

Ground Lease for Agricultural Purposes: [*insert description of Land*]

Shire of Ravensthorpe

[*Insert name of Lessee*]



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Details

Parties

Shire of Ravensthorpe

of PO Box 43, Ravensthorpe, Western Australia
(**Lessor**)

[Name of Lessee]

[(ACN #####)]

of [address]

(**Lessee**)

[Name of Guarantor]

of [Address]

(**Guarantor**)

Background

- A The Lessor is registered as proprietor of an estate in fee simple in the Land.
- B Following the Request for Tender (**RFT**) process, the parties have agreed that, the Lessor shall grant, and the Lessee shall accept, a lease of the Premises, subject to and in accordance with the terms and conditions contained in this Lease.
- C The Parties enter into this Lease to set out the terms and conditions in relation to the grant of Lease.

Agreed terms

1. Grant of Lease

The Lessor leases to the Lessee the Premises for the Term subject to:

- (a) all Encumbrances and any Reservations;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

2. Rent and Other Payments

2.1 Rent

The Lessee agrees with the Lessor, to pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule clear of any deductions whatsoever.

2.2 Outgoings

- (1) The Lessee agrees with the Lessor, to pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), properly assessed or reasonably incurred in respect of the Premises:
 - (a) local government rates, taxes and charges and including charges for rubbish or garbage removal and the emergency service levy;
 - (b) water, drainage and sewerage rates, charges for disposal of stormwater, management of/disposal of waste water, meter rent and excess water charges AND the Lessee shall ensure that any such accounts are taken out and issued in the name of the Lessee;
 - (c) irrigation water rates and charges including (without limitation) charges for headworks and usage;
 - (d) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
 - (e) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (f) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises is not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 2.2(1)** being the proportion that the area of the Premises bears to the total area of the premises or land included in the charge or assessment.

2.3 Interest

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee must pay to the Lessor interest on demand on any Amounts Payable which are unpaid for fourteen (14)

days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

2.4 Costs

The Lessee agrees with the Lessor to pay to the Lessor on demand:

- (a) all duty, fines and penalties payable under the *Duties Act 2008* (WA) and other statutory duties or taxes payable on or in connection with this Lease; and
- (b) all registration fees in connection with this Lease (if any);
- (c) the Lessor's reasonable costs of and incidental to the instructions for the preparation and execution of this Lease;
- (d) all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
 - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (ii) any breach of an obligation or agreement by the Lessee or the Lessee's Agents;
 - (iii) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* (WA) requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (iv) any work done at the Lessee's request, cost for which has been approved by the Lessee (acting reasonably) prior to the commencement of works; and
 - (v) any action or proceedings arising out of or incidental to any matters referred to in this **clause 2.4(d)** or any matter arising out of this Lease.

2.5 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

2.6 Payment of money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

3. Rent Review

3.1 Rent to be reviewed

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next relevant Rent Review Date.

3.2 Methods of review

The basis for each Rent Review is as identified for each Rent Review Date in **Item 8** of the Schedule.

3.3 CPI Review

- (1) A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI. The CPI will be determined having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last relevant Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date.
- (2) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an equivalent index.

3.4 Market Review

(1) Market Rent Review

- (a) A rent review based on market rent will establish the current market rent for the Premises by agreement between the Parties and failing agreement, will be determined in accordance with the following provisions.
- (b) In this clause, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (i) any improvements made or effected to the Premises by the Lessee; and
 - (ii) any rent free periods, discounts or other rental concessions.

(2) Lessor’s Market Rent Notice

- (a) The Lessor must advise the Lessee in writing of the amount it considers to be the current market rent for the Premises at least thirty (30) days prior to the relevant Rent Review Date (**Market Rent Notice**). To avoid doubt, the current market rent for the Premises will be determined by reference to an independent market valuation report prepared by the Lessor at its cost.
- (b) The Lessee must give notice to the Lessor to advise that the Lessee accepts, disputes or rejects the current market rent within fourteen (14) days of service of the Market Rent Notice.
- (c) If the Lessee does not give the notice specified in **clause 3.4** the Lessee will be deemed to have accepted the current market rent as specified in the Market Rent Notice.

(3) Lessee’s Valuation Report

- (a) If the Lessee disputes or rejects the current market rent specified in the Market Rent Notice then within fourteen (14) days of the Market Rent Notice, the Lessee shall at the expense of the Lessee request a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978* (WA), to be appointed by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute) to prepare a valuation report to determine the current market rent for the Premises (**Lessee’s Valuation Report**).
- (b) The Lessee must provide a copy of the Lessee’s Valuation Report to the Lessor within five (5) days of the date of the Lessee’s Valuation Report.

- (c) The Lessor must give notice to the Lessee to advise that the Lessor accepts, disputes or rejects the current market rent as specified in the Lessee's Valuation Report within fourteen (14) days of service of the Lessee's Valuation Report.

(4) **Joint Valuation**

If the Lessor disputes or rejects the current market rent specified in the Lessee's Valuation Report or does not give the notice specified in **clause 3.4(3)(b)**, then the parties shall, in the first instance, request that their respective Valuers re-assess their valuations in order to reach a consensus.

(5) **Final Valuer**

- (a) If the Valuers are unable to reach a consensus in accordance with **clause 3.4(4)**, then the current market rent for the Premises will be determined by a third Valuer (**Final Valuer**), at the request of both Parties.
- (b) The costs for the Final Valuer will be shared equally by the Parties.
- (c) The Final Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Final Valuer.

(6) **Rent will not Decrease**

Notwithstanding the provisions in this clause, the Rent payable from any rent review based on CPI Review or Market Review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

(7) **Lessor's Right to Review**

The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

4. Goods and Services Tax

(1) In this **clause 4**:

- (a) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (b) any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member;
- (c) any reference to an input tax credit entitlement by a Party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that Party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

- (2) Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Lease for any supply made under or in connection with this Lease does not include GST.

- (3) To the extent that any supply made under or in connection with this Lease is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- (4) A Party's right to payment under **clause 4** is subject to a valid tax invoice being delivered to the Party who is the recipient of the taxable supply.
- (5) To the extent that a Party is required to reimburse or indemnify another Party for a loss, cost or expense incurred by that other Party, that loss, cost or expense does not include any amount in respect of GST for which that other Party is entitled to claim an input tax credit.

5. Insurance

5.1 Insurance required

- (1) The Lessee occupies the Premises pursuant to this Lease as if it were the owner of the Premises and in that regard:
 - (a) the Lessee is required to take out and maintain all insurances that in the Lessor's reasonable opinion a prudent landowner would take out and maintain in respect of the Premises; and
 - (b) the Lessor is not required to take out or maintain any insurance in respect of the Premises.
- (2) Notwithstanding **clause 5.1(1)**, the Lessee must effect and maintain with reputable insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:
 - (a) adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
 - (b) adequate insurance to cover the full replacement costs of any improvements located or constructed on the Premises to their full insurable value against all usual risks against which in the reasonable opinion of the Lessor from time to time a lessee should ordinarily insure; and
 - (c) an insurance policy covering the risk of spillage of fuels, oils, chemicals, dangerous compounds or substances or any other pollutants on or from the Premises and the cost of rectifying and compensating relevant Parties for, any resultant damages to adjacent land and waterways.

5.2 Details and receipts

In respect of the insurances required by **clause 5.1** the Lessee must:

- (a) on demand (not to be made more than once every twelve (12) months) supply to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums notify the Lessor immediately:
 - (i) when a material event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

5.3 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might;

- (a) render any insurance effected under **clause 5.1** on the Premises, or any adjoining land, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining land (except insofar as an approved development may lead to an increased premium).

5.4 Reports

The Lessee must report to the Lessor promptly in writing and in an emergency verbally:

- (a) any material damage to the Premises of which it is or might be aware; and
- (b) any circumstances of which it is aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person on the Premises.

5.5 Lessee to pay excess on insurances

The Lessee agrees with the Lessor that it will be responsible to pay any excess payable in connection with the insurances referred to in **clause 5.1**.

5.6 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property EXCEPT to the extent that such loss or damage is directly caused by the negligence or default of the Lessor.

5.7 Failure to comply with insurance requirements

If the Lessee fails to comply with any of its obligations under this **clause 5**, the Lessor may, by serving written notice upon the Lessee, require that such default be remedied within twenty-eight (28) days and in the event that the Lessee fails to comply with such notice, then the Lessor may, in its absolute discretion, immediately terminate this Lease.

6. Indemnity

6.1 Lessee responsibilities

The Lessee is responsible and liable for all acts or omissions of any Authorised Person on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

6.2 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor or the Minister for Lands, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and

(c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (i) the use or occupation of the Premises by the Lessee or any Authorised Person;
- (ii) any work carried out by or on behalf of the Lessee on the Premises;
- (iii) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (iv) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (v) a negligent or wrongful act or omission of the Lessee or any Authorised Person.

6.3 Obligations continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 6.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

6.4 Release

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by; and
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and

except to the extent that such loss or damage is directly caused or contributed to (to the extent of that contribution) by the negligence or default of the Lessor or the Lessor's Agents.

(2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

6.5 Limit of liability

(1) The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring, except to the extent that such loss or damage is directly caused or contributed to (to the extent of that contribution) by the negligence or default of the Lessor.

- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.
- (3) Notwithstanding any implication or rule of law to the contrary, the Lessor will not except in the case of its own negligence or any negligence on the part of the Lessor's Agents be liable to the Lessee for any loss or damage suffered by the Lessee in consequence of any malfunction or breakdown in or interruption of any Services, any of the appurtenances contained in the Premises or from the breakage, blockage or overflow of any sewer, waste, drains, conduits, cables, wires, gutters, down pipes or stormwater drains.
- (4) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is registered as the proprietor in fee simple of the Land.

7. Maintenance and Repair

7.1 Generally

- (1) The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (including any improvements or infrastructure located on the Premises) in Good Repair.
- (2) The Lessee must take such reasonable action as is necessary to prevent, if it has occurred as a result of the Lessee's use of the Premises; and rectify or otherwise ameliorate, the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

7.2 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

7.3 Repair damage

The Lessee must promptly repair at its own expense to the reasonable satisfaction of the Lessor, any damage to the Premises regardless of how the damage is caused.

7.4 Pest and weed control

The Lessee must keep the Premises free of any:

- (a) noxious, poisonous or deleterious weeds or plants;
- (b) vermin; and
- (c) other recognised pests,

and the cost of extermination will be borne by the Lessee.

7.5 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all structures, buildings and improvements on the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any structures, buildings or improvements on the Premises.
- (2) Any development proposed on the Premises during the Term as shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained all necessary statutory approvals.

7.6 Acknowledgement of state of repair

- (1) The Lessee accepts the Premises in its present condition relying upon its own enquiries and investigations.
- (2) The Lessor does not expressly or impliedly warrant that the Premises are now or will remain suitable or adequate for all or any of the purposes of the Lessee or for the business which the Lessee is authorised to conduct thereon and to the extent permitted by law, all warranties (if any) as to suitability and adequacy of the Premises implied by law are hereby expressly negated.

7.7 Comply with all reasonable conditions

The Lessee must promptly comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

8. Use

8.1 Restrictions on use

(1) Generally

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than for the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any Written Law.

(2) No nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(3) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first approved to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(4) Power

The Lessee must not use any form of light, power or heat (other than an auxiliary power during any power failure or, electricity or gas supplied through meters).

(5) Removal of rubbish

The Lessee must keep the Premises free from dirt and rubbish and store and keep all trade waste and garbage in proper receptacles.

(6) **No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by any Hazardous Materials, Dangerous Substances, garbage, refuse, water matter, oil and other pollutants.

(7) **No animals**

The Lessee must not and must not suffer to permit any live animal or bird to be kept on the Premises at any time, unless otherwise approved by the Lessor.

(8) **No signs**

The Lessee must not suffer or permit a person to display or affix any signs, notices or advertisements on the Premises without first complying with the relevant signage laws. The Lessee will not be required to obtain the prior consent of the Lessor to affix, alter, remove, replace or repair signage on the Premises which the Lessee reasonably considers is necessary for the good, proper and orderly use of the Premises for the Permitted Purpose and in conjunction with its business.

(9) **No auctions**

The Lessee must not hold, or permit to be held, any auction, bankrupt or fire sale on the Premises.

8.2 No warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any Written Law for its use of the Premises.

8.3 Premises subject to restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises and takes the Premises on an “as is” basis.

8.4 Indemnity for costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 7.6(1)**.

9. Environmental Contamination, Hazardous Materials and Dangerous Substances

9.1 Environmental Contamination

(1) The Lessee acknowledges and agrees:

- (a) during the Term, Further Term and any period of holding over, if applicable, it is responsible for all and any Environmental Contamination arising in connection with the Lessee’s use and occupation of the Premises after the Commencement Date;
- (b) if at any time during the Term, Further Term, or any period of holding over (if applicable), the Lessee knows or suspects of any Environmental Contamination on, in or under the

Premises, then the Lessee must immediately inform the DWER, the EPA and the Lessor of the Environmental Contamination;

- (c) it must take all reasonable steps to prevent Environmental Contamination:
 - (i) occurring on, in or under the Premises; and
 - (ii) entering neighbouring premises from the Premises; and
- (d) if any Environmental Contamination occurs which is attributable to the Lessee's use of the Premises, it must immediately and to the Lessor's satisfaction remediate such Environmental Contamination. If the Lessee fails to remediate the Environmental Contamination in accordance with this clause, then the Lessor is permitted to, at the Lessee's cost remediate the Premises. Any reasonable expense that the Lessor incurs in remediating the Environmental Contamination will be owed by the Lessee to the Lessor as a debt payable on demand.

9.2 Hazardous Materials and Dangerous Substances

The Lessee acknowledges and agrees that:

- (a) the Premises will be provided to the Lessee on an "as is" basis; and
- (b) the Lessee will at its own expense be responsible to ensure that any asbestos, Hazardous Materials or Dangerous Substances that may be on or about the Premises are safely removed in accordance with the requirements of any relevant Authority and Environmental Laws so that the Premises is rendered safe.

10. Alterations

10.1 Restriction

The Lessee must not without prior written consent from the Lessor and from any other person from whom consent is required under this Lease or under any Written Law in force from time to time, including but not limited to the planning approval of the Lessor under a local planning scheme of the Lessor:

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (b) subject to the performance of the Lessee's obligations in **clause 7**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

10.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 10.1** the Lessor may:
 - (a) consent subject to conditions;
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (c) require that any works be carried out to the reasonable satisfaction of the Lessor under the supervision of an engineer or other consultant.
- (2) If the Lessor consents to any matter referred to in **clause 10.1**:

- (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any Written Law for such matters; and
- (b) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

10.3 Cost of works

All works undertaken under this **clause 9.2** will be carried out at the Lessee's expense.

10.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

10.5 Compliance with plans

The Lessee acknowledges and agrees that:

- (a) it will not carry out any works on the Premises without first obtaining the consent of the Lessor to such works; and
- (b) any works approved by the Lessor on the Premises will be carried out in accordance with plans or requirements or other restraints which relate to the Premises.

11. Statutory Obligations and Notices

11.1 Comply with statutes

The Lessee must:

- (a) obey any Written Law that requires the Lessee to do, or to refrain from doing anything concerning the Premises, the Lessee's use of the Premises, or this Lease;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licenses and permits required under any statute for the Permitted Purpose to be undertaken on the Premises; and
- (c) comply promptly with all orders, notices, requisitions or directions of any Authority relating to the Premises or the Lessee's use of the Premises.

11.2 Lessee to observe copyright

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

11.3 Indemnity if Lessee fails to comply

The Lessee indemnifies the Lessor and the Minister for Lands against:

- (a) failing to perform, discharge or execute any of the items referred to in this **clause 11**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in this **clause 11**.

12. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the Local Government Act, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any other provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

13. Report to Lessor

The Lessee must immediately report to the Lessor:

(a) **Vandalism**

Any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware.

(b) **Pollution**

Any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment.

(c) **Notices, etc**

All notices, orders and summonses received by the Lessee, which affect the Premises.

14. Assignment, Subletting and Charging

14.1 No Assignment or sub-letting without consent

Subject to **clause 14.3**, the Lessee may not transfer, assign, sublet, assign or otherwise part with possession or any way dispose of any of its rights or obligations under this Lease without the written consent of the Lessor, which consent in the case of the Lessor must not be unreasonably withheld or delayed.

14.2 Change of ownership of shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001* (Cth) will be deemed to be an assignment of the leasehold estate created by this Lease provided however that this clause will not apply if the transfer of shares in the Lessee is to a corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001* (Cth) whose shares are quoted on a stock exchange in Australia.

14.3 Lessor's consent to assignment and sub-letting

The Lessor will not unreasonably withhold or delay consent to the assignment or sub-letting of the leasehold estate created by this Lease if:

- (a) the proposed sublease or assignment is for the whole of the Premises;
- (b) the Lessee proves to the Lessor that the proposed assignee is a respectable and financially responsible person or corporation with relevant experience and ability to conduct successfully and profitably a business of the same type as the Lessee's business;
- (c) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, which has been notified to the Lessee, of any of the Lessee's Covenants;
- (d) the Lessee procures the execution by:
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a Party and which deed is prepared and completed by the Lessor's solicitors at the cost of the Lessee in reasonable form and substance used by lawyers in Western Australia;
- (e) the sublease is in a reasonably acceptable form which includes a covenant from the Lessee that nothing in the sublease releases, diminishes or otherwise affects the Lessee's Covenants; and
- (f) the deed of assignment contains a covenant, by the assignee with the Lessor, for the assignee to pay all Amounts Payable and to perform and observe all the Lessee's Covenants, and if the assignment is to a corporation an appropriate guarantee from a director of the corporation.

14.4 Consents of assignee supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants, unless the Lessor otherwise agrees.

14.5 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* (WA) are excluded.

14.6 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let, licence the leasehold estate created by this Lease the Lessee must pay all reasonable and proper professional and other costs and expenses incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) reasonable and relevant enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
- (b) any consents required under this Lease or at law; and
- (c) other matters directly relevant to the proposed assignment or sub-letting including preparation of any deed of assignment or subletting,

whether or not the assignment or sub-letting proceeds.

14.7 No mortgage or charge without consent

The Lessee must not mortgage or charge the Premises without the Lessor's prior written consent, which must not be unreasonably withheld. The parties acknowledge that the Lessor may impose reasonable terms and conditions in respect of any consent provided under this subclause.

15. No Caveat or Other Interests

15.1 No caveat

The Lessee nor any person on behalf of the Lessee must not lodge any caveat over the Premises or Premises or part thereof, without the prior written consent of the Lessor and the Minister for Lands.

15.2 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor and the Minister for Lands, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally:

- (a) for the Term of Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate;

- (d) a withdrawal of any caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

15.3 Costs of removal, indemnity and ratification

- (1) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.
- (2) The Lessee indemnifies the Lessor against:
 - (a) any loss arising from any act done under this clause; and
 - (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee including the withdrawing of any caveat effecting the Premises the registration of this Lease to exercise the power of attorney set out in **clause 15.2**.

16. Lease Security

16.1 Bank Guarantee

Within five (5) Business days of the Commencement Date, the Lessee must give the Lessor an unconditional and irrevocable undertaking (**Guarantee**) from a bank or financial institution

authorised to carry on banking in Australia under the *Banking Act 1959* (Cth) in the terms provided in **clauses 16.2 – 16.5**.

16.2 Purpose of the Guarantee

The Guarantee will authorise the Lessor to draw on the money guaranteed:

- (a) if any Amounts Payable remain unpaid for seven (7) days after becoming due whether or not a demand or Notice has been given to the Lessee; or
- (b) to recover the cost to the Lessor of rectifying any breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) which has not been rectified by the Lessee within fourteen (14) days of being notified of the breach.

16.3 Form of the Guarantee

The Guarantee must be in favour of the Lessor and in a form that is reasonably satisfactory to the Lessor.

16.4 Term of Guarantee

The Guarantee must be enforceable at all times for:

- (a) the Term of the Lease;
- (b) any Further Term, extension or holding over; and
- (c) a period of three months after Termination of the Lease.

16.5 Amount of Guarantee

The amount of the Guarantee shall be at any point in time during the Term or any Further Term be equal at all times to the sum specified in **Item 9** of the Schedule. If the Guarantee is not equal to such sum (ie because the Lessor has drawn against the Guarantee or the Rent has increased following a Rent Review), the Lessee must provide a further bank guarantee or replacement bank guarantee within a reasonable period of time, or within ten (10) Business Days of written notice from the Lessor.

16.6 Cost of Guarantee

Any costs associated with meeting this obligation will be paid by the Lessee.

17. Personal Guarantee

17.1 Personal Guarantee

In consideration of the Lessor entering into a Lease with the Lessee at the request of the Guarantor, the Guarantor hereby jointly and severally:

- (a) GUARANTEES payment by the Lessee of the Amounts Payable by the Lessee to the Lessor pursuant to this Lease and the observance and performance by the Lessee of the Lessee's Obligations; and
- (b) AGREES that if any money payable by the Lessee to the Lessor pursuant to the terms of this Lease shall not be recoverable from the Guarantor under this Guarantee by reason of any legal limitation disability or incapacity on or of the Lessee or by reason of any avoidance of the liability of the Lessee or of any other fact or circumstances then the Guarantor will hold the Lessor fully indemnified at all times against all loss or damage

which the Lessor may suffer or incur by reason of any limitation disability incapacity failure fact or circumstances,

(Personal Guarantee).

17.2 Guarantor's Covenants

- (1) The Guarantor covenants and agrees with the Lessor as follows:
 - (a) to pay all moneys due and payable to the Lessor by the Lessee under this Lease upon demand;
 - (b) the liability of the Guarantor will not be affected by:
 - (i) the granting of any time or other indulgence by the Lessor to any person;
 - (ii) any compounding compromise release abandonment waiver variation or renewal of any term of this Lease or of the right of the Lessor or any omission;
 - (iii) the avoidance of any payment by the Lessee or the Guarantor to the Lessor;
 - (iv) any other dealing matter or thing which but for this provision operates to affect the liability of the Guarantor;
 - (c) this Personal Guarantee is an irrevocable and continuing Personal Guarantee and will remain in effect for the benefit of the Lessor in respect of all liabilities of the Lessee arising from this Lease both before and after the determination of the Term;
 - (d) all benefits or moneys received by the Lessor from or on account of the Lessee capable of being applied by the Lessor in reduction of any money owing to the Lessor will be taken and applied by the Lessor as payment in gross without any right of the Guarantor to claim any benefit from any moneys so received by the Lessor;
 - (e) upon liquidation or bankruptcy of the Guarantor the Lessor will be entitled to prove for the total indebtedness of the Lessee under this Lease for the Term notwithstanding that the Rent or other moneys payable by the Lessee to the Lessor under this Lease are not due and payable at the date of the liquidation or bankruptcy of the Guarantor;
 - (f) the indemnity given in this clause by the Guarantor will be a principal obligation and may be enforced against the Guarantor without any responsibility on the part of the Lessor to proceed against the Lessee or any other person;
 - (g) upon liquidation or bankruptcy of the Lessee the Guarantor will not prove in competition with the Lessor and the Guarantor authorises the Lessor to provide for all moneys which the Guarantor has paid under this Lease and retain or to appropriate at the discretion of the Lessor any amount received by the Lessor;
 - (h) to give effect to this Lease the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee;
 - (i) the liabilities of the Guarantor created by this clause shall not be affected by reason of any security taken by the Lessor being or becoming void or defective;
 - (j) in the event of any part of this Lease being severed in accordance with the provisions in that behalf contained or implied in this Lease then the Guarantor will not be entitled to rely on or claim the benefit of any severance; and

- (k) this Personal Guarantee will remain in force and continue notwithstanding any extension, renewal or assignment of this Lease, and will continue during any period of holding over by the Lessee (whether or not with the Lessor's consent).

17.3 Obligations Effective in All Circumstances.

The obligations (expressed or implied) of the Guarantor in this Lease shall apply to and be fully effective in respect of the Lessee's Obligations whether or not:

- (a) the whole or any part of the Lessee's Obligations are enforceable at law or in equity or otherwise pursuant to any express or implied lease, tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Lessor under this Lease or under or pursuant to any antecedent agreement or otherwise enjoyed by the Lessee at law or in equity;
- (b) the Lease is in a form such as to be capable of being registered in the manner referred to in the *Transfer of Land Act 1893* (WA); or
- (c) it is the intention (expressed or implied) of either or both of the Lessor and the Lessee that the Lease be registered in the manner referred to in the *Transfer of Land Act 1893* (WA).

18. Quiet Enjoyment

Except as provided in the Lease, subject to the performance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

19. Lessor's Right of Entry

19.1 Entry on reasonable notice

- (1) The Lessee must permit entry by the Lessor or any of the Lessor's Agents onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:
 - (a) at all reasonable times:
 - (i) with or without workers and others; and
 - (ii) with or without plant, equipment, machinery and materials;
 - (b) for each of the following purposes:
 - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) planting, removing, maintaining or otherwise dealing with any tree, shrub, plant or grassed area in accordance with the Lessor's usual maintenance standards;
 - (iii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iv) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and

- (v) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.
- (2) The Lessor must make good to the Lessee's satisfaction any damage caused to the Premises as a result of the Lessor exercising the Lessor's powers to enter the Premises for any reason.

19.2 Costs of rectifying breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 19.1(1)(b)(v)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

20. Obligations on Termination of Lease

20.1 Peacefully surrender

On the expiration of the Term or within one (1) month after the earlier determination of this Lease, the Lessee must:

- (a) surrender peaceably and yield up the Premises to the Lessor:

- (i) clean;
 - (ii) free from rubbish, debris and other material;
 - (iii) in a state of repair and condition,

consistent with the performance by the Lessee of the Lessee's Obligations, fair wear and tear excluded, under this Lease and give to the Lessor all keys and security devices and combinations for locks providing access to or within the Premises held by the Lessee whether or not provided by the Lessor;

- (b) remove all:

- (i) all crops/vegetation planted on the Premises by the Lessee and all weeds;
 - (ii) improvements, buildings and fixtures constructed or located on the Premises which are not the property of the Lessor; and
 - (iii) property of the Lessee including the Lessee's signs, fittings and fixtures, equipment and other articles upon the Premises or brought upon the Premises by the Lessee,

and promptly make good to the reasonable satisfaction of the Lessor any damage caused by the removal in **clause 20.1(b)** and restore the Premises to a condition consistent with the condition of the Premises prior to the planting of such crops/vegetation and/or the erection of any such improvements, the buildings and fixtures at the Lessee's cost.

20.2 Failure to remove or restore

If the Lessee fails to comply with **clause 20.1**, the Lessor may at its option:

- (a) remove and dispose of all crops/vegetation, weeds, structures, building, fixtures and property and recover the cost of doing so from the Lessee as a liquidated debt payable on demand; and

- (b) restore the Premises and surrounding area to a condition consistent with the condition of the land prior to the planting of such crops/vegetation and/or the erection of such improvements, the buildings and fixtures at the Lessee's cost and recover the cost of doing so from the Lessee as a liquidated debt payable on demand.

20.3 Obligations to continue

The Lessee's obligations under this **clause 20** will continue, notwithstanding the end or Termination of this Lease.

21. Default

21.1 Events of default

A default occurs if:

- (a) any Amounts Payable remain unpaid for seven (7) days after becoming due and written notice has been given to the Lessee to pay such Amounts Payable;
- (b) the Lessee is in breach of any of the Lessee's Covenants other than the covenant to pay the Amounts Payable for fourteen (14) days after written notice has been given to the Lessee to rectify the breach;
- (c) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
- (d) a controller, as defined by the *Corporations Act 2001* (Cth), is appointed in respect of the Lessee's interest in the Premises under this Lease;
- (e) a mortgagee takes possession of the Lessee's interest in the Premises under this Lease;
- (f) the Premises is vacated or otherwise not used, in the Lessor's reasonable opinion, for the Permitted Purpose for a six (6) month period;
- (g) the registration of the Lessee is cancelled or dissolved under the *Corporations Act 2001* (Cth);
- (h) the Lessee suffers an Insolvency Event; or
- (i) a person other than the Lessee or a permitted sublessee, licensee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

21.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 21.1** the Lessor may:

- (a) by reasonable prior notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (b) by reasonable prior notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 23**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

21.3 Lessor may remedy Lessee's default

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

21.4 Acceptance of Amount Payable by Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

21.5 Essential terms

Each of the Lessee's Covenants in **clauses 2** (Rent and Other Payments), **4** (Goods and Services Tax), **5** (Insurance), **6** (Indemnity), **7** (Maintenance and Repair), **8** (Use), and **14** (Assignment, Subletting and Charging) is an essential term of this Lease but this **clause 21.5** does not mean or imply that there are no other essential terms in this Lease.

21.6 Breach of essential terms

- (1) If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:
 - (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
 - (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
 - (c) the Lessee agrees with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises.

- (2) The Lessee agrees that the obligation set out in this **clause 21.6(1)(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease.

- (3) The Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

22. Repudiation by Lessee

22.1 Compensation

In the event that the Lessee's conduct (whether by acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's Covenants under the Lease) or constitutes a breach of any Lease covenants, it is agreed that:

- (a) the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach; and
- (b) the Lessor shall be entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term of this Lease.

22.2 Entitlement to recover damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

- (a) the Lessee abandons or vacates the Premises;
- (b) the Lessor elects to re-enter or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or
- (d) the Lessee's conduct constitutes a surrender of lease by operation of law.

22.3 Legal proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term of the Lease, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in **clause 22.2**, whether the proceedings are instituted either before or after such conduct.

22.4 Lessor to mitigate losses

Notwithstanding any other provision of this Lease, the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

23. Holding Over

23.1 General

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding the expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

- (2) The Lessee shall not be entitled to hold over for more than twelve (12) months after the expiry of the Term.
- (3) In the event that the Lessee is permitted to hold over the land pursuant to paragraph (1) above, the Parties acknowledge and agree that:
 - (a) the Rent will continue to be reviewed in accordance with **clause 3**;
 - (b) the Lessee is obliged during any holding over period to pay any other outgoings payable by the Lessee under this Lease as if the holding over period was included in the Term;
 - (c) any rental amounts paid under the holding over provision of this Lease must be paid monthly in advance; and
 - (d) either the Lessee or Lessor may give notice to the other, at any time, to terminate the monthly tenancy and termination will take effect one month after the date of service of that notice.
- (4) If the Lessee is granted a new lease of the Premises following the expiration of the Term of this Lease, the Parties acknowledge and agree that the Lessee will as a condition of the grant of the new lease be required to pay the new rental amount payable under the new lease from the date of expiration of this Lease, and in that regard the Lessee must pay to the Lessor any difference or shortfall between the rental amounts paid under the holding over provision of this Lease and the new rental amount payable under the new lease, at the time of executing the new lease.

24. Dispute Resolution

- (1) Until the parties have complied with this clause, a party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.
- (2) Where any Dispute arises, a party may give notice in writing of the Dispute to the other party's representative setting out the material particulars of the Dispute. The representatives must act in good faith to try to resolve the Dispute quickly.
- (3) If the Dispute has not been resolved within fourteen (14) days of the Dispute Notice (or any longer period the Representatives agree), each party must refer the Dispute to its Dispute Resolution Representative who must act in good faith to try to resolve the Dispute quickly.
- (4) If the parties have not:
 - (a) resolved the Dispute; or
 - (b) agreed to an alternative method of resolving the Dispute,within fourteen (14) days after the Dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either party may submit the Dispute to mediation.
- (5) If the Dispute is submitted to mediation and the parties do not, within fourteen (14) days (or any longer period the parties agree) after the Dispute is submitted to mediation, agree on:
 - (a) a mediator and the mediator's compensation;
 - (b) the procedure for the mediation; or
 - (c) the timetable of each step of the procedure,

the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.

- (6) If a Dispute is not resolved within thirty (30) days after the Dispute Notice or, where a Party has submitted the dispute to mediation, sixty (60) days after the Dispute Notice (or any longer period the parties agree), either party who has complied with this clause may end this dispute resolution process and commence court proceedings in relation to the Dispute.

25. Additional Terms, Covenants and Conditions

Each of the terms, covenants and conditions specified in **Item 10** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

26. General Provisions

26.1 Notice

(1) Form of Delivery

A Notice to a person must be in writing and may be given or made:

- (a) by a delivery to the person personally; or
- (b) by addressing it to the person and leaving it at or posting it by prepaid post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

(2) Service of Notice

A Notice to a person is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 26.1(1)**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 26.1(1)**, on the third Business Day following the date of posting of the Notice.

(3) Signing of Notice

A Notice to a person may be signed:

- (a) if given by an individual by the person giving the Notice;
- (b) if given by a corporation by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

26.2 Planning and Development Act

- (1) If for any reason whatsoever this Lease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005* (WA), then this

Lease is made expressly subject to and conditional on the granting of that consent in accordance with the provisions of the *Planning and Development Act 2005* (WA).

- (2) If any form of consent is required under this Lease from the Lessor to the Lessee other than the consent described in paragraph (1) above, the consent will not be unreasonably withheld, delayed or conditioned.

26.3 Amendments to Lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the Parties in writing.

26.4 Waiver

- (1) No General Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

- (2) Partial Exercise of Right Power or Privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

26.5 Acts by Agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, or the Lessor's Agents.

26.6 Statutory Powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

26.7 Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

26.8 Severance

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

26.9 Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

26.10 Governing Law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

27. Definitions & Interpretation

27.1 Definitions

In this Lease, unless otherwise required by the context or subject matter:

Alterations means any of the acts referred to in **clauses 10.1(a)** and **10.1(b)**;

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorised Person means:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Premises by the authority of a person specified in paragraph (a) above;

Authority means every governmental or semi-governmental body, municipal council and any other board, person, or authority now or in the future exercising under any Act any control or jurisdiction over or power in connection with the Premises or with any business at any time conducted on or from the Premises and **Authorities** shall have a corresponding meaning;

Business Day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia;

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

Dangerous Substances means any substance in or about the Premises which poses a health and/or safety risk to the Lessee, the Lessee's Agents, the Lessor, any Authorised Person or any other person or persons attending the Premises;

Dispute Notice means a written notice served under **clause 24**;

Dispute Resolution Representative means the Lessee's Dispute Resolution Representative or the Lessor's CEO and a reference to Dispute Resolution Representatives is a reference to both of them;

DWER means the Department of Water and Environmental Regulation;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title(s) for the Premises;

Environmental Contamination has the same meaning as the word "contaminated" in the *Contaminated Sites Act 2003* (WA);

Environmental Law means all planning, environmental, health, toxic and hazardous substances, waste, disposal or pollution laws, orders, notices, ordinances or requirements and all licences, approvals, consents, permissions or permits issued under such laws;

EPA means the Environmental Protection Authority of Western Australia;

Further Term means the further term(s) specified in **Item 3** of the Schedule;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Hazardous Materials means any asbestos, material, substance, gas, liquid, chemical, biological, minerals or other physical matter which would if present on, over or in the Land and/or the Premises result in any relevant Authority issuing any notice or direction or order requiring any clean-up, decontamination, removal, remedial action or making good under any Environmental Law or which would constitute a violation or contravention of any Environmental Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act.

an **Insolvency Event** occurs in respect of a person when that person:

- (a) informs its creditors generally that it is insolvent;
- (b) has a meeting of its creditors called with a view to entering a scheme of arrangement or executing a deed of company arrangement;
- (c) enters a scheme of arrangement except for reconstruction whilst solvent;
- (d) executes a deed of company arrangement with creditors;
- (e) has a controller or liquidator (as those terms are defined in the *Corporations Act 2001* (Cth)) of its property or part of its property appointed;
- (f) is the subject of an application to a court for its winding up, which application is not stayed within ten (10) Business Days;
- (g) has a winding up order made in respect of it;
- (h) has an administrator appointed under section 436A, 436B or 436C of the *Corporations Act 2001* (Cth);
- (i) enters into voluntary liquidation; or
- (j) fails to comply with, or apply to have set aside, a statutory demand within fourteen (14) days of the time for compliance and:
 - (i) if the corporation applies to have the statutory demand set aside within fourteen (14) days of the time for compliance, the application to set aside the statutory demand is unsuccessful; and
 - (ii) the corporation fails to comply with the statutory demand within seven (7) days of the order of the court dismissing the application;

Interest Rate means the rate at the time the payment falls due being the interest rate adopted by the Lessor or money owing to the local government each year for its annual budget. The Lessee acknowledges that for the 2019-2020 financial year the Interest Rate is 11%;

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

Lease means this lease and any equitable or common law tenancy evidenced by document as supplemented, amended or varied from time to time;

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessee's Dispute Resolution Representative means the person nominated by the Lessee from time to time to be the Lessee's dispute resolution representative;

Lessor's Agents means the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law, to be performed and observed by the Lessor;

Local Government Act means the *Local Government Act 1995* (WA);

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 6** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Rent Review Date means a date identified in **Item 8** of the Schedule;

Reservations means the right of the Lessor to install, maintain, use, repair, alter and replace, pipes, ducts, conduits and wires leading through the Premises and to run gas, water, heat, oil, electricity and other power, telephone lines and air conditioning through such pipes and ducts and conduits and wires, and to enter and remain on the Premises with or without workmen, contractors, employees and materials, plant and equipment for such purposes;

Schedule means the Schedule to this Lease;

Services means all services or systems of any nature from time to time provided or available for use to the Premises including, but not limited to:

- (a) electricity or power, lighting, gas, fuel, power, water, sewerage, drainage, fire services, sprinkler systems or devices, lifts and air conditioning; and
- (b) fittings, fixtures, appliances, plant and equipment utilised for any of the services specified in paragraph (a);

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 2** of the Schedule;

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over;

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority; and

WAPC means the Western Australian Planning Commission.

27.2 Interpretation

In this Lease, unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include each gender;
- (b) a reference to:
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;

- (j) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them;
- (l) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done; and
- (m) except in the Schedule headings do not affect the interpretation of this Lease; and
- (n) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

Schedule

Item 1 Land and Premises

(a) Land

[insert description of Land and Certificate of Title details]

(b) Premises

[The whole of the Land].

OR

[Subject to a formal survey being completed by the Lessor prior to the Commencement Date, that portion of the Land as shown depicted on the plan annexed at **Annexure 1** and comprising an area of approximately [insert area]m² or thereabouts.]

Item 2 Term

[X] years, commencing on the Commencement Date.

Item 3 Further Terms

[To be advised]

Item 4 Commencement Date

[To be advised]

Item 5 Rent

Base Rent

[\$[Insert amount] per annum plus GST and outgoings, payable [annually/quarterly/monthly] in advance by equal consecutive [quarterly/monthly] instalments.

Item 6 Permitted Purpose

Cultivating agricultural crops and associated works.

Item 7 Public Liability Insurance

Twenty million dollars (\$20,000,000.00).

Item 8 Rent Review Date

(a) CPI & Fixed Increase Review

CPI reviews are to be undertaken upon each anniversary of the Commencement Date for each year of the Term (including any Further Terms and any period of holding over, if applicable), other than the dates for market review specified in subclause (b) below.

(b) Market Review

Market reviews are to be undertaken every five (5) years during the Term (including any Further Terms and any period of holding over, if applicable) on the anniversary of the Commencement Date.

Item 9 Bank Guarantee

[To be advised, if no security to be provided insert '*Not Applicable.*']

Item 10 Additional terms and conditions

[10.1 Lessor's right to terminate]

(1) *Notwithstanding any other provision of this Lease, the Parties agree that the Lessor may terminate this Lease for any reason upon twelve (12) months' written notice to the Lessee.*

(2) *If this Lease is terminated in accordance with this clause, **clause 20** will apply.*

Signing page

EXECUTED by the Parties as a deed

2020

THE COMMON SEAL of the **SHIRE OF RAVENSTHORPE** was hereunto affixed in the presence of:

Name of Shire President (print)

Signature of S (print)

Name of Chief Executive Officer (print)

Signature of Chief Executive Officer

[Insert Lessee's signing clause]

Executed by the guarantor, [insert name], in the presence of:

Signature of [insert name]

Witness Sign

Name of Witness

Address

Occupation

Annexure 1 – Plan of Premises

[To be provided]