i) provide the Parties with an equal and fair opportunity to make written submissions and if requested by either Party, conduct a hearing to allow the Parties to make oral submissions in support of their position;
 - (ii) provide written reasons for the Expert's determination;
 - (iii) before handing down the determination, issue the determination in draft form to the Parties and allow the Parties an equal and fair opportunity (taking into account any urgency in resolving the Dispute) to lodge written submissions concerning the proposed determination which the Expert must consider before settling and handing down the Expert's determination.

- (h) Subject to any privileges under Law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a Party would be permitted under any provisions of this Lease.
- (i) The Expert's determination:
 - (i) is final and binding on the Lessor and the Lessee unless it involves a cost exceeding \$5,000.00 (excluding the costs incurred by a Party in the course of the determination) to either the Lessor or the Lessee. If the Expert's determination does involve a cost to either the Lessor or the Lessee in excess of \$5,000.00 (excluding the costs incurred by a Party in the course of the determination), that determination will be final and binding on the Lessor and the Lessee unless the Lessor elects, within 14 days of the determination, in the Lessor's absolute discretion, to reject the Expert's determination;
 - (ii) will be made without delay and in any event within 20 Business Days after being appointed as an Expert, unless the Parties otherwise agree in writing; and
 - (iii) will determine what, if any, adjustments may be necessary between the Parties.
- (j) The costs in relation to a determination by the Expert will be dealt with as follows:
 - (i) the remuneration of the Expert will be advanced by the Parties to the Dispute in equal shares, until agreement or a determination is made under paragraph (ii) below as to who should pay for such remuneration;
 - (ii) unless the Parties specifically otherwise agree, the Expert will determine which Party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers a Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly.
- (k) Nothing, while in Dispute, will relieve the Lessor or the Lessee from any of their obligations under this Lease.

1.4 **Costs**

Unless otherwise ordered by the Expert under clause 1.3, the Expert's costs shall be paid by the Lessor and the Lessee in equal shares and each Party shall pay its own legal and other costs of the Dispute.

1.5 **Urgent interlocutory relief**

Nothing in this clause 1 prevents a Party from seeking urgent injunctive, declaratory or other interlocutory relief from a court, if urgently required.

ANNEXURE B
PLANS

ANNEXURE C
SPECIFICATIONS

ANNEXURE D

NOT USED

ANNEXURE E

NOT USED

ANNEXURE F
LEASE CONDITIONS

Lease Condition	Lease Condition Deadline
This Lease is subject to and conditional upon the Department agreeing and or consenting to this Lease and to that agreement and or consent being in a form acceptable to the Lessor. This condition is inserted for the benefit of the Lessor and may be waiver by the Lessor.	1 December 2014

ANNEXURE G
EXISTING FUNDING AGREEMENT

ANNEXURE H

NOT USED

ANNEXURE I
NATIONAL PROGRAM GUIDE

ANNEXURE J
DEED OF CONSENT

Dated this _____ day of _____ 2014

LESSOR/S SIGN HERE (Note 10)

See the within Lease

Signed _____ Signed _____

In the Presence of _____ In the Presence of _____

LESSEE/S SIGN HERE (Note 10)

See the within Lease

Signed _____ Signed _____

In the Presence of _____ In the Presence of _____

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page ..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.

Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If part, define by recital and/or sketch.

The Volume and Folio number to be stated.

2. LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS

In this panel show (subject to the next paragraph) those Limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the certificate(s) of title:

- (a) In the Second Schedule;
 - (b) If no Second Schedule, that are encumbrances;
- (Unless to be removed by action or document before registration hereof)

Do not show any:

- (a) Easement Benefits or Restrictive/Covenant Benefits; or
- (b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg. If a mortgage is shown, do not show any partial discharges or any document affecting either). The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and plan/diagram number. Strata/survey-strata plan encumbrances are to be described as "Interests on strata/survey-strata plan".

If none show "nil".

3. LESSOR

State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in certificate of title and the address/addresses to which future notices can be sent.

4. LESSEE

State full name of the Lessee/Lesseees and the address/addresses to which future notices can be sent. If two or more state tenancy e.g. Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

5. TERM OF LEASE

Must exceed 3 years.

Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.

6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth any Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7. State amount of yearly rental in figures.

8. State term of payment.

9. Insert any Covenants required.

10. LESSOR/LESSEE EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The full name, address and occupation of the witness must be stated.

EXAMINED

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY JACKSON McDONALD

ADDRESS 140 St Georges Terrace
PERTH WA 6000
Ref: RZC 4614261_1.DOC

PHONE No. (08) 9426 6611 FAX No. (08) 9481 8649

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- | | |
|----------|-----------------|
| 1. _____ | Received Items |
| 2. _____ | Nos. |
| 3. _____ | |
| 4. _____ | |
| 5. _____ | |
| 6. _____ | Receiving Clerk |

Registered pursuant to the provisions of the *TRANSFER OF LAND ACT 1893* as amended on the day and time shown above and particulars entered in the Register.



Deed of Indemnity - GPSC

City of Cockburn
City

and

Cockburn GP Super Clinic Limited
GPSC

Subject to Council Approval

Jackson McDonald
Lawyers
140 St Georges Terrace
Perth Western Australia 6000

t: +61 8 9426 6611
f: +61 8 9481 8649
w: www.jacmac.com.au

Contact: Ryan Chorley
Reference: RZC:7145881

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Deed of Indemnity

Date:

2014

Parties

City City of Cockburn (ABN 27 471 341 209) of 9 Colville Crescent, Spearwood, Western Australia

GPSC Cockburn GP Super Clinic Limited (ACN 471 341 209) of PO Box 3057, Success, Western Australia

Background

- A. GPSC has or will shortly enter into the Head Lease and the Subleases.
- B. Under the Head Lease the City will lease the GPSC Premises to GPSC.
- C. GPSC has been established by the City to set up, operate and run a healthcare facility within the building situated at the corner of Wentworth Parade and Beeliar Drive, Success, Western Australia (**Building**).
- D. The healthcare facility, to be known as Cockburn Integrated Health, will be established and operated on the Cockburn Integrated Health and Community Facility site to provide primary health care and support services to the residents of the City of Cockburn and surrounding areas (**Super Clinic**).
- E. The Super Clinic has been constructed by the City with partial Commonwealth Government funding to provide a community healthcare centre and community facilities.
- F. The City acknowledges that GPSC has been instructed by the City to secure the tenancies of a range of healthcare professionals for the Premises.
- G. GPSC is a company limited by guarantee. The board of directors of GPSC hold their positions as an act of charity and goodwill and apart from nominal directors fees, receive no other consideration for their services.
- H. GPSC's primary source of income will be from the rent received from sub-leases of the GPSC Premises to healthcare providers.
- I. It is anticipated that GPSC will have significant operating costs to maintain and secure the operation of the Super Clinic and that as a general healthcare provider GPSC will incur significant liabilities.
- J. The City has agreed to indemnify GPSC from all Claims and Liabilities incurred directly or indirectly by GPSC in the conduct of the operation of Super Clinic, including under the Head Lease and the Subleases and the Collaboration Agreement, on the terms and conditions contained in this Deed.

1. Definitions and Interpretation

1.1 Definitions

Available Assets	means the income and assets of GPSC directly and immediately available to satisfy a Liability or Claim of or against GPSC, including: <ul style="list-style-type: none">(a) the amount of cash on hand less the amount of working capital reasonably required for the operation of the business of GPSC as determined by GPSC (acting reasonably and in good faith) at the relevant time; and(b) the net proceeds of a claim, under an Insurance Policy paid to and received by GPSC.
Business Day	means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
Claim	means any actions, suits, proceedings, accounts, losses, damages, charges, expenses, sums of money, costs (including legal costs), liabilities, demands, obligations and claims of whatsoever nature and howsoever arising, including but not limited to, claims arising in equity, contract, tort (including negligence), statute or common law and whether present or contingent and includes any: <ul style="list-style-type: none">(a) proceedings (whether civil or criminal), administrative proceedings, arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any legal, administrative or arbitral proceedings); and(b) investigation or inquiry by any Government Authority, relating to, arising out of or in any way connected with any actual or alleged act or omission of GPSC; and(c) any written or oral threat, complaint or demand or other circumstance that might reasonably cause the Officer to believe that any proceedings, investigation or inquiry referred to above will be initiated.
Collaboration Agreement	means the Collaboration Agreement dated at about the same time as this Deed, made between the GPSC and Curtin University and the City.
Deed	means this deed of indemnity, and includes all annexures and schedules to this deed, the Recitals and any lawful amendments to this deed.
Government Authority	means any government or local authority and any department, minister or agency of any government.

GPSC Premises	that part of Lot 406 on Deposited Plan 400928 as is depicted on interest only Deposited Plan [insert number] contained within Certificate of Title Volume 2835 Folio 30.
Head Lease	means the lease made between the City and GPSC on or about the date of this Deed in respect of the GPSC Premises.
Head Lessor	means the Lessor under the Head Lease.
Indemnity Claim	means a Claim made by GPSC under this Deed.
Insolvency Event	has the meaning given to it in the Head Lease.
Insurance Policy	means an insurance policy specified in clause 4.3(a)(i).
Legal Proceedings	means proceedings of any kind including any enquiry by any authority or other person and includes also any claim, action, suit or demand, whether civil or criminal, including any proceedings that relate to or arise from or are in any way connected directly or indirectly with any Sublease or the Head Lease or the Collaboration Agreement.
Liability	means and includes all liabilities for any and all damages, costs, losses, charges, expenses, actions, proceedings, legal proceedings, accounts, suits, demands, claims and liabilities of any kind howsoever arising. .
Local Government Laws	has the meaning given to it in the Head Lease.
Period	means the period commencing on the date of this Deed and ending on the date which is 7 years after the last date when GPSC ceases to be the lessee under the Head Lease and the Sub-lessor under every Sub-lease.
Reputable Insurance Company	, any reputable and financially sound registered insurance company, domiciled and carrying on business in Australia whose business includes the provision of the insurance contemplated in clause 4.3(a)(i).
Sublease	means any sublease made between GPSC (as sublessor) and a sub-tenant with respect to part of the GPSC Premises that is entered into in accordance with the provisions of 13 of the Head Lease.

1.2 Interpretation

- (a) Unless the context otherwise requires, a word which denotes:
- (i) the singular includes the plural and vice versa;
 - (ii) any gender includes the other genders; and
 - (iii) a person includes an individual, a body corporate, and a government and vice versa.

- (b) Unless the context otherwise requires, a reference to:
 - (i) any legislation includes any regulation or instrument made under it and, where amended, re-enacted or replaced, means that amended, re-enacted or replacement legislation;
 - (ii) a clause, schedule, annexure or exhibit, is a reference to a clause of, annexure to, schedule to or exhibit to this Deed;
 - (iii) a group of persons includes any one or more of them;
 - (iv) the word includes is not a word of limitation and does not restrict the interpretation of a word or phrase in this agreement;
 - (v) an agreement, representation or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally.
- (c) If a date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (d) The use of a defined term will not be affected by the presence or absence of capital letters.
- (e) The recitals under the heading Background at the beginning of this Deed are incorporated into and form part and parcel of the provisions of this Deed.

2. Indemnity

2.1 Indemnity

- (a) Subject to clause 3 and 2.1(b), the City indemnifies GPSC and will keep GPSC indemnified against any Claim or Liability incurred by GPSC during the Period if and to the extent that GPSC's Available Assets are not sufficient to satisfy the relevant Claim or Liability at the time the Claim is made or the Liability arises.
- (b) GPSC must at all times act in a reasonable and prudent manner and the City's liability under this Deed is reduced or extinguished to the extent that GPSC has not acted in a reasonable and prudent manner.

2.2 Payment on Demand

- (a) Any moneys payable by the City under this Deed are payable to GPSC within 14 days of a written demand by GPSC.
- (b) Any obligations under this Deed unless otherwise specified must be performed and fulfilled as soon as reasonably practicable.
- (c) Without limiting the City's rights under clause 2.3, GPSC, if it receives an amount from the City pursuant to clause 2.2(a), must promptly repay it to the City if GPSC was not entitled to it under this Deed.
- (d) It is not necessary for GPSC to incur any expense or make any payment before enforcing its right of indemnity under this Deed.
- (e) The indemnity given by the City under this Deed is irrevocable and will continue for the entire Period and is not affected by:

- (i) any intermediate payments, settlement of accounts or payments;
- (ii) delay on the part of GPSC;
- (iii) the death, bankruptcy, insolvency or liquidation of GPSC or any person; or
- (iv) subject to the terms of this Deed, any other thing or matter which might otherwise affect the indemnity, whether in law or equity.

2.3 Repayment and later recoveries

If, at any time after the City has made a payment to GPSC in respect of an Indemnity Claim, GPSC:

- (a) receives a payment, benefit or credit (including in relation to tax) from any person in respect of the Liability to which the Indemnity Claim related (including an insurer); or
- (b) otherwise has sufficient Available Assets to repay some or all of the amount received from the City under the Indemnity Claim,

then GPSC must:

- (c) promptly give to the City full particulars of the relevant payment, benefit, credit or Available Assets; and
- (d) on demand by the City promptly pay to the City:
 - (i) in the case of a payment, benefit or credit (including in relation to tax), the lesser of the amount received from the City under the Indemnity Claim and the amount of the payment, benefit or credit which was received by GPSC; or
 - (ii) in the case of having sufficient Available Assets, such portion of the amount received from the City under the Indemnity Claim as is demanded by the City.

2.4 Subrogation

After the City pays a Liability of GPSC under this clause 2, the City is subrogated to any other rights of GPSC in respect of the Liability.

3. Limitations on Indemnity

- (a) The indemnity in clause 2.1 applies only if GPSC has complied with and is not in material default of its obligations under this Deed.
- (b) The liability of the City in respect of an Indemnity Claim is reduced or extinguished (as the case may be) to the extent that:
 - (i) GPSC is otherwise entitled to be indemnified and is actually indemnified by payment made by another person (including any insurer of GPSC) and until such payment is made, the City must indemnify GPSC; or
 - (ii) any Liability the subject of an Indemnity Claim is made good or compensated for without any loss to GPSC.
- (c) The City will not be liable for, and GPSC cannot make, any Indemnity Claim unless GPSC has given written notice, and provided full particulars of the Indemnity Claim before the expiry of the Period.

4. GPSC's Obligations

4.1 Indemnity Obligations

GPSC must at all times (including after an Indemnity Claim has been made):

- (a) give the City notice as soon as reasonably practicable after becoming aware of an actual or threatened Claim, proceeding or other circumstance which could reasonably be expected to give rise to an Indemnity Claim;
- (b) at the cost of the City, take such action as the City or its insurer reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Legal Proceedings, a Claim or any adjudication of a Claim which has given or could give rise to an Indemnity Claim;
- (c) not make any admission of liability in respect of or settle any Claim or Legal Proceeding which GPSC knows has given or could give rise to an Indemnity Claim without the prior written consent of the City;
- (d) at the cost of the City:
 - (i) allow the City or its insurer to assume the conduct, negotiation or defence of any Claim or Legal Proceedings which has given or could give rise to an Indemnity Claim; and
 - (ii) on request by the City, render all reasonable assistance and co-operation to the City or its insurer in the conduct of any such Claim, including giving the City or its insurer any document, authority or direction that the City or its insurer may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (e) at the cost of the City and on request by the City or its insurer, do everything necessary or desirable which the City reasonably requests to enable the City or its insurer (so far as it is possible) to be subrogated to and enjoy the benefits of the GPSC's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the City or its insurer for that purpose; and
- (f) at the cost of the City notify any Claim or Legal Proceedings to an insurer or any other person who may be liable to indemnify GPSC in respect of a Claim which has given or could give rise to an Indemnity Claim and promptly and diligently take all reasonable steps to enforce all GPSC's rights against the insurer or other person.

4.2 Leases

GPSC must not during the Period:

- (a) vary or waive any material rights or obligations under a Sublease; or
- (b) exercise any right to terminate or rescind a Sublease,

without the City's prior written consent, which will not be unreasonably withheld.

4.3 Insurance Policies

- (a) GPSC must:

- (i) maintain insurance in accordance with prudent business practice and for amounts which would be maintained in accordance with prudent business practice, including:
 - A. insurance for risks relating to damage to property, personal injury, and public liability;
 - B. such insurance as the City reasonably requires GPSC to procure and maintain; and
 - C. directors and officers insurance in respect of the directors and officers of GPSC.
 - (ii) procure that the City is a co-insured on each Insurance Policy;
 - (iii) use its best endeavours to ensure that each Insurance Policy is maintained during the entire Period with a Reputable Insurance Company (the City acknowledging that insurance policies are generally taken out on a year by year basis);
 - (iv) each time an Insurance Policy is obtained or renewed, obtain from its insurance broker advice in writing as to the type and nature of insurance that is required in order to comply with the provisions of this clause 4.3, and provide the City with a copy of that advice.
- (b) GPSC must pay the cost of any premiums under each Insurance Policy when due.
 - (c) GPSC must ensure that each Insurance Policy provides that nothing in this Deed prejudices or decreases the liability of an insurer under an Insurance Policy.
 - (d) Upon request, GPSC must provide a copy of an Insurance Policy and a certificate of currency to the City.
 - (e) GPSC must use its best endeavours to comply with the terms and conditions of each Insurance Policy.
 - (f) Subject to payment of any premiums as required by the City (if an Indemnity Claim has been made in respect of those premiums prior to the due date for payment of them), GPSC must take all reasonable steps to maintain the insurance cover held by it.

5. Term

- (a) This Deed expires:
 - (i) at the end of the Period; or
 - (ii) on an earlier date if terminated at law or in accordance with this Deed,
 whichever occurs first.

6. Confidentiality

- (a) GPSC must not to disclose the terms or existence of this Deed except:

- (i) to shareholders, officers, employees, agents, financiers, legal and other advisers and auditors of GPSC, provided the recipient agrees to act consistently with this clause
 - (ii) with the consent of the City (that consent not to be unreasonably withheld); or
 - (iii) as required by law or as requested or required by any competent regulatory authority or stock exchange.
- (b) If GPSC is required to disclose information in accordance with clause 6(a)(iii), it must notify the City, to the extent that is reasonably practical or legally permissible to do so, to allow the City to comment on the content of the disclosure.

7. GST

7.1 Definitions

Any reference in this clause to terms defined or used in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (Act)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

7.2 GST

The parties agree that:

- (a) Any amount referred to in this Deed which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (b) GST is payable in respect of any taxable supply made under this Deed.
- (c) In respect of any taxable supply made under this Deed for which:
 - (i) the consideration attributable to that taxable supply is exclusive of GST, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Deed. The GST liability for that taxable supply is the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - (ii) the consideration attributable to that taxable supply is inclusive of GST, the recipient is only required to pay to the supplier the consideration for that taxable supply by the date required under this Deed. The GST liability for that taxable supply is the amount determined in accordance with the Act.
- (d) If one of the parties (**Paying Party**) is required to reimburse or make a payment to another party (**Receiving Party**) under or in connection with this Deed that is referable to a cost, expense or other amount (**Amount**) paid or incurred by the Receiving Party, the amount of the reimbursement or payment to be made by the Paying Party will be net of any input tax credits which may be claimed by the Receiving Party or by the representative member of the GST group in which the Receiving Party is a member in relation to the Amount.
- (e) The supplier or the relevant representative member of the GST group (as applicable) must issue:

- (i) a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - (ii) any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply.
- (f) If there is an adjustment to any of the consideration payable for a taxable supply which gives rise to an adjustment event, the GST liability for that taxable supply must be recalculated in accordance with clause 7.2(c) above based on the adjusted consideration and where applicable, an appropriate payment on account of the adjusted GST liability is to be made between the parties.

8. General

8.1 Legal Costs

Each party must pay its own costs and outlays relating to the negotiation, preparation and execution of this Deed.

8.2 Assignment and encumbrances

GPSC must not assign, transfer, mortgage or otherwise encumber any part of its rights or interest under this Deed without the prior written consent of the City.

The City may not assign transfer mortgage or otherwise encumber or dispose of any part of its rights or obligations under this Deed.

8.3 Duty

GPSC must pay all duty payable in connection with this Deed.

8.4 Amendment

This Deed may only be varied by the written agreement of the parties to this Deed.

8.5 Counterparts

This Deed may be executed in a number of counterparts and, if so executed, the counterparts taken together constitute one instrument.

8.6 Severance

Each of the agreements of each of the parties under this Deed is severable from the others and the severance of one agreement does not affect the other agreements.

8.7 Governing Law

This Deed is governed by and must be construed in accordance with the laws of Western Australia.

8.8 Jurisdiction

Each party to this Deed:

- (a) irrevocably and unconditionally submits to the jurisdiction of the courts of Western Australia and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

Executed by the parties as a deed

The common seal of the **City of Cockburn** was hereunto affixed by authority of a resolution of the Council in the presence of:



.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Full Name (please print)

.....
Full Name (please print)

Executed by
Cockburn GP Super Clinic Limited
(ACN 471 341 209)
pursuant to Section 127
of the Corporations Act



.....
Director

.....
Director/Secretary

.....
Full Name (please print)

.....
Full Name (please print)



Deed of Indemnity - Officers

City of Cockburn
City

and

Cockburn GP Super Clinic Limited
GPSC

and

[INSERT DIRECTOR'S NAME]
Officer

Subject to Council Approval

Jackson McDonald
Lawyers
140 St Georges Terrace
Perth Western Australia 6000

t: +61 8 9426 6611
f: +61 8 9481 8649
w: www.jacmac.com.au

Contact: Ryan Chorley
Reference: RZC:7145881

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Deed of Indemnity

Date: 2014

Parties

City City of Cockburn (ABN 27 471 341 209) of 9 Colville Crescent, Spearwood, Western Australia

GPSC Cockburn GP Super Clinic Limited (ACN 471 341 209) of PO Box 3057, Success, Western Australia

Officer [INSERT NAME OF DIRECTOR] of [INSERT ADDRESS], Western Australia

Background

- A. The Officer is a director of GPSC.
- B. GPSC has or will shortly enter into the Head Lease and the Subleases.
- C. The City has agreed to indemnify the Officer from any claims and liabilities arising whilst he/she is an Officer of GPSC on the terms and conditions contained in this Deed.

1. Definitions and Interpretation

1.1 Definitions

Appointment Date means the date the Officer commenced acting as an officer of GPSC;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Claim means any actions, suits, proceedings, accounts, losses, damages, charges, expenses, sums of money, costs (including legal costs), liabilities, demands, obligations and claims of whatsoever nature and howsoever arising, including but not limited to, claims arising in equity, contract, tort (including negligence), statute or common law and whether present or contingent and includes any:

- (a) proceedings (whether civil or criminal), administrative proceedings, arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any legal,

administrative or arbitral proceedings); and

- (b) investigation or inquiry by any Government Authority, relating to, arising out of or in any way connected with any actual or alleged act or omission of the Officer as an officer of the Company; and
- (c) any written or oral threat, complaint or demand or other circumstance that might reasonably cause the Officer to believe that any proceedings, investigation or inquiry referred to above will be initiated.

Corporations Act

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

D&O Policy

means a policy of insurance insuring the Officer as a present or former officer of GPSC, and any subsidiary of GPSC, against liability as a director or officer of GPSC and its subsidiaries;

Deed

means this deed of indemnity, and includes all annexures and schedules to this deed, the Recitals and any lawful amendments to this deed;

GPSC Premises

that part of Lot 406 on Deposited Plan 400928 as is depicted on interest only Deposited Plan [insert number] contained within Certificate of Title Volume 2835 Folio 30;

Government Authority

means any government or local authority and any department, minister or agency of any government.

Head Lease

means the lease made between the City and GPSC on or about the date of this Deed in respect of the GPSC Premises;

Legal Proceedings

means proceedings of any kind including any enquiry by any authority or other person and includes also any claim, action, suit or demand, whether civil or criminal, which relates to or arises from or is in any way connected directly or indirectly with the Officer being an officer of the GPSC;

Local Government Laws

has the meaning given to it in the Head Lease.

Liability

means and includes all liabilities for and all damages, costs, losses, charges, expenses, actions, proceedings, legal proceedings, accounts, suits, demands, claims and liabilities of any kind howsoever arising.

Period

means the period commencing on the Appointment Date and ending on the later of:

- (a) the date which is 7 years after the Officer ceases to be an officer of GPSC; and

- (b) the date any Legal Proceedings have been finally resolved;

Reputable Insurance Company means any reputable and financially sound registered insurance company, domiciled and carrying on business in Australia whose business includes the provision of the insurance contemplated in clause 3.2

Sublease means any sublease made between GPSC (as sublessor) and a sub-tenant with respect to part of the GPSC Premises that is entered into in accordance with the provisions of 13 of the Head Lease.

1.2 Interpretation

- (a) Unless the context otherwise requires, a word which denotes:
 - (i) the singular includes the plural and vice versa;
 - (ii) any gender includes the other genders; and
 - (iii) a person includes an individual, a body corporate, and a government and vice versa.
- (b) Unless the context otherwise requires, a reference to:
 - (i) any legislation includes any regulation or instrument made under it and, where amended, re-enacted or replaced, means that amended, re-enacted or replacement legislation;
 - (ii) a clause, schedule, annexure or exhibit, is a reference to a clause of, annexure to, schedule to or exhibit to this Deed;
 - (iii) a group of persons includes any one or more of them;
 - (iv) the word includes is not a word of limitation and does not restrict the interpretation of a word or phrase in this agreement; and
 - (v) an agreement, representation or warranty in favour of or on the part of two or more people, benefits or binds them jointly and severally.
- (c) If a date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (d) The use of a defined term will not be affected by the presence or absence of capital letters. Where words used in this Deed are defined in the Corporations Act those words shall have that defined meaning unless the context clearly otherwise indicates.

2. Indemnity

2.1 Indemnity

- (a) Subject to clause 2.1(b), the City indemnifies the Officer and will keep the Officer indemnified against any Claim or Liability incurred by the Officer as an employee or as an officer or former officer of GPSC or any of its subsidiaries during the Period.

- (b) The Officer must at all times act in a reasonable and prudent manner and the City's liability under this Deed is reduced or extinguished to the extent that the Officer has not acted in a reasonable and prudent manner.

2.2 Continuing Indemnity

- (a) The indemnity contained in this Deed is a continuing indemnity and is not voided or affected by the Officer resigning or otherwise ceasing to be or to act as an officer of GPSC for any reason, or by the occurrence of any other event.
- (b) The indemnity given by the City under this deed is irrevocable and will continue for the entire Period (which includes that period after the Officer ceases, for any reason, to be an officer) and is not affected by:
 - (i) any intermediate payments, settlement of accounts or payments;
 - (ii) any delay on the part of the Officer;
 - (iii) the death, bankruptcy, insolvency or liquidation of any person; or
 - (iv) subject to the terms of this Deed, any other thing or matter which might otherwise affect the indemnity, whether in law or equity.
- (c) It is not necessary for the Officer to incur any expense or make any payment before enforcing a right of indemnity under this Deed.

2.3 Payment on Demand

- (a) Subject to the terms of this Deed, any moneys payable by the City under this Deed are payable by the City within 14 days of a written demand by the Officer.
- (b) Any obligations under this Deed unless otherwise specified must be performed and fulfilled as soon as reasonably practicable.
- (c) The Officer, if it receives an amount from the City pursuant to clause 2.3(a), must promptly repay it to the City if the Officer was not entitled to it under this Deed.
- (d) If, at any time after the City has made a payment to the Officer in respect of an Claim under the indemnity in this Deed, the Officer receives a payment, benefit or credit (including in relation to tax) from any person in respect of the Liability to which the indemnity Claim related (including an insurer), the Officer must:
 - (i) promptly give to the City full particulars of the relevant payment, benefit or credit; and
 - (ii) on demand by the City promptly pay to the City the lesser of the amount received from the City under the indemnity Claim and the amount of the payment, benefit or credit received by the Officer.

2.4 Obligations of Officer

The Officer must:

- (a) give the City notice as soon as reasonably possible after the Officer becomes aware of any circumstances which could reasonably be expected to give rise to a claim for indemnity under this Deed;
- (b) at the cost of the City, take such action as the City or its insurer reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Legal Proceedings or Claim or any adjudication of a Claim;
- (c) not make any admission of liability in respect of or settle any Claim or Legal Proceeding the subject of an indemnity under this Deed without the prior written consent of the City, which will not be unreasonably withheld;
- (d) at the cost of the City:
 - (i) allow the City or its insurer to assume the conduct, negotiation or defence of any Claim or Legal Proceedings; and
 - (ii) on request by the City, render all reasonable assistance and co-operation to the City or its insurer in the conduct of any Claim, including giving the City or its insurer any document, authority or direction that the City or its insurer may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (e) at the cost of the City and on request by the City or its insurer, do everything necessary or desirable which the City reasonably requests to enable the City or its insurer (so far as it is possible) to be subrogated to and enjoy the benefits of the Officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the City or its insurer for that purpose; and
- (f) at the cost of the City notify any Claim or Legal Proceedings to an insurer or any other person who may be liable to indemnify the Officer in respect of that Claim and at the cost of the City promptly and diligently take all reasonable steps to enforce all the Officer's rights against the insurer or other person.

2.5 Limits on Indemnity

- (a) The indemnity in clause 2.1 applies only
 - if the Officer has taken all reasonable steps to comply with his obligations under clause 2.4 and clause 3.
- (b) The liability of the City in respect of an Claim under the indemnity in this deed is reduced or extinguished (as the case may be) to the extent that:
 - (i) and for the amount that the Officer is not otherwise entitled to be indemnified and is actually indemnified by payment made by another person (including GPSC under the Constitution of GPSC or any insurer of GPSC or the Officer) and until such payment is made, the City must indemnify the Officer; or
 - (ii) GPSC would not be liable to indemnify the Officer for the Claim by reason of any law (including under s.199A of the Corporations Act or s.224 of the Second Schedule of the *Competition and Consumer Act 2010* (Cth)).

2.6 Subrogation

After the City pays a Liability of the Officer under this clause 2, the City is subrogated to any other rights of the Officer in respect of the Liability.

3. GPSC's Obligations

3.1 D&O Policy

GPSC must procure and maintain a D&O Policy from the date of this Deed until the end of the Period which covers and indemnifies the Officer for the entire Period, consistent at least with the indemnity given by GPSC under the GPSC Constitution.

3.2 Terms of D&O Policy

- (a) GPSC must ensure that:
 - (i) the D&O Policy is maintained for the entire Period with a Reputable Insurance Company;
 - (ii) the D&O Policy is appropriate in view of the potential liabilities of the Officer;
 - (iii) procure that the City is a co-insured on each Insurance Policy;
- (b) GPSC must pay the cost of any premiums under the D&O Policy when due.
- (c) GPSC must ensure that each D&O Policy provides that nothing in this Deed prejudices or decreases the liability of an insurer under a D&O Policy.
- (d) Upon request, GPSC must provide a copy of the D&O Policy and a certificate of currency to the City.
- (e) The Officer and GPSC must take all reasonable steps to comply with the terms and conditions of the D&O Policy.

4. Confidentiality

- (a) GPSC and the Officer must not to disclose the terms or existence of this Deed except:
 - (i) to shareholders, officers, employees, agents, financiers, legal and other advisers and auditors of GPSC or the Officer, provided the recipient agrees to act consistently with this clause
 - (ii) with the consent of the City (that consent not to be unreasonably withheld); or
 - (iii) as required by law or as requested or required by any competent regulatory authority or stock exchange.
- (b) If GPSC or the Officer is required to disclose information in accordance with clause 4(a)(iii), it must notify the City, to the extent that is reasonably practical or legally permissible to do so, to allow the City to comment on the content of the disclosure.

5. GST

5.1 Definitions

Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**Act**) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

5.2 GST

The parties agree that:

- (a) Any amount referred to in this Deed which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (b) GST is payable in respect of any taxable supply made under this Deed.
- (c) In respect of any taxable supply made under this Deed for which:
 - (i) the consideration attributable to that taxable supply is exclusive of GST, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Deed. The GST liability for that taxable supply is the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - (ii) the consideration attributable to that taxable supply is inclusive of GST, the recipient is only required to pay to the supplier the consideration for that taxable supply by the date required under this Deed. The GST liability for that taxable supply is the amount determined in accordance with the Act.
- (d) If one of the parties (**Paying Party**) is required to reimburse or make a payment to another party (**Receiving Party**) under or in connection with this Deed that is referable to a cost, expense or other amount (**Amount**) paid or incurred by the Receiving Party, the amount of the reimbursement or payment to be made by the Paying Party will be net of any input tax credits which may be claimed by the Receiving Party or by the representative member of the GST group in which the Receiving Party is a member in relation to the Amount.
- (e) The supplier or the relevant representative member of the GST group (as applicable) must issue:
 - (i) a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - (ii) any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply.
- (f) If there is an adjustment to any of the consideration payable for a taxable supply which gives rise to an adjustment event, the GST liability for that taxable supply must be recalculated in accordance with clause 6.2(c) above based on the adjusted consideration and where applicable, an appropriate payment on account of the adjusted GST liability is to be made between the parties.

6. General

6.1 Legal Costs

The City and GPSC must pay their own costs and outlays relating to the negotiation, preparation and execution of this Deed. The Officer's reasonable legal costs will be borne by GPSC.

6.2 Consents

Except as otherwise provided to the contrary in this Deed, a party may give or withhold its consent to any matter referred to in this Deed or decide that any matter is or is not acceptable to it, in its absolute discretion. A party that gives its consent to any matter referred to in this Deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

6.3 Assignment and encumbrances

GPSC must not assign, transfer, mortgage or otherwise encumber any part of its rights or interest under this Deed without the prior written consent of the City.

6.4 Duty

GPSC must pay all stamp duty payable in connection with this Deed.

6.5 Amendment

This Deed may only be varied by the written agreement of the parties to this Deed.

6.6 Counterparts

This Deed may be executed in a number of counterparts and, if so executed, the counterparts taken together constitute one instrument.

6.7 Entire Agreement

This Deed constitutes the entire agreement between the parties with respect to their subject matter and supersede all prior discussions, undertakings and agreements.

6.8 Severance

Each of the agreements of each of the parties under this Deed is severable from the others and the severance of one agreement does not affect the other agreements.

6.9 Governing Law

This Deed is governed by and must be construed in accordance with the laws of Western Australia.

6.10 Jurisdiction

Each party to this Deed:

- (a) irrevocably and unconditionally submits to the jurisdiction of the courts of Western Australia and all courts which have jurisdiction to hear appeals from those courts; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

Executed by the parties as a deed

The common seal of the **City of Cockburn** was hereunto affixed by authority of a resolution of the Council in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer

.....
Full Name (please print)

.....
Full Name (please print)

Executed by
Cockburn GP Super Clinic Limited
(ACN 471 341 209)
pursuant to Section 127
of the Corporations Act



.....
Director

.....
Director/Secretary

.....
Full Name (please print)

.....
Full Name (please print)

DRAFT

Signed by
[INSERT NAME OF DIRECTOR]
in the presence of:

}
[INSERT NAME OF DIRECTOR]

.....

Signature of Witness

.....

Name of Witness

.....

Address of Witness

.....

Occupation of Witness

DRAFT

Cockburn GP Super Clinic Budget Requirements 2014/15 - 2018/19					
	2014/15	2015/16	2016/17	2017/18	2018/19
Revenue	\$452,542	\$564,503	\$580,135	\$596,203	\$612,720
Super Clinic -Budget					
Auditing Services	\$7,000	\$7,210	\$7,426	\$7,649	\$7,879
Accounting Services	\$10,000	\$10,300	\$10,609	\$10,927	\$11,255
Accreditation	\$12,000	\$12,360	\$12,731	\$13,113	\$13,506
Bookkeeping Services	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510
Advertising	\$5,000	\$5,150	\$5,305	\$5,464	\$5,628
Bank Charges	\$3,000	\$3,000	\$3,000	\$3,090	\$3,183
IT Expenses	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510
Directors Honorarium	\$45,000	\$46,350	\$47,741	\$49,173	\$50,648
Filing Fees - ASIC	\$2,000	\$2,060	\$2,122	\$2,185	\$2,251
Insurance - Public Liability	\$5,000	\$5,150	\$5,305	\$5,464	\$5,628
Insurance - Directors and Officers	\$1,000	\$1,030	\$1,061	\$1,093	\$1,126
Legal Fees	\$20,000	\$10,000	\$10,300	\$10,609	\$10,927
Postage	\$1,000	\$1,030	\$1,061	\$1,093	\$1,126
Printing & Stationery	\$1,500	\$1,545	\$1,591	\$1,639	\$1,688
Repairs & Maintenance	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510
Seminars, Promotions and Memberships	\$6,000	\$6,300	\$6,615	\$6,813	\$7,018
Telephone	\$6,000	\$6,300	\$6,615	\$6,813	\$7,018
Wages & Salaries - Manager	\$160,000	\$167,200	\$174,724	\$179,966	\$185,365
Admin/Project Officer		\$73,150	\$76,000	\$78,000	\$80,000
Car Allowance	\$18,000	\$18,810	\$19,656	\$20,246	\$20,854
Superannuation	\$16,465	\$21,632	\$22,565	\$23,242	\$23,939
Insurance - Workers Comp	\$3,000	\$5,616	\$5,859	\$6,035	\$6,216
Variable Outgoings	\$30,000	\$30,900	\$31,827	\$32,782	\$33,765
Incidental Costs	\$10,000	\$10,300	\$10,609	\$10,927	\$11,255
Total Budget Requirements	\$421,965	\$507,192	\$526,375	\$541,886	\$557,803
Surplus	\$30,577	\$57,311	\$53,760	\$54,317	\$54,917