

**MEMORANDUM OF LEASE**Guidance Notes  
available**CERTIFICATE(S) OF TITLE BEING LEASED**

Portions of the land comprised in Certificate of Title Volume 5091 Folio 217 being those portions identified as Tenancy A, Toilets C, Kitchen B and Tenancy D in FX 250349.

**ESTATE AND INTEREST**

Estate in Fee Simple

**ENCUMBRANCES**

Subject to Mortgage No. 12215088

**LESSOR**

**FULLARTON INVESTMENTS PTY LTD** ACN 167 249 194  
of 77 Fullarton Road, Kent Town SA 5067

**LESSEE****COMMONWEALTH OF AUSTRALIA**

of c/- Five D (A JLL Company), Level 22, 25 Grenfell Street, Adelaide SA 5001

**TERM OF LEASE**COMMENCING ON THE 1<sup>st</sup> day of July 2015EXPIRING AT MIDNIGHT ON THE 30<sup>th</sup> day of June 2020

WITH ONE (1) RIGHT OF RENEWAL OF SIX (6) YEARS – See Clause 5

**RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)**

**SIXTY SIX THOUSAND FIVE HUNDRED AND FORTY DOLLARS (\$66,540.00)** plus GST per annum in accordance with Item 10 of the Schedule to the Lease and subject to review in accordance with the provisions of this Lease. The annual rent must be paid by equal consecutive calendar monthly instalments equivalent to one twelfth of the annual rent always in advance the first such instalment to be paid on the Commencement Date (being a proportionate payment if appropriate) and then on the first day of each and every succeeding month.

**OPERATIVE CLAUSE**

The Lessor LEASES TO THE LESSEE the land (a) ABOVE/~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed \*herein in ~~Memorandum No.~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

\*Delete the inapplicable

**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

N/A

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

LEASE

**Fullarton Investments Pty Ltd**  
ACN 167 249 194

and

**Commonwealth of Australia** (represented by the Ministerial and Parliamentary Services Division, Corporate and Parliamentary Services Group of the Department of Finance)



**Commonwealth of Australia**  
Ministerial and Parliamentary Services  
Division  
Corporate and Parliamentary Services  
Group  
Department of Finance

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## LEASE

### Date

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This Lease is dated ..... day of ..... 2015

### Parties

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This Lease is made between and binds the following parties:

Fullarton Investments Pty Ltd ACN 167 249 194 (**Landlord**); and

Commonwealth of Australia represented by the Ministerial and Parliamentary Services Division, Corporate and Parliamentary Services Group of the Department of Finance (**Tenant**)

## SECTION 1 INTERPRETATION AND GENERAL PROVISIONS

### 1. Interpretation

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#### 1.1. Definitions

1.1.1. In this Lease unless the contrary intention appears:

<b>Asbestos</b>	means the fibrous form of the mineral silicates belonging to the serpentine and amphibole groups of rock forming minerals, including actinolite, amosite (brown asbestos), crocidolite (blue asbestos), chrysolite (white asbestos), tremolite, or any mixture containing one or more of these minerals.
<b>Australian Standards</b>	means any current standard published by Standards Australia International Limited trading as Standards Australia.
<b>Authority</b>	means the Commonwealth, the State or Territory of the Jurisdiction, or any federal, state or local government administrative body, government body, department or agency or anybody exercising regulatory powers or other powers under Laws in respect of the Land and/or the Building, Services, heritage, environment, or other activities, uses or transactions contemplated by this Lease and where the context requires means an Authority which has jurisdiction or powers in the context of the relevant clause of this Lease.
<b>Building</b>	means the building (and all improvements to the

Building) located on the Land.

<b>Car Parking Bays</b>	means the number of car parking bays identified in Item 5 and hatched on the plan in Schedule 4.
<b>Claim</b>	means an action, claim, proceeding, expense, demand or damages.
<b>Commencement Date</b>	means the date specified in Item 6.
<b>Common Areas</b>	means those areas of the Land and Building provided for common use by the Tenant and other occupants of the Building or members of the public including but not limited to walkways, pavements, docks, driveways, access and egress roads, the entrances, lobbies, corridors, passages, stairways, lifts, escalators, toilets, tearooms and washrooms in the Building.
<b>Expert</b>	means a person appointed in accordance with clause 38
<b>Expiry Date</b>	means the date specified in Item 8.
<b>Fittings</b>	includes fixtures, partitions and equipment.
<b>Gilles Street Lease</b>	means Memorandum of Lease Registration Number 11689310 over a portion of the property located at 19 Gilles Street, Adelaide (being Lot 203 in Tertiary Community Strata Plan 26142 being portion of the land comprised in Certificate of Title Volume 6067 Folio 527 marked "Office A" in FP No. 56045) from Adabco Pty Ltd to Commonwealth of Australia dated 11 August 2011.
<b>GLS</b>	means the Green Lease Schedule at Schedule 7.
<b>GST</b>	means the same as in the GST law.
<b>GST law</b>	means the same as GST law means in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Hazardous Disease</b>	includes any disease, bacteria, virus or foreign matter which may create a risk to the health or safety of the Tenant.
<b>Hazardous Substance</b>	Includes any organic or inorganic substance whether a solid, liquid or gas (or combination thereof) which may create a risk to the health or safety of the Tenant.

<b>Institute</b>	means the Australian Property Institute incorporated in the Jurisdiction or if that body no longer exists then its successors or equivalent body.
<b>Item</b>	means an item in Schedule 1.
<b>Jurisdiction</b>	means the State or Territory in which the Land is located.
<b>Land</b>	means the land described in Item 3.
<b>Landlord</b>	means the Party named in Item 1.
<b>Landlord's Representative</b>	means the person nominated in Item 21 or such other person notified by the Landlord to the Tenant from time to time in accordance with this Lease.
<b>Law</b>	means the common law, a statute, regulation, rule, by law, ordinance, proclamation, enactment, statutory instrument or delegated or subordinated legislation (whether federal, state, municipal or of any Authority) and any notices or Requirements issued under Laws.
<b>Lease</b>	means this lease and the Schedules.
<b>Month</b>	means calendar month.
<b>Monthly</b>	means calendar monthly.
<b>net lettable area of the Building</b>	means the area (if any) specified as the net lettable area of the Building in Item 11.
<b>net lettable area of the Premises</b>	means the area (if any) specified as the net lettable area of the Premises in Item 11.
<b>Normal Business Hours</b>	means the hours specified in Item 25.
<b>Notice</b>	includes a consent, request or demand.
<b>Option Term</b>	means any period specified in Item 18.
<b>Party</b>	means a party to this Lease and where the context permits includes a party's officers, employees, agents and contractors.
<b>Permitted Use</b>	means the permitted use specified in Item 9.
<b>Premises</b>	means the premises described in Item 4 and identified on the plan or plans in Schedule 3 extending from the interior face of all walls, doors and windows and extending from the surface of the floor to the underside of the false ceiling.
<b>Relocation Expenses</b>	means the Tenant's costs of: <ul style="list-style-type: none"> <li>a. vacating the Premises during the Term;</li> </ul>

- b. obtaining alternative accommodation excluding rent except to the extent that rent for the alternative accommodation exceeds Rent under this Lease;
- c. the installation and establishment of the Tenant in alternative accommodation including the costs of a standard office fitout (subject to the standard and extent of fitout being reasonable given the expected duration of the relocation) after deduction of any amount received by the Tenant from any party towards the costs of the fitout or as an incentive to lease; and
- d. if applicable, the return and re-establishment of the Tenant in the Premises when it is again fit for the Tenant to occupy and use.

<b>Rent</b>	means the amounts specified in Item 10 as varied from time to time under this Lease.
<b>Rent Commencement Date</b>	means the date specified in Item 11, and in accordance with clause 36.1.
<b>Requirement</b>	means any requirement, notice, order, permit, approval or direction received from or given by a competent Authority.
<b>Rules</b>	means the rules specified in Schedule 2.
<b>Schedule</b>	means a schedule of this Lease.
<b>Services</b>	means all utilities and services on or in the Land or the Building including water, gas, electricity, lighting, drains, sanitary, hot water, air-conditioning and ventilation systems, security systems, communication and telecommunication systems, fire safety systems, aerials and lifts installed in the Building and serving the Premises and includes all wires, cables, pipes, ducts, conduits, tanks, cisterns, electrical and mechanical plant and all other ancillary or associated parts and accessories.
<b>Structure</b>	in relation to the Building includes, but is not limited to, all walls (whether load-bearing or not), floors, doors, windows, gutters, downpipes, facades, foundations, ceilings and roofs and 'structural' has a corresponding meaning.
<b>Surrender Date</b>	means that date specified as such by the Tenant in

	the Surrender Notice.
<b>Surrender Notice</b>	means a notice from the Tenant to the Landlord under clause 8.1.1 stating that that the Tenant intends to surrender the Premises on the Surrender Date.
<b>Tenant</b>	means the Party named in Item 2.
<b>Tenant's Alterations</b>	means any alteration to the Premises, installation of any Fitting or any building work on or in the Premises undertaken by or for the Tenant.
<b>Tenant's Representative</b>	means the person performing the duties and functions of the position specified in Item 20 or if that position is abolished or the function of that position is transferred to another position, the person for the time being performing the equivalent duties and functions in the organisation administering this Lease on behalf of the Tenant.
<b>Term</b>	means the period specified in Item 7 and where the context permits any extension or renewal.
<b>Umpire</b>	means a person appointed by the President or senior official of the Institute pursuant to Schedule 5 and who must have the same qualifications required of a Valuer.
<b>Valuer</b>	means a member of the Division of the Institute in the Jurisdiction with not less than 5 years' experience as a valuer.
<b>Working Day</b>	means each day except Saturdays, Sundays and public holidays in the Jurisdiction.

## 1.2. Interpretation

- 1.2.1. The singular includes the plural and vice versa.
- 1.2.2. Words importing the masculine gender include the feminine and neuter.
- 1.2.3. Reference to a person includes a corporation or government body and the legal representatives, successors and assigns of that person.
- 1.2.4. Reference to a right includes a remedy, authority or power.
- 1.2.5. Reference to Laws or Requirements include amendments to or replacement of a Law or Requirement from time to time.

- 1.2.6. Headings are for convenience only and do not form part of this Lease or affect its interpretation.
- 1.2.7. The Schedules are incorporated into and form part of this Lease.
- 1.2.8. A reference to an Item is a reference to that item in Schedule 1.
- 1.2.9. If two or more people are named as Tenant or Landlord, this Lease binds them jointly and individually.
- 1.2.10. As far as possible all provisions must be construed so as not to be invalid, illegal or unenforceable.
- 1.2.11. If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- 1.2.12. If a provision cannot be read down, that provision will be void and severable and the rest of the Lease remains in force.
- 1.2.13. Words of inclusion are not words of limitation.
- 1.2.14. No rule of construction will apply to disadvantage a Party on the basis that it put forward this Lease.
- 1.2.15. Reference to a thing is a reference to all or part of that thing.
- 1.2.16. Unless the context requires or is otherwise stated in this Lease a Party's obligations must:
- a. be performed at its cost; and
  - b. be performed throughout the Term and any holding over of this Lease.
- 1.2.17. A Party which is a trustee is bound both personally and in its capacity as a trustee.
- 1.2.18. To the extent appropriate in the circumstances where this Lease requires a Party to do or refrain from doing something the Party must arrange for its officers, employees, agents and contractors to do or refrain from doing the relevant thing.
- 1.2.19. Where this Lease refers to a government department, agency, body or Authority or to any person holding a specified position in a government department, agency, body or Authority and that department, agency, body, Authority or position is changed or abolished then that reference will be deemed to be a reference to the department, agency, body, Authority or position performing the equivalent function from time to time.
- 1.3. Consents and approvals**
- 1.3.1. Unless this Lease states otherwise, if a Party's consent or approval is required:

- a. the requested Party must consider and respond to the request promptly;
- b. the consent or approval must not be unreasonably withheld;
- c. the requested Party may require the requesting Party to comply with reasonable conditions before giving its consent (but the requested Party will not make payment of its costs a condition of its consent); and
- d. the consent or approval is not effective unless in writing.

**1.4. Time for doing things**

- 1.4.1. If a payment is due or a thing is to be done on other than a Working Day that payment must be made or the thing done on the next Working Day.

**1.5. Time for Compliance**

- 1.5.1. Any Notice given by the Landlord in accordance with this Lease requiring the Tenant to pay any moneys or perform any act must allow a minimum period of 20 Working Days (unless a longer period is expressly provided) for compliance.

- 1.5.2. The Tenant is under no obligation to pay any amount, except for Rent, which the Tenant becomes liable to pay under this Lease until 20 Working Days after the Landlord has furnished the Tenant with reasonable particulars of the amounts claimed by the Landlord and reasonable proof of payment of those amounts by the Landlord.

**1.6. Landlord must not sell or act as attorney**

- 1.6.1. Any provision expressed or implied in this Lease enabling the Landlord to sell any property of the Tenant or to sign documents or otherwise act as attorney for the Tenant has no effect.

**1.7. No interest payable**

- 1.7.1. Any provision expressed or implied in this Lease obliging the Tenant to pay interest on any moneys, including Rent, has no effect.

**1.8. Measurement**

- 1.8.1. If the area of the Premises or the Building has to be ascertained for any reason, it will be measured in accordance with the method of measurement for the measurement of the net lettable area set out in Section 3 of the Property Council of Australia Method of Measurement for Lettable Area of March 1997.

**1.9. GST**

1.9.1. Unless otherwise indicated, all consideration for any supply made under this Lease is exclusive of any GST imposed on the supply.

1.9.2. If one party (Supplier) makes a taxable supply to the other party (Recipient) under this Lease, the Recipient on receipt of a tax invoice from the Supplier must pay without set off an additional amount to the Supplier equal to the GST imposed on the supply in question.

1.9.3. No party may claim from or retain any amount from the other party under this Lease for which the first party can obtain or has obtained an input tax credit.

**1.10. Applicable law**

1.10.1. The law applying in the Jurisdiction applies to the construction of this Lease but nothing in this lease is to be construed as binding the Tenant to comply with Laws or Requirements which do not apply to it of their own force.

**1.11. Entire Agreement**

1.11.1. "The Parties agree that this Lease constitutes the entire agreement between them".

**SECTION 2 GRANT OF LEASE AND OTHER TENANT'S RIGHTS**

**2. Grant of Lease**

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**2.1. Lease of the Premises**

2.1.1. The Landlord leases the Premises to the Tenant for the Term in accordance with the terms of this Lease.

**2.2. The Landlord's reserved rights**

2.2.1. The Landlord may pass the Services through the Premises with the consent of the Tenant but in doing so there must be no interference with the Tenant's occupation and use of the Premises.

**3. Quiet Enjoyment**

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**3.1. Quiet Enjoyment**

3.1.1. The Tenant is entitled to quiet enjoyment of the Premises. The Tenant may occupy and use the Premises free from interruption or interference by the Landlord or anyone who claims through the Landlord.

3.1.2. If the Landlord breaches clause 3.1.1:



- a. the Landlord must use its best endeavours to bring the interruption or disturbance to an end as quickly as possible; and
  - b. if the breach results in the Premises being wholly or partially unfit for the occupation, use or enjoyment of the Tenant then the Rent and all other money payable by the Tenant under this Lease will be suspended and cease to be payable in accordance with clause 27.
- 3.1.3. The Landlord must not derogate from the grant of this Lease despite any other provision of this Lease.

#### **4. Access and Use**

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##### **4.1. Unrestricted Access and Use**

- 4.1.1. The Tenant is entitled to
- a. unrestricted access to the Premises and the Common Areas; and
  - b. unrestricted access to and exclusive use of the toilets, tea rooms, lift lobbies and external balconies on those floors of the Building which contain the Premises and on which the Tenant is the sole occupant.

#### **5. Permitted Use**

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##### **5.1. Permitted Use**

- 5.1.1. The Tenant is entitled to use the Premises for the Permitted Use and any use reasonably incidental to the Permitted Use.

#### **6. Option to Renew**

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##### **6.1. Option to Renew Lease**

- 6.1.1. If:
- a. an Option Term is set out in Item 18;
  - b. the Tenant wishes to lease the Premises for that Option Term commencing upon the expiration of the Term granted by this Lease;
  - c. the Tenant gives notice to the Landlord of that wish prior to the expiration of the Term at least three (3) months prior to the Expiry Date; and
  - d. any breach or default under this Lease by the Tenant prior to that notice which has been notified to the Tenant by the Landlord has been either waived or rectified or, in the case of a negative covenant, has been discontinued,

then the Landlord must grant to the Tenant a new lease of the Premises for the Option Term:

- e. at an initial Rent which is agreed between the Parties or, failing agreement within 3 months after the commencement of the new lease, determined in accordance with the procedure set out in Schedule 5; and
- f. otherwise, on the same terms contained in this Lease except that
  - i. this clause 6 will be omitted unless Item 18 refers to an Option Term after that for which the new lease is being granted;
  - ii. the Review Dates in the Option Term will be those set out in Item 19; and
  - iii. the Items in Schedule 1 will be amended as appropriate.

## **7. Overholding**

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### **7.1. Overholding under Lease**

- 7.1.1. If the Tenant continues to occupy the Premises after the expiration of the Term without the Landlord demanding possession then the Tenant is deemed to hold the Premises under a monthly tenancy which:
  - a. can be terminated at any time upon no less than 1 months' notice (which notice may expire at any time) given by either Party to the other;
  - b. is at the same Rent, and on the same terms as are contained in this Lease so far as they can be applied to a monthly tenancy.

## **8. Federal Electorate Requirements**

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### **8.1. Termination Arrangements**

- 8.1.1. If
  - a. the person holding at any time during the Term the position of Member of the Senate for the Federal electorate in which the Premises are located ceases to represent that electorate;
  - b. by reason of re-drawing of electoral boundaries the Premises cease to be located in that electorate; or
  - c. there is a Ministerial or departmental decision that the Premises are no longer required as an electorate office

the Tenant may give the Landlord a Surrender Notice stating that it intends to surrender the Premises on the Surrender Date.

- 8.1.2. The Surrender Notice will be given by the Tenant to the Landlord not less than 1 month before the Surrender Date.
- 8.1.3. On and from the Surrender Date:
- a. the Premises will be deemed to be surrendered;
  - b. the Premises will no longer be subject to this Lease; and
  - c. the Tenant will be released from all its obligations under this Lease relating to the Premises (except that the Tenant will comply with its obligations under clause 13.1.1.b and any obligation under clause 18.1.1).
- 8.1.4. The surrender will be without prejudice to any rights and remedies which a Party may have against the other Party relating to the Premises and which accrued before the Surrender Date.
- 8.1.5. The Parties will make all necessary adjustments to the Rent and other payments due under this Lease to reflect the surrender of the Premises. Any adjustments not agreed by the Surrender Date may be referred for determination under clause 38.
- 8.1.6. No compensation or surrender fee is payable by the Tenant if it exercises its rights under this clause.
- 8.1.7. Production of this clause and the Surrender Notice will be evidence of a valid surrender but, if either Party requires, a deed of surrender in reasonable terms will be prepared to further record the surrender. The deed of surrender:
- a. will be consistent with this clause; and
  - b. will be prepared at its own cost by the Party requesting it and each Party will bear its own legal costs in relation to its completion and any incidental tasks.

### **SECTION 3 TENANT'S OBLIGATIONS**

#### **9. Tenant's Financial Obligations**

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##### **9.1. Rent**

- 9.1.1. The Tenant must pay the Rent by equal monthly instalments in advance on the first day of each month.

##### **9.2. Rent Commencement Date**

- 9.2.1. The Tenant must pay the first instalment of Rent on the Rent Commencement Date.

**9.3. Apportionment**

9.3.1. If the Lease commences on a day which is not the first day of a month or ends on a day which is not the last day of a month the Tenant will pay the first and last instalments of Rent apportioned on a daily basis.

**9.4. Manner of Payment**

9.4.1. The Tenant must pay all instalments of Rent to the person and the place notified by the Landlord in Item 10 or as otherwise contained in a Notice from the Landlord to the Tenant from time to time.

9.4.2. Despite any other provisions of the Lease the Landlord is not entitled to require payments from the Tenant to be affected by direct debit but the Tenant may consider payment by electronic funds transfer.

**10. Rent review**

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**10.1. Fixed Increase in Rent**

10.1.1. In this Lease **Review Date** means a date specified in Item 13.

10.1.2. On each Review Date the Rent will increase by the per centum specified in Item 14 and will be payable from the relevant Review Date.

**10.2. Rent Review based on CPI Movement**

10.2.1. In this Lease:

- a. **Review Date** means a date specified in Item 13; and
- b. **CPI** means the Consumer Price Index (All Groups) for the city specified in Item 15 (or if no city is specified, then for the capital of the Jurisdiction) kept by the Australian Statistician and published by the Australian Bureau of Statistics ('the Index') and in the event of the Index being discontinued or abolished then such price index as the Australian Statistician substitutes for it.

10.2.2. The Rent payable from the relevant Review Date will be the Rent calculated in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A is the Rent payable on and from the Review Date;
- B is the Rent payable immediately before the Review Date;
- C is the CPI current at the relevant Review Date; and

- D is the CPI current at the last Review Date (which for the first Review Date is the Commencement Date).
- 10.2.3. The Rent fixed under this clause is payable from the relevant Review Date.
- 10.2.4. Until the Landlord notifies the Tenant of a change in Rent, the Tenant will pay the Rent which applies immediately prior to the Review Date.
- 10.2.5. If the Rent changes by the operation of clause 10.2.2, the Parties must make any necessary adjustment by payment or repayment within 20 Working Days after the Landlord gives the Tenant notice under clause 10.2.4.
- 10.2.6. Notwithstanding any other provision of this Lease, if the Landlord fails to give the Tenant notice under clause 10.2.4 within six (6) months from the relevant Review Date there will be no change of Rent and the Tenant will pay the Rent which applies immediately prior to the Review Date.

## **11. Electricity, gas and water**

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### **11.1. Tenant pays for consumption and use on Premises**

- 11.1.1. Provided the Landlord complies with clause 20.1.2, the Tenant must pay to the suppliers all charges for separately metered
- a. electricity;
  - b. gas; and
  - c. water (whether described as water consumption charges or excess water charges but excluding water rates),
- consumed or used by the Tenant on the Premises except for electricity, gas and water consumed or used in the operation of the air-conditioning and ventilation systems.
- 11.1.2. The Tenant must pay all charges for telephones and similar services used on the Premises.

## **12. Payment of Outgoings**

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### **12.1. Gross Lease**

- 12.1.1. The Parties agree that the Rent is a gross rent and that outgoings are not payable by the Tenant.

### **13. Tenant's obligations to maintain and repair**

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#### **13.1. Tenant's duties**

13.1.1. Having regard to the condition of the Premises at the Commencement Date and subject to clause 13.1.4, clause 18.2 and the Landlord's obligations under this Lease the Tenant:

- a. must keep and maintain the Premises in good and tenable repair and condition; and
- b. at the expiry or termination of this Lease or any holding over must deliver up the Premises clean and tidy and in good and tenable repair and condition.

13.1.2. The Tenant's obligations under clause 13.1.1 exclude

- a. fair wear and tear; and
- b. damage caused by the Landlord, or an employee, agent or contractor of the Landlord or any other person for whom the Tenant is not responsible.

13.1.3. The Tenant may require the Landlord to provide at the Landlord's expense a photographic and descriptive condition report to accurately describe the pre-lease condition of the Premises. In that case:

- a. the Landlord will provide the condition report in duplicate to the Tenant no later than 5 Working Days before the Tenant takes possession of the Premises;
- b. the Tenant, within 15 Working Days of receiving the condition report, will either:
  - i. sign the condition report and return it to the Landlord; or
  - ii. notify the Landlord of any objections to the condition report; and
- c. if the Tenant objects to the condition report and the issue is not resolved by the Parties within 10 Working Days of the objection then the issue will be referred for determination by the Expert under clause 38.

13.1.4. The Tenant is not obliged to repair:

- a. damage resulting from fair wear and tear, fire, lightning, storm, flood, tempest, earthquake, water damage (including sprinkler leakage and rain water), radiation, fusion, explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, termites, structural or inherent defect (whether due to faulty design, construction, inadequate supervision, defective or unsuitable materials or other cause),

subsidence, inevitable accident, Act of God, riot, civil commotion, acts of terrorism, strikes, enemy action or malicious damage; or

- b. any part of the Services or the Structure,
- c. except where that need for repair is caused by the wilful or negligent act or omission of the Tenant.

13.1.5. The Landlord acknowledges and agrees that:

- a. the Tenant is not obliged to use any mats or protective devices on the carpet; and
- b. the failure to use mats or protective devices by the Tenant will not constitute excessive or unusual wear and tear for the purposes of clauses 13.1.1 and 13.1.4.

#### **14. Compliance with Laws and Requirements by Tenant**

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##### **14.1. Tenant's duty to comply**

14.1.1. The Tenant must comply with all Laws and Requirements relating to the use of the Premises to the extent that the Tenant is bound by a Law or Requirement.

14.1.2. Clause 14.1.1 does not require the Tenant to effect structural alterations, make additions to the Premises or install, alter or add to equipment in the Premises.

#### **15. Rules**

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##### **15.1. Compliance with Rules**

15.1.1. The Landlord and the Tenant must observe the Rules (if any are specified in Schedule 2).

15.1.2. The Landlord may change the Rules from time to time if:

- a. the change is reasonably necessary for the safety, care and cleanliness of the Building or for the preservation of good order in the Building;
- b. the change is not inconsistent with the Tenant's rights in this Lease;
- c. the change is notified to the Tenant at least 20 Working Days prior to taking effect and the Landlord has given the Tenant reasonable opportunity to make comments;
- d. the Landlord has taken into account the Tenant's comments in determining the final form of the Rules; and
- e. the change is not a variation of a covenant of this Lease.

- 15.1.3. The Lease prevails over anything in the Rules that is inconsistent with it.

**16. Tenant's Indemnity to Landlord**

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**16.1. Indemnity**

- 16.1.1. Subject to clause 28, the Tenant must indemnify the Landlord from and against all Claims for which the Landlord becomes liable and which arise from:

- a. the negligent use or misuse by the Tenant of the Services;
- b. overflow or leakage of water in or from the Premises to the extent caused or contributed to (but only to the extent of the Tenant's contribution) by the negligent act or omission of the Tenant; or
- c. loss, damage or injury to property or to a person within or outside the Premises or the Building to the extent caused or contributed to (but only to the extent of the Tenant's Contribution) by the negligent act or omission of the Tenant in connection with the Tenant's use of the Premises.

- 16.1.2. The Tenant's indemnity under this clause 16 is limited to \$20,000,000.00 in the aggregate and will expire on the expiry or earlier termination of this Lease.

- 16.1.3. The Tenant's indemnity under this clause 16 is limited to \$20,000,000.00 for any single occurrence or event and will expire on the expiry or earlier termination of this Lease.

- 16.1.4. Immediately upon becoming aware of any event, circumstance or Claim which may give rise to the Landlord relying on the indemnity in this clause 16.1 the Landlord:

- a. must notify the Tenant in writing of the event, circumstance or Claim and provide reasonable details; and
- b. must use its best endeavours to mitigate any loss, damage or expenses arising out of or in connection with the event, circumstance or Claim.

- 16.1.5. The parties agree that if the Tenant requires, the Tenant will be entitled to have the conduct of any Claim in respect of which the indemnity in this clause 16 applies. The Landlord will co-operate with the Tenant in the conduct of the Claim.



## **17. Tenant's Alterations**

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### **17.1. Landlord's consent required**

17.1.1. The Tenant must obtain the Landlord's consent before any Tenant's Alterations are undertaken.

17.1.2. If the Tenant requests the Landlord's consent to any Tenant's Alterations the Tenant must provide reasonably detailed plans and specifications of the proposed Tenant's Alterations. The Landlord must consider the Tenant's request and respond in a reasonable time. The Landlord must not impose conditions on any consent which are inconsistent with any terms of this Lease.

### **17.2. Undertaking the Tenant's Alterations**

17.2.1. In undertaking the Tenant's Alterations the Tenant must:

- a. comply to the extent that it is bound with any Requirement applying to the Tenant's Alterations;
- b. arrange for the Tenant's Alterations to be performed in a proper and workmanlike manner and consistent with the general standards of the Building reasonably notified by the Landlord;
- c. not interfere with the Services or air circulation unless permitted to do so by the Landlord; and
- d. rebalance or reconfigure the Services if necessary as a result of the Tenant's Alterations.

### **17.3. Responsibility for Tenant's Fittings and Tenant's Alterations**

17.3.1. The Tenant owns the Tenant's Fittings and Tenant's Alterations.

17.3.2. The Tenant is responsible for the repair and maintenance of all Fittings installed by the Tenant and Tenant's Alterations. Any Fittings installed by the Tenant in the Premises which are owned by the Landlord will be deemed to form part of the Premises and the Parties' respective obligations relating to the Premises under this Lease apply to the extent practicable.

## **18. Fittings and Tenant's Alterations at Lease End**

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### **18.1. Fittings and Tenant's Alterations at Lease End**

18.1.1. On or before the expiry or termination of this Lease or any holding over the Tenant may remove all or any of its Fittings and Tenant's Alterations. If the Tenant chooses to remove all or any of its Fittings and Tenant's Alterations it must make good and restore all damage to the Premises caused by that removal.

- 18.1.2. If the Tenant does not remove all or any of its Fittings and Tenant's Alterations before the expiry or termination of this Lease or any holding over, those Fittings and Tenant's Alterations not removed will become the property of the Landlord.
- 18.2. Tenant not obliged to make good**
- 18.2.1. Subject to clause 18.1.1:
- a. on or before the expiry or termination of this Lease or at expiry of any holding over the Tenant is not obliged to make good, reinstate, redecorate, repaint, recarpet or restore the Premises or remove its Fittings or Tenant's Alterations or any Fittings except where painting or carpeting is required in accordance with clause 29.1 at the times specified in Item 17 ; and
  - b. subject to clause 29.1, the Landlord must not seek from the Tenant any cost, charge or expense incurred by the Landlord making good, reinstating, redecorating, repainting, recarpeting or restoring the Premises or removing any Fittings or Tenant's Alterations.

#### **SECTION 4 LANDLORD'S OBLIGATIONS**

##### **19. Compliance with Laws and Requirements by Landlord**

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###### **19.1. Landlord's duty to comply**

- 19.1.1. The Landlord must comply with all Laws and Requirements relating to the Premises, the Building and the Land including but not limited to all Laws and Requirements relating to the health, safety and security of the Building, the Premises and occupants.

##### **20. Landlord to pay for Operation of Services**

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###### **20.1. Landlord Payments and Metering**

- 20.1.1. Subject to clause 11.1 and clause 25.2, the Landlord must pay for all electricity, gas and water consumed in operating the Services.
- 20.1.2. The Landlord
- a. will ensure that from the Commencement Date the Premises are separately metered for electricity, gas and water;
  - b. will ensure that the meters have an accuracy class suitable for customer billing and the meter register is readily accessible for billing;
  - c. agrees that if the Tenant requires, management of the meters will reside with the Tenant on installation; and
  - d. agrees that the Tenant is entitled to purchase its own electricity.

- 20.1.3. The Landlord will ensure that from the Commencement Date there is separate metering for electricity , gas and water for central services in the Building including common areas.
- 20.1.4. The Landlord will not pass on any costs incurred under clause 20.1.2 and clause 20.1.3 to the Tenant directly or indirectly.
- 20.1.5. In the event that the GLS contains requirements different to this clause then the GLS takes precedence.

## **21. Rates taxes and outgoings**

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### **21.1. Landlord must pay rates taxes and outgoings**

- 21.1.1. The Landlord must pay:
- a. all rates and taxes in respect of the Land, the Building and the Premises; and
  - b. all other outgoings in respect of the Land, the Building and the Premises except for those which the Tenant is required to pay under this Lease.
- 21.1.2. If the Landlord does not make the payments in clause 21.1.1 the Tenant may make those payments on behalf of the Landlord together with all fines, reconnection fees and other like charges. The amount paid by the Tenant under this clause will be a debt due and payable by the Landlord to the Tenant within 10 Working Days of written demand. If payment is not made in this time then without limiting any other remedy the Tenant may choose to recover the amounts paid by a set-off in Rent or other moneys payable by the Tenant under this Lease.

## **22. Warranty of fitness**

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### **22.1. Landlord's warranties**

- 22.1.1. The Landlord warrants that at the Commencement Date, at all times during the Term and any holding over the Premises and the Building:
- a. are and will remain fit for use and occupation for the Permitted Use;
  - b. will comply with:
    - i. the standards, if any, specified in Schedule 6;
    - ii. the relevant Australian Standards effective at the Commencement Date; and
    - iii. the industry standards effective at the Commencement Date

provided that in the event of inconsistency, the highest standard will apply; and

c. will be managed and operated at a high standard.

**22.2. Landlord's responsibilities for loss and damage**

22.2.1. The Landlord is responsible for all loss and damage suffered by the Tenant, including Relocation Expenses caused by or arising out of in connection with:

- a. any negligent act or omission of the Landlord; or
- b. any structural faults or defects including those inherent in the Building or the Premises,

which make the Premises unfit for use and occupation by the Tenant.

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**23. Landlord's obligation to maintain and repair**

**23.1. Landlord's duties**

23.1.1. Subject to the obligations of the Tenant to repair in clause 13, the Landlord must keep and maintain the Premises, the Landlord's Fittings and the Building including the Structure and the Services watertight, in good and substantial repair, working order and condition, and in accordance with all Laws and Requirements and in the manner required by this Lease.

23.1.2. The Landlord must:

- a. maintain the Building and the Services efficiently;
- b. replace any plant and equipment which it is reasonably necessary to replace rather than repair taking into account its age and condition and the frequency and extent of ongoing repair to the relevant item of plant and equipment.

**23.2. Landlord to remedy defects**

23.2.1. The Landlord must rectify all defects in the Building which result from faulty design, supervision or materials or construction not having been carried out in a proper and workmanlike manner.

**23.3. Landlord to replace specified items**

23.3.1. Without limiting the operation of clause 23.1, the Landlord must promptly replace:

- a. all broken and damaged glass in the windows and doors of the Building including plate glass, unless payment of any insurance monies in respect of that breakage or damage is irrecoverable due to the act or omission of the Tenant; and

- b. all damaged or non-operative electric light bulbs, globes, tubes and other means of illumination in all parts of the Land and the Building except for the Premises.

**23.4. Landlord to maintain gardens and control pests**

23.4.1. Without limiting the operation of clause 23.1, the Landlord must:

- a. keep and maintain all gardens and landscaped areas except for those within the Premises; and
- b. keep the Building free of rodents, termites, cockroaches and other vermin.

**23.5. Landlord to effect maintenance contracts**

23.5.1. Without limiting the Landlord's obligations under the GLS the Landlord must effect and maintain contracts for the maintenance and repair of the Services in accordance with the relevant Australian Standards with respectable and recognised maintenance and repair contractors.

**23.6. Landlord to provide information on Services**

23.6.1. Without limiting the Landlord's obligations under the GLS, on the Commencement Date, each anniversary of the Commencement Date and at other times when reasonably requested by the Tenant, the Landlord must provide to the Tenant:

- a. a copy of each of the current contracts for the maintenance and repair of the Services; and
- b. a certificate by the Landlord's air-conditioning maintenance contractor that the performance and maintenance of the air-conditioning system complies with the requirements of this Lease and that the maintenance and repair of the air-conditioning system has been carried out in accordance with the current air-conditioning maintenance contract.

23.6.2. The Landlord must obtain testing reports evidencing its compliance with relevant Laws and Requirements and the provisions of this Lease relating to the Services (including the reports referred to in clause 23.6.3) and must provide these to the Tenant within 5 Working Days of the report being issued.

23.6.3. Without limiting any other obligation of the Landlord:

- a. reports must include heterotrophic colony counts (cooling tower testing) and Legionella (warm water systems) for samples taken and tested specifying the results (including whether they are less, the same or higher than the standards required by this Lease);

- b. reports must demonstrate compliance or failure to comply with applicable Laws and Requirements (and where there is failure to comply the nature of the failure and the required remedial action must be specified).

**23.7. Tenant may rectify Landlord's failure to repair**

23.7.1. Without prejudice to any other right or cause of action available to the Tenant, if the Landlord fails to effect a repair, other than a repair relating to a malfunction of the Services, within 10 Working Days after receipt of a notice from the Tenant to effect that repair, the Tenant may effect that repair and recover from the Landlord the cost of that repair, including the Tenant's reasonable administrative costs and expenses directly related to that repair. The amount paid by the Tenant under this clause will be a debt due and payable by the Landlord to the Tenant within 10 Working Days of written demand. If payment is not made in this time then without limiting any other remedy the Tenant may choose to recover the amount paid by a set-off in Rent or other moneys payable by the Tenant under this Lease.

**24. Health and safety**

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**24.1. Landlord's warranties**

24.1.1. Without limiting the operation of clause 22, the Landlord warrants that:

- a. no materials containing Asbestos or any other Hazardous Substance exist in the Land or the Building, as shall be evidenced by the provision of an Asbestos Register or Asbestos Clearance Statement prior to the commencement of the fit out works; and
- b. the air-conditioning system has been treated and maintained in accordance with the relevant Australian Standards to prevent the occurrence of any Hazardous Disease and in accordance with the Occupational Health and Safety Code of Practice 2008 (as amended from time to time) and any other code of practice approved pursuant to section 70 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

**24.2. Treatment of Hazardous Substance and Hazardous Disease**

24.2.1. If any Hazardous Substance or Hazardous Disease is at any time discovered in the Land or the Building and the presence of the Hazardous Substance or Hazardous Disease is not attributable to the act or omission of the Tenant:

- a. the Landlord must promptly notify the Tenant;

- b. the Landlord must promptly and in a safe manner remove or eradicate the Hazardous Substance or Hazardous Disease; and
- c. if the Tenant elects to vacate the Premises until such time as the Hazardous Substance or Hazardous Disease is removed or eradicated and the Premises are rendered safe:
  - i. the Landlord must pay the reasonable Relocation Expenses of the Tenant; and
  - ii. from the time the Tenant vacates the Premises until the Premises are again rendered safe, the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable in accordance with clause 27 as if the Premises had been rendered wholly or partly (as the case may be) unfit for the Tenant's occupation or use.

**24.3. Tenant's rights to terminate Lease**

24.3.1. The Tenant may by notice to the Landlord terminate this Lease if:

- a. the Tenant's use or occupation of the Premises is rendered unsafe because of the presence of a Hazardous Substance or Hazardous Disease in the Land or the Building; and
- b. in the written opinion of the Expert the Land or the Building is unlikely to be rendered safe within 3 months from the date of that opinion; or
- c. the Landlord fails to render safe the Land and the Building within 3 months from the date on which the presence of the Hazardous Substance or Hazardous Disease is identified.

24.3.2. Despite clause 38.1.1, neither Party is required to give to the other notice of a dispute before requesting the appointment of an Expert to provide a written opinion under clause 24.3.1b.

24.3.3. If the Tenant terminates the Lease under clause 24.3.1:

- a. the termination will not prejudice the rights or claims of either Party in existence prior to that termination; and
- b. despite any clause to the contrary, the Tenant is not required to remove its Fittings or Tenant's Alterations, redecorate, restore, reinstate or make good the Premises.

**24.4. Landlord must provide information**

24.4.1. The Landlord must provide such information as is reasonably required by the Tenant to comply with its obligations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* or any Law or Requirement.

## **25. Air-conditioning and other services**

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### **25.1. Landlord must provide and operate Services**

25.1.1. The Landlord must provide and operate the Services at all times (except for the air conditioning which the Landlord must provide and operate during Normal Business Hours with any warming up or cooling down outside those hours) in accordance with:

- a. the standards, if any, specified in Schedule 6;
  - b. the relevant Australian Standards effective at the Commencement Date; and
  - c. the industry standards effective at the Commencement Date
- provided that in the event of inconsistency, the highest standard will apply.

25.1.2. If any of the Services becomes unusable or otherwise incapable of being operated in accordance with clause 25.1.1 from any cause the Landlord must, within a reasonable time, repair or replace those Services.

### **25.2. Landlord must provide after hours Services**

25.2.1. At the Tenant's request the Landlord must provide air-conditioning and ventilation Services to any one or more of the floors of the Building on which the Premises are located outside Normal Business Hours in accordance with the standards specified in clause 25.1.1 and the Tenant must pay to the Landlord within 30 days after being billed the cost of:

- a. providing conditioned air calculated at the rate per floor agreed by the Parties for each hour or part of an hour during which that service is being provided to that floor and in the absence of an agreement at the rate determined by the Expert; and
- b. providing ventilation calculated at the rate per floor agreed by the Parties for each hour or part of an hour during which that service is being provided to that floor and in the absence of an agreement at the rate determined by the Expert.

25.2.2. On each anniversary of the Commencement Date new hourly rates for the provision of air-conditioning and ventilation Services outside Normal Business Hours will be agreed by the Parties and failing agreement those rates will be determined by the Expert.

### **25.3. Tenant may monitor air-conditioning performance**

25.3.1. The Tenant may install within the Premises equipment to monitor the performance of the air-conditioning and ventilation systems.



- 25.3.2. The Landlord must produce to the Tenant, if required by the Tenant, the Landlord's records relating to the operation and performance of the air-conditioning and ventilation systems.

**26. Remedies for malfunction of the Services**

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**26.1. Tenant may give notice if the Services malfunction**

- 26.1.1. Without prejudice to any other right or cause of action available to the Tenant, if the occupation, use or enjoyment of the Premises by the Tenant is diminished as a result of a malfunction of the Services from a cause not attributable to the negligent act or omission of the Tenant, the Tenant may give notice to that effect to the Landlord.
- 26.1.2. If the malfunction is not rectified within 2 Working Days after receipt of the notice ("the grace period") subject to clause 26.1.4, the Rent and all other amounts payable by the Tenant will be suspended and cease to be payable in accordance with clause 27 as if the Premises had been rendered wholly or partially (as the case may be) unfit for the Tenant to occupy and use from the expiration of the grace period until the Services are restored. During and for the period of suspension the Tenant's liability to pay the Rent and all other amounts, as agreed or determined under clause 27, calculated on a daily basis, ceases.
- 26.1.3. If a malfunction remains uncorrected for a period of 5 Working Days after the grace period the Tenant may carry out the necessary repairs and recover the cost of the repairs from the Landlord. The amount paid by the Tenant under this clause will be a debt due and payable by the Landlord to the Tenant within 10 Working Days of written demand. If payment is not made in this time then without limiting any other remedy the Tenant may choose to recover the amount paid by a set-off in Rent or other moneys payable by the Tenant under this Lease.
- 26.1.4. If the Tenant's act or omission contributes to a material degree to the malfunction the Tenant may exercise its rights under clauses 26.1.2 and 26.1.3 only to the extent that the Landlord is entitled to be indemnified from insurance against loss resulting from that malfunction or would have been so entitled if the Landlord had insured in accordance with this Lease.

**27. Premises unfit for occupation and use**

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**27.1. Suspension of Rent and Tenant's rights to terminate Lease**

- 27.1.1. If the Premises or the Building is wholly or partially unfit (including where this is a result of the malfunction of the Services) for the Tenant to occupy and use for the Permitted Use or is otherwise inaccessible then:

- a. the Rent and all other moneys becoming payable by the Tenant under this Lease (or a fair and just proportion according to the nature and extent of the effect upon the Premises) will be suspended and cease to be payable in respect of the period from the date the unfitness commences until:
  - i. the Building and Premises have been made fit for occupation and use for the Permitted Use and are otherwise accessible; and
  - ii. a further period has elapsed which is reasonable in all the circumstances to allow the Tenant to carry out any necessary refitting out of the Premises;
- b. the Tenant's covenant to repair and maintain in good and tenantable repair any part of the Premises for which Rent has been suspended will cease and be suspended for so long as the Premises or the Building is unfit to occupy and use for the Permitted Use or is inaccessible;
- c. where:
  - i. the Expert certifies that the Premises or the Building is likely to remain wholly or partially unfit for occupation and use for the Permitted Use or inaccessible for not less than 3 months from the date of the certificate; or
  - ii. the Building is condemned as a dangerous building or structure by any authority having jurisdiction for that purpose and the Expert certifies that the Premises or the Building is likely to remain wholly or partially unfit for occupation and use for the Permitted Use or inaccessible for not less than 3 months from the date of that certificate; or
  - iii. the Premises or the Building remains wholly or partially unfit for occupation and use for the Permitted Use, or is inaccessible for a period of 3 months from the date on which the Premises or the Building became wholly or partially unfit for occupation and use for the Permitted Use or became inaccessible,the Tenant may by notice to the Landlord terminate this Lease;
- d. where the Premises are partially unfit for occupation and use for the Permitted Use and the Landlord fails to render the Premises and the Building fit for that occupation and use and accessible within a reasonable time having regard to the extent and severity of the unfitness or the inaccessibility, the Tenant may:
  - i. by notice to the Landlord terminate this Lease; or

- ii. rectify the Landlord's failure at the cost of the Landlord and recover that cost from the Landlord. The amount paid by the Tenant under this clause will be a debt due and payable by the Landlord to the Tenant within 10 Working Days of written demand. If payment is not made in this time then without limiting any other remedy the Tenant may choose to recover the amounts paid by a set-off in Rent or other moneys payable by the Tenant under this Lease.
- 27.1.2. Despite clause 38.1.1, neither Party is required to give to the other notice of a dispute before requesting the appointment of an Expert to provide a certificate under clause 27.1.1c.
- 27.2. Landlord's right to terminate Lease**
- 27.2.1. If the Premises or the Building is rendered wholly unfit for occupation and use for the Permitted Use or inaccessible by any cause which is not attributable to the act or omission of the Landlord, then within 30 days from the date that unfitness or inaccessibility commences and provided the Tenant does not give notice under clause 28.6.1.c that it requires the Landlord to reinstate the Building, the Landlord may terminate this Lease by 1 month's prior notice to the Tenant accompanied by a certificate given by the Expert that the Premises is likely to remain wholly unfit for occupation and use for the Permitted Use or inaccessible for not less than 3 months from the date of the certificate.
- 27.3. Rights on termination**
- 27.3.1. Termination by either Party under this clause does not affect either Party's rights in respect of a breach which occurs before termination.
- 27.4. Tenant's act or omission**
- 27.4.1. If the act or omission of the Tenant causes the unfitness or inaccessibility, the Tenant may exercise its rights under this clause only to the extent that the Landlord is entitled to be indemnified from insurance or would have been so entitled if it had insured in accordance with this Lease.
- 28. Landlord to insure**

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- 28.1. Landlord's duty to insure**
- 28.1.1. The Landlord must insure and keep insured in the names and manner specified in Item 22:
  - a. the Building (including, if required in Item 23, the Tenant's Fittings and Tenant's Alterations) for its full reinstatement or replacement value (including architects, surveyors and other

professional fees, the cost of debris removal, demolition, site clearance, any works that may be required by a Requirement and incidental expenses) at the time of loss or damage, against loss or damage from fire, lightning, flood, storm and tempest, earthquake, water damage (including sprinkler leakage and rain water), explosion or concussion from explosion, impact by vehicles or aircraft or articles dropped from aircraft, riots, strikes, civil commotion and malicious damage.

- b. against public risk in respect of all Claims for injury loss or damage to any person or property however sustained arising out of the use of the Land or the Building for not less than the sum specified in Item 24 or such greater amount as the Landlord or the Tenant may from time to time reasonably require;
- c. against damage and breakage to all plate glass within the Building to the full replacement value; and
- d. against damage to the Premises, the Tenant's fittings and Tenant's Alterations caused by the Landlord.

**28.2. Tenant to reimburse for additional premiums**

28.2.1. The Tenant must reimburse the Landlord for all additional premiums on the insurances in clause 26.1 as a result of:

- a. a waiver by the insurer of its rights of subrogation against the Tenant;
- b. claims against the policies for loss or damage caused by the Tenant;
- c. the inclusion of the Tenant's Fittings and Tenant's Alterations and
- d. the notation of the Tenant's interest on the Landlord's insurance under clause 28.3.2.

28.2.2. The above clause 28.2.1 will not apply if the additional premiums are reimbursable by the Tenant as Outgoings.

**28.3. Form of insurance**

28.3.1. Any insurance policy effected by the Landlord under clause 28.1:

- a. must be taken out with a reputable insurer;
- b. must be in the general form of policy issued by the insurer for that class of insurance subject only to any special terms required by the insurer to provide for the matters set out in clause 28.2; and

- c. must contain a provision that the insurer cannot cancel, suspend or otherwise cancel the insurance policy without first giving the Tenant no less than 10 Working Days written notice.

**28.3.2. The Landlord must:**

- a. ensure that the Tenant's interests under this Lease are noted in each of the policies of insurance (unless the Tenant has been included as a co-insured); and
- b. procure a waiver by the insurer of its rights of subrogation against the Tenant.

**28.4. Landlord's warranties about insurance**

**28.4.1. The Landlord warrants that:**

- a. the use of the Premises for the Permitted Use does not render void or voidable the Landlord's insurance;
- b. the provisions of this Lease do not affect the Landlord's right to be indemnified under the insurances required by clause 28.1; and
- c. the Landlord's insurers have approved the provisions of this Lease.

**28.5. Landlord to prove currency of insurance**

**28.5.1.** The Landlord must produce to the Tenant, promptly on request by the Tenant, proof of the currency of any of the insurances required by clause 28.1 and if the Tenant considers it is reasonable to do so, a copy of the insurance policies.

**28.6. Application of insurance proceeds**

**28.6.1. If, during the Term:**

- a. the Building is damaged or destroyed by a risk against which the Landlord is required by this Lease to insure;
- b. the payment of insurance moneys under the insurance policy has not been refused in whole or in part because of any act or omission of the Tenant; and
- c. the Tenant has notified the Landlord within 30 days after the date of the damage or destruction that it requires the Landlord to reinstate the Building,

the Landlord must promptly do everything reasonably necessary to:

- d. claim and obtain payment of any insurance moneys to which it is entitled under the insurance policy for the damage or destruction;

- e. obtain any permission, permits and consents that may be required under a Requirement to enable the Landlord to reinstate the Building; and
- f. use all relevant insurance proceeds (except sums for loss of Rent) in reinstating the Building making up any difference between the cost of reinstating and the insurance proceeds.

**28.7. Tenant not to void Landlord's insurance**

28.7.1. The Tenant must not do anything which renders void or voidable the insurance the Landlord must maintain under this Lease.

**28.8. Limitation on Tenant's obligations**

28.8.1. Notwithstanding anything contained or implied in this Lease, the Tenant is required to perform a covenant or satisfy an obligation only to the extent that the Landlord:

- a. is not entitled to receive indemnity under an insurance policy which the Landlord is required to effect under clause 28.1; or
- b. would not have been so entitled had the Landlord insured in accordance with that clause.

**29. Repainting and recarpeting**

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**29.1. Landlord must repaint and replace floor coverings**

29.1.1. The Landlord must:

- a. repaint, colour and paper the Premises and the Building (including the external parts of the Building and the Common Areas previously painted, coloured or papered) as often as may become necessary due to fair wear and tear (but in respect of the Premises not less often than is specified in Item 16 and in colours approved by the Tenant) in a proper and workmanlike manner and with materials of no lesser standard to those used previously; and
- b. replace in a proper and workmanlike manner and in accordance with the relevant Australian Standards at that time, all carpet and other floor coverings within the Premises and the Common Areas on those floors of the Building on which the Premises are located and all stairways connecting those floors as often as may become necessary due to fair wear and tear (but not less often than is specified in Item 17) with floor coverings of no lesser standard to those used previously.

**29.2. Tenant must uplift non fixtures**

29.2.1. If it is necessary to uplift the Tenant's Fittings which are not fixtures so as to enable the Landlord to carry out its obligations under clause 29.1 then:

- a. the Landlord (or if the Tenant requires, the Tenant) will uplift the Tenant's fittings which are not fixtures at the Landlord's cost;
- b. if the Landlord uplifts the Tenant's Fittings then the Landlord must:
  - i. do so without interfering with the Tenant's use and enjoyment of the Premises (including if required by the Tenant undertaking the works outside Normal Business Hours; and
  - ii. make good immediately any damage caused to the Tenant's property or to the Premises.

**29.3. Tenant has no obligation to uplift fixtures**

29.3.1. Nothing in this Lease requires the Tenant to take down or dismantle the Tenant's Fittings which are fixtures and the Landlord must lay any replacement carpet and floor coverings up to the face of those fixtures.

**29.4. When Landlord must perform work**

29.4.1. The Landlord must carry out all work it is obliged to do under this clause 29 outside of Normal Business Hours and with as little disruption as possible to the Tenant's use and occupation of the Premises.

**SECTION 5 GENERAL PROVISIONS**

**30. Landlord's rights to enter Premises**

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**30.1. Landlord's rights to inspect**

30.1.1. The Landlord may enter the Premises at any reasonable time for the purposes set out in clause 30.1.2 if it has given the Tenant prior reasonable notice. When entering the Premises the Landlord must be accompanied by a person appointed by the Tenant.

30.1.2. The purposes for which the Landlord may enter the Premises under clause 30.1.1 are to:

- a. inspect the state of repair of the Premises not more often than once every 3 months;

- b. re-inspect the Premises where, following an inspection under clause 30.1.2.a, notice has been served which properly requires the Tenant to effect a repair; or
- c. carry out repairs, maintenance or alteration of the Premises or the Building if the work:
  - i. is maintenance or repair for which the Tenant is liable under this Lease and has failed to carry out in accordance with a notice referred to in clause 30.1.2.b;
  - ii. is necessary to comply with the Landlord's obligations to maintain or repair under this Lease;
  - iii. is required by Law to be done; or
  - iv. is required to be done for the safety of the Premises or the Building or the occupants of the Premises or the Building.

**30.2. Landlord's rights in an emergency**

- 30.2.1. If there is a fire, flood or other emergency which poses a risk to life or may affect the safety of the Building the Landlord may enter the Premises unaccompanied by a representative of the Tenant:
  - a. at any time; and
  - b. without giving notice if that is impracticable and the Lessor has used its best endeavours to contact the Tenant to ascertain and if necessary remedy the cause or limit the effect of the emergency.
- 30.2.2. The Landlord must promptly inform the Tenant in writing of any entry affected under clause 30.2.1.
- 30.2.3. In exercising its rights of entry under this clause 30 the Landlord must:
  - a. cause no undue interference to the occupation, use or enjoyment of the Premises by the Tenant;
  - b. use its best endeavours to avoid damage to the Premises or the Tenant;
  - c. immediately make good all damage caused to the Premises or the Tenant arising from the exercise of those rights;
  - d. indemnify and keep indemnified the Tenant from and against all Claims in any way resulting from the exercise of those rights; and
  - e. not breach any requirements of the Tenant relating to
    - i. the security of the Premises;



- ii. any information or material in the Premises (including ensuring that there is no access to information held on the Premises); or
- iii. the safety of occupants of the Premises;

and must take appropriate steps to prevent impairment of the Tenant's security.

## **31. Assignment and subletting**

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### **31.1. Consent to assignment and subletting**

- 31.1.1. After obtaining the Landlord's consent to do so the Tenant may assign, sublet, part with possession or deal with its interest in this Lease.
- 31.1.2. The Landlord's consent is not required if the Tenant assigns, subleases, licenses, parts with possession or deals with its interest in this Lease to a Commonwealth agency or statutory body or agency.
- 31.1.3. The Tenant must notify the Landlord of any action taken in the exercise of its rights under clause 31.1.2.

### **31.2. Information to be given on assignment**

- 31.2.1. The Tenant's request for the Landlord's consent to an assignment of this Lease will include:
  - a. the name and the address of the proposed assignee;
  - b. 2 references as to the proposed assignee's financial circumstances;
  - c. a copy of the proposed deed of assignment; and
  - d. such other information as the Landlord reasonably requires.

### **31.3. Landlord to give consent to assignment**

- 31.3.1. The Landlord must give its consent promptly if:
  - a. the Tenant satisfies the Landlord that the proposed assignee is financially secure and has the ability to carry out the Tenant's obligations under this Lease;
  - b. the proposed assignee signs a deed or agreement in which it covenants with the Landlord and the Tenant to perform the obligations of the Tenant under this Lease and gives such security as the Landlord reasonably requires;
  - c. the Tenant complies with any other reasonable requirements of the Landlord;

- d. the Tenant is not in breach of this Lease; and
  - e. the Tenant pays the Landlord's reasonable costs (being the Landlord's reasonable costs comprising its reasonable administrative and legal costs and expenses directly related to the giving of consent including enquiries about a person's respectability, financial soundness and reputation) of giving its consent.
- 31.3.2. The Tenant's request for the Landlord's consent to a sublease will include:
- a. the name and the address of the proposed sublessee;
  - b. 2 references as to the proposed sublessee's financial circumstances;
  - c. a copy of the proposed sublease; and
  - d. such other information as the Landlord reasonably requires.
- 31.4. Landlord to give consent to subletting**
- 31.4.1. The Landlord must give its consent to a subletting promptly if:
- a. the Tenant complies with the reasonable requirements of the Landlord;
  - b. the Tenant is not in breach of this Lease; and
  - c. the Tenant pays the Landlord's reasonable costs (being the Landlord's reasonable costs comprising its reasonable administrative and legal costs and expenses directly related to the giving of consent including enquiries about a person's respectability, financial soundness and reputation) of giving its consent.

## **32. Cleaning**

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### **32.1. Landlord's Obligation to Clean**

- 32.1.1. The Landlord must clean and maintain in a clean and tidy condition all parts of the Land and the Building with the exception of the Premises. The cleaning of the exterior surfaces of the windows in the Building must be undertaken not less often than is specified in Item 26.
- 32.1.2. If the Landlord fails to perform its obligations in clause 32.1 the Tenant may notify the Landlord giving particulars of the failure.
- 32.1.3. If at the expiration of 10 Working Days from the date on which the Tenant gives notice to the Landlord the standard of cleaning is still unsatisfactory the Tenant may:

- a. carry out supplementary cleaning; and
- b. recover the cost from the Landlord. The amount paid by the Tenant under this clause will be a debt due and payable by the Landlord to the Tenant within 10 Working Days of written demand. If payment is not made in this time then without limiting any other remedy the Tenant may choose to recover the amounts paid by a set-off in Rent or other moneys payable by the Tenant under this Lease.

**32.2. Tenant's Obligation to Clean**

32.2.1. The Tenant must clean and maintain the Premises in a clean and tidy condition.

32.2.2. The Tenant may engage a cleaning contractor to clean the Premises on the Tenant's behalf.

**33. Consent of mortgagee**

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**33.1. Landlord must obtain consent of mortgagee**

33.1.1. If:

- a. the Land is subject to a mortgage, charge or other encumbrance; and
- b. this Lease would otherwise not be binding upon the mortgagee, chargee or encumbrancee,

the Landlord must obtain promptly from the mortgagee, chargee or encumbrancee its unconditional consent in writing to this Lease in a form reasonably acceptable to the Tenant.

**34. Car parking**

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**34.1. Tenant has exclusive rights to the Car Parking Bays**

34.1.1. The Tenant is entitled to the exclusive use of the Car Parking Bays and the unrestricted ingress to and egress from those bays.

34.1.2. The Tenant may at any time and upon giving no less than 30 days' notice to the Landlord terminate its use of any or all of the Car Parking Bays.

34.1.3. The Landlord must ensure that any car parking contractor appointed by it is made aware of the Tenant's rights under this clause 34.

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**35. Directory boards and signs**

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**35.1. Landlord must provide directory boards**

35.1.1. The Landlord must provide and maintain directory boards at prominent locations listing the tenants of the Building or floor, as appropriate, together with floor locations.

35.1.2. The Tenant must reimburse the Landlord the reasonable cost of providing the Tenant's listing on the directory boards.

**35.2. Tenant may affix signs**

35.2.1. The Tenant may affix signs, advertisements or notice within the Premises whether visible from outside the Building or not and, with the Landlord's prior consent, outside the Building.

35.2.2. At the expiry or termination of this Lease or any holding over, the Tenant must remove, paint out or obliterate, according to the reasonable requirements of the Landlord, all signs, advertisements and notices affixed pursuant to clause 35.2.1 if the Landlord has imposed that obligation as a condition of its consent.

**35.3. Tenant may install flag pole**

35.3.1. The Tenant may install a flagpole at its own cost on the exterior of the Premises or the Building with the Landlord's prior consent.

35.3.2. At the expiry or termination of this Lease or any holding over, the Tenant must remove the flagpole if the Landlord has imposed that obligation as a condition of its consent.

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**36. Rent Free Period**

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**36.1. Rent Free Period**

36.1.1. The parties acknowledge that the Tenant will be entitled to a rent free period, which will expire on the earlier of:

- a. 14 August 2016, being the date of expiry of the Gilles Street Lease ("**Gilles Street Expiry**"); or
- b. where the Gilles Street Lease is subleased by the Lessee before the Gilles Street Expiry to a third party, the date of commencement of rent under that sublease,

("Rent Free Period"), and that rent will be due and payable from the day following expiry of the said Rent Free Period.

36.1.2. The parties acknowledge that the Rent Free Period only applies to this initial term of the Lease and is not exercisable on any option term.

**36.2. Commencing Rental Amount**

36.2.1. The commencing rental payable from the Rent Commencement Date will be determined by a Valuer, to be appointed by the Australian Property Institute ("API") on behalf of the Department of Finance, Ministerial and Parliamentary Services.

36.2.2. Where the Gilles Street Lease is sublet, and the rent payable by the third party is less than the rent due by the Tenant under the Gilles Street Lease, then the Landlord agrees that the monthly rent difference (being the rent due by the Tenant in accordance with the Gilles Street Lease, and the rent received from the subtenant) will be deducted from the rental due under this Lease until expiry of the Gilles Street Lease.

**37. Default and termination**

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**37.1. Tenant's Act of Default and Landlord's Remedy**

37.1.1. The Tenant commits a Tenant's Act of Default under this Lease if:

- a. the Rent is unpaid after it becomes due and the Tenant fails to pay that Rent within 20 Working Days after the receipt of Notice from the Landlord to make that payment; or
- b. the Tenant:
  - i. is properly required by the Landlord by notice to carry out repairs or maintenance and the Tenant fails to commence them within 20 Working Days after receipt of that notice or to proceed diligently to complete them; or
  - ii. fails to perform or observe a provision of this Lease (other than any referred to in clause 37.1.1.a or 37.1.1.b i or Schedule 7) and that failure is not capable of remedy, or is capable of remedy but continues for not less than 20 Working Days after the Landlord gives notice to the Tenant to remedy that failure.

37.1.2. If:

- a. the Tenant commits a Tenant's Act of Default and does not remedy it within 20 Working Days after receipt of a notice in accordance with clause 37.1.1; or
- b. the Act of Default is not capable of remedy,  
the Landlord may do any one or more of the following without affecting any pre-existing rights of a Party:
  - c. re-enter and take possession of the Premises;
  - d. by notice to the Tenant, terminate this Lease; and

- e. exercise any of its other legal rights.

**37.2. Landlord's Act of Default and Tenant's Remedy**

37.2.1. The Landlord commits a Landlord's Act of Default under this Lease if the Landlord:

- a. is properly required by the Tenant by notice to carry out repairs or maintenance and the Landlord fails to commence them within 20 Working Days after receipt of that notice or to proceed diligently to complete them;
- b. fails to perform or observe a provision of this Lease (other than any referred to in clause 37.2.1.a or Schedule 7) and that failure is not capable of remedy, or is capable of remedy but continues for not less than 20 Working Days after the Tenant gives notice to the Landlord to remedy that failure; or
- c. is a corporation and an administrator or controller is appointed or a resolution is passed or proceedings are commenced for the winding up of the Landlord.

37.2.2. If:

- a. the Landlord defaults and does not remedy the default within 20 Working Days after receipt of a notice in accordance with clause 37.2; or
- b. the default is not capable of remedy,

the Tenant may do either one or both of the following without affecting any pre-existing rights of a Party:

- c. by notice to the Landlord, terminate this Lease; and
- d. exercise any of its other legal rights.

37.2.3. This clause 36 does not apply to the GLS in Schedule 7.

**38. Resolution of disputes**

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**38.1. Process to resolve disputes**

38.1.1. Subject to any provision of this Lease to the contrary any difference or dispute between the Parties which is not resolved within 10 Working Days after notice by one Party to the other of the nature of the dispute may be referred by either Party for determination by an Expert who is an appropriate practising professional appointed at the request of either Party, by:

- a. the President of the professional body most appropriate to determine the dispute or, if the Parties are unable to agree on the appropriate body, the President for the time being of the

Australian Institute of Arbitrators and Mediators in the Jurisdiction; or

- b. if there is no such body in existence at the time of the request, the President for the time being of an equivalent body.
- 38.1.2. Each Party may make a submission either orally or in writing to the Expert within 10 Working Days after that appointment.
- 38.1.3. In making a determination the Expert must:
- a. act as an expert and not as an arbitrator;
  - b. consider any submission made to it by a Party; and
  - c. provide the Parties with a written statement of reasons for the determination.
- 38.1.4. The determination of the Expert is conclusive and binding on the Parties.
- 38.1.5. The costs of the Expert will be shared equally between the Parties.
- 38.1.6. If the Expert fails to deliver a determination within 10 Working Days after the last day on which the Parties are entitled to make submissions, either Party may require the appointment of a further Expert under clause 38.1.1 to determine the dispute.

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**39. Costs of Lease**

**39.1. Parties bear own costs**

- 39.1.1. Each Party must bear its own costs of and incidental to the negotiation, settlement, preparation and execution of this Lease.

**39.2. Landlord prepares plans**

- 39.2.1. The Landlord must provide suitable plans of the Premises and the Car Parking Bays at its own cost.

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**40. Registration**

**40.1. Registration of Lease**

- 40.1.1. If requested by the Tenant, the Landlord must do what is required to enable this Lease to be registered, including but not limited to, providing plans which comply with Laws and Requirements, obtaining all necessary consents and making available the duplicate certificate of title. The Landlord will act promptly and reasonably in performing its obligations under this clause.
- 40.1.2. The Tenant will arrange registration.
- 40.1.3. The Tenant will pay the registration fees applicable to registering this Lease.

- 40.1.4. Where stamp duty is payable in the Jurisdiction in relation to this Lease or this transaction the Landlord will pay the stamp duty.

**41. Notices**

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**41.1. Notices to be in writing**

- 41.1.1. Any Notice given under this Lease must be in writing.

**41.2. Who can sign a Notice**

- 41.2.1. A Notice from a Party can be signed by:

- a. one of its officers;
- b. its representative designated in Item 20 or Item 21;
- c. its solicitor; or
- d. it's duly appointed agent.

**41.3. How can a Notice be served**

- 41.3.1. The Landlord may serve a Notice on the Tenant by delivering it by hand, sending it by prepaid post or by facsimile transmission to the Tenant's Representative at the address in Item 20.

- 41.3.2. The Tenant may serve a Notice on the Landlord by delivering it by hand, sending it by prepaid post or by facsimile transmission to the Landlord's Representative at the address in Item 21.

**41.4. When is service deemed to have occurred**

- 41.4.1. A Notice is deemed to have been given, served or received:

- a. if sent by prepaid post, on the day 2 Working Days after posting; and
- b. if sent by facsimile:
  - i. before 5pm on a Working Day in the place of receipt on the day it is sent and otherwise on the next Working Day at the place of receipt; and
  - ii. provided there is evidence of complete and satisfactory transmission to the recipient's facsimile number.

**41.5. Notices on Change of Landlord**

- 41.5.1. If:

- a. the Landlord sells or otherwise disposes of its interest in the whole or any part of the Land; or
- b. changes its address for Notices; or



- c. a mortgagee or any other person becomes entitled to the receipt of Rent and other payments under the Lease or becomes entitled to any of the rights and obligations of the Landlord under this Lease,

the Landlord must give the Tenant prompt notice of the above circumstances and if it fails to do so then the Landlord releases the Tenant from, and indemnifies the Tenant from and against, all Claims for which the Tenant may become liable as a result of or in connection with the Landlord's failure or delay in notifying the Tenant of the above circumstances.

## **42. Confidentiality**

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### **42.1. Tenant's activities confidential**

- 42.1.1. The Landlord acknowledges that the activities of the Tenant in the Premises are confidential and agrees that it will not disclose to a third party information which comes into its possession pursuant to or as a result of or in the performance of any obligation or right under this Lease, whether that information relates to the business, activities or technical operation of the Tenant or any person dealing with the Tenant or otherwise. This clause does not apply to disclosure to a Commonwealth Minister or Parliamentary Secretary or disclosure required by Laws which is applicable to the Commonwealth of Australia.

### **42.2. Survival**

- 42.2.1. The operation of this clause survives the termination or expiration of this Lease.

## **43. Green Lease Schedule**

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### **43.1. Green Lease Schedule**

- 43.1.1. The Parties agree that the GLS is incorporated into and forms part of this Lease and they agree to comply with the terms of the GLS.
- 43.1.2. If any conflict arises between:
  - a. the terms and conditions contained in the Lease; and
  - b. any clauses or parts of the clauses of the GLS,then:
  - c. in so far as the issue to be resolved relates to or affects the rights and obligations of the Parties under the GLS; and
  - d. unless the particular terms and conditions contained in the Lease expressly provide that they prevail over the GLS,

the clauses (or the relevant parts of the clauses) of the GLS prevail to the extent necessary to resolve the conflict.

**SCHEDULE 1 - PARTICULARS**

**1. Landlord**

(Preamble, Clause 1.1)

Fullarton Investments Pty Ltd ACN 167 249 194

**2. Tenant**

(Preamble, Clause 1.1)

Commonwealth of Australia  
(represented by the Ministerial and Parliamentary Services Division,  
Corporate and Parliamentary Services Group of the Department of  
Finance).

**3. Land**

(Clause 1.1)

Premises being part of the Ground and First Floors, 77 Fullarton  
Road Kent Town, comprising of approximately 180 square meters  
and described as Allotment 90 in Filed Plan 100149.

**4. Premises**

(Clause 1.1)

The Premises comprises that portion of the Building, being those  
portions identified as Tenancy A, Toilets C, Kitchen B and  
Tenancy D in FX 250349.

**5. Car Parking Bays**

(Clause 1.1)

One (1) reserved car parking bay as delineated on the plan or plans  
in Schedule 4

**6. Commencement Date**

(Clause 1.1)

1<sup>st</sup> day of July 2015.

**7. Term**

(Clause 1.1)

From the Commencement Date until 30 June 2020.

**8. Expiry Date**

(Clause 1.1)

30 June 2020

**9. Permitted Use**

(Clauses 1.1 and 5.1)

Office Accommodation and Communication Facility

**10. Rent**  
(Clauses 1.1 and 9.1)

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**Rent (per annum)**

To be determined by an independent valuer elected by the API and coordinated by Five D (A JLL Company) on behalf of the Department of Finance, Ministerial and Parliamentary Services and in accordance with clause 36.2.

**Rent (per month)**

To be the equivalent of one twelve of the annual rental, payable on the first day of each month in advance.

**Place for Payment of Rent**

Rent and other payments due under this Lease and related agreements are to be paid by the Lessee in equal monthly instalments in advance by electronic transfer on the 1<sup>st</sup> day of the month to the account nominated by the Lessor (as varied from time to time).

**11. Rent Commencement Date**  
(Clauses 1.1 and 9.2)

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In accordance with clause 36.1 which provides that the Tenant is entitled to a rent free period from the Commencement Date of the Lease.

**12. Net lettable area**  
(Clause 1.1)

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**Net lettable area of the Building**

734 square meters

**Net lettable area of the Premises**

Approximately 180 square meters.

**13. Review Dates for Fixed Increases or CPI Movement**  
(Clause 10.1 and clause 10.2)

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Rent will be reviewed on the anniversary of the Commencement Date and will be multiplied by 103% per annum during the Lease Term.

**14. Percentage for Fixed Increases on Review Date**  
(Clause 10.1.2)

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3%

- 15. CPI Increases on Review Date**  
(Clause 10.2.1.b)  
N/A
- 16. Minimum frequency for painting**  
(Clause 29.1.1.a)  
once each 6 years since the Premises was last painted, or sooner if reasonably necessary.
- 17. Minimum frequency for replacing floor coverings**  
(Clause 29.1.1.b)  
once each 6 years since the floor coverings in the Premises and the Common Areas were last replaced, or sooner if necessary.
- 18. Option Term**  
(Clauses 1.1 and 6.1.1.a)  
The Parties acknowledge and agree that the Lessee has one further option to renew at the expiry of this Lease for a term of six (6) years (options to be exercised three months prior to expiry).
- 19. Review Dates in Further Term**  
(Clause 6.1.1.f.ii)  
If the further option to renew is exercised, the rent will be reviewed to Market Value at the Commencement Date of the new term.  
If the further option to renew is exercised, the rent will be reviewed on the following dates:  
1 July 2021  
1 July 2022  
1 July 2023  
1 July 2024  
1 July 2025
- 20. Tenant's Representative and address for service**  
(Clauses 1.1 and 41.2)  
Dean Placanica  
National Leasing Manager  
Five D (A JLL Company)  
Level 22, 25 Grenfell Street  
ADELAIDE SA 5001  
Fax Number : (08) [REDACTED]

**21. Landlord's Representative and address for service**

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(Clauses 1.1 and 41.2)

Debra Smith  
Fullarton Investments Pty Ltd  
77 Fullarton Road  
KENT TOWN SA 5067

**22. Insurance**

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(Clause 28.1)

In the name of the Landlord and such other persons as the Landlord may require.

**23. Insurance of Tenant's Fittings and Tenant's alterations**

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(Clause 28.1.1.a)

Insurance does not need to include Tenant's Fittings and Tenant's Alterations.

**24. Public liability amount**

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(Clause 28.1.1.b)

\$20,000,000

**25. Normal business hours**

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(Clause 1.1)

8 am to 6 pm Monday to Friday inclusive except for public holidays in South Australia.

**26. Frequency of window cleaning**

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(Clause 32.1)

Once each year for the windows in the Premises and the Common Areas were last cleaned, or sooner if necessary.

SCHEDULE 2 - RULES

N/A

SCHEDULE 3 - PLAN OR PLANS OF PREMISES



SCHEDULE 4 - PLAN OF CAR PARKING BAYS

**SCHEDULE 5 - RENT DETERMINATION FOR FIRST RENT PERIOD OF FURTHER TERM**

**1. Valuer to determine Rent if not agreed**

**1.1. Determination of Rent**

1.1.1. If the Parties fail to agree the Rent for the first Rent Period of the Option Term in accordance with clause 6, the Rent will be determined in accordance with this Schedule.

1.1.2. In this Schedule:

**a. Appointment Date means:**

- i. *where two Valuers are appointed on time under clause 1.1.3 - 1 Working Day after the end of the Appointment Period;*
- ii. *where the Second Party appoints both Valuers in accordance with clause 1.1.4 - 1 Working Day after the end of the Supplementary Appointment Period; and*
- iii. *where the Umpire is appointed to determine the rent under clause 1.1.4, clause 1.1.5 or clause 1.1.6 – 1 Working Day after the Umpire is appointed under clause 1.1.4, clause 1.1.5 or clause 1.1.6 (as the case requires).*

**b. Appointment Period** means the period of 20 Working Days after the end of the Rent Review Consideration Period;

**c. Determination** means:

- i. where two Valuers have been appointed, their joint determination; and
- ii. where one Umpire has been appointed the Umpire's determination;

**d. Determination Period** means the period of 20 Working Days after the Appointment Date;

**e. Rent Review Consideration Period** means the period of 3 months after the commencement of the new lease under clause 6;

**f. Rent Period** means:

- i. for the first Rent Period, the period commencing on the Commencement Date of the new lease and ending on the day before the first Review Date under the new lease; and
- ii. for each subsequent Rent Period, the period commencing on a Review Date under the new lease and ending on the

earlier of the day before the next Review Date under the new lease and the end of the Term of the new lease; and

**g. Supplementary Appointment Period** means the period of 10 Working Days after the end of the Appointment Period.

- 1.1.3. The Parties must each appoint a Valuer and advise each other of the name and contact details of the Valuer by the end of the Appointment Period.
- 1.1.4. If a Party (First Party) fails to appoint its Valuer by the end of the Appointment Period then it may no longer appoint its own Valuer and other Party (Second Party) may appoint both Valuers. If the Second Party fails to appoint the second Valuer within of the Supplementary Appointment Period then either Party may request the President to appoint an Umpire within 5 Working Days of the request to determine the Rent.
- 1.1.5. Where the two Valuers have been appointed to determine the Rent and they fail or refuse to deliver a Determination within the Determination Period then either Party may request the President to appoint an Umpire within 5 Working Days of the request to determine the Rent.
- 1.1.6. If the Umpire fails or refuses to deliver a determination by the end of the Determination Period then either Party may request the President to appoint another Umpire and the provisions of this Schedule 5 relating to appointment and determination by an Umpire will apply to the extent practicable to the second Umpire.
- 1.1.7. Each Valuer (and, where applicable, the Umpire) must
  - a. determine the open market rental value of the Premises at the commencement date of the relevant Option Term;
  - b. act as an expert and not as an arbitrator; and
  - c. give a written determination with reasons by the end of the Determination Period.
- 1.1.8. A Party may make oral and/or written submissions to the Valuers (or, if applicable, the Umpire) but only within 10 Working Days after the Appointment Date. In making a determination the Valuers (or, if applicable, the Umpire) must consider the written and/or oral submissions of a Party received within 10 Working Days after the Appointment Date.
- 1.1.9. The fees and expenses of the Valuers and, if applicable, the Umpire, must be paid by the Landlord and the Tenant equally.
- 1.1.10. The Determination of the Valuers and, if applicable, the Umpire, is final and binding.

- 1.1.11. The Valuers or the Umpire (as the case may require) must determine the open market rental value of the Premises at the Commencement Date of the Option Term assuming that:
- a. the Landlord is a willing but not anxious landlord and the Tenant is a willing but not anxious tenant;
  - b. the Premises are available with vacant possession,  
and taking into account:
    - c. the open market rental value (other than rental values which have been escalated to a predetermined amount or in accordance with movements in the consumer price index or any other index) at the Commencement Date of the Option Term of comparable premises, in the town or city within which the Building is situated whether that value is determined in respect of new lettings with vacant possession or in respect of occupied premises;
    - d. the Permitted Use of the Premises;  
and taking into account:
      - e. the open market rental value (other than rental values which have been escalated to a predetermined amount or in accordance with movements in the consumer price index or any other index) at the Commencement Date of the Option Term of comparable premises, in the town or city within which the Building is situated whether that value is determined in respect of new lettings with vacant possession or in respect of occupied premises;
      - f. the Permitted Use of the Premises;
      - g. the period which will elapse between the Commencement Date of the Option Term and the first review date in the Further Term or, if there is no review date, the end of the Option Term;
      - h. the increased value of the Premises occasioned by the Landlord repainting or recarpeting the Premises pursuant to this Lease (provided that nothing in this clause will require the Tenant to reimburse the Landlord for the cost of that repainting or recarpeting);
      - i. the restriction on user, assignment or sub-letting;
      - j. the terms and conditions generally of the lease for the Option Term;
      - k. any rent-free period, financial contribution (including any contribution towards the cost of fitout) or other concession

customarily or likely to be offered to new tenants of comparable vacant premises,

but not taking into account:

- l. the adverse effect on the condition or rental value of the Premises of any breach of this Lease by the Tenant;
- m. any Fittings and other improvements or alterations installed in or made to the Premises by or for the Tenant, its sub-tenants or their respective predecessors in title during the Term, the Option Term or any period of prior occupation to the intent that the Premises for the purpose of determining the open market rental value will be regarded as cleared space but otherwise serviced and habitable;
- n. any increase in value in the Premises as a result of any structural alterations or other voluntary improvements made to the Premises or the Building (including installation of equipment) by the Landlord at its discretion for any reason at any time (except any carried out at the prior request of the Tenant to which the Tenant has not contributed either by way of service charge or otherwise);
- o. any special interest of the Tenant, its sub-tenants or their respective predecessors in title including the fact that the Tenant is a sitting tenant;
- p. goodwill occasioned by the Tenant, its sub-tenants or their respective predecessors in title;
- q. any right of the Tenant to use any part of the Building or the Land other than the net lettable area of the Premises and the Car Parking Bays; or
- r. any naming rights the Tenant may have in respect of the Building.

**SCHEDULE 6 - PERFORMANCE STANDARDS**

SCHEDULE 7 - GREEN LEASE SCHEDULE

**EXECUTED as a Deed.**

**Signatures**

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**SIGNED SEALED AND DELIVERED** for and on behalf of the **Commonwealth of Australia** represented by the Department of Finance by:

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Print name of signatory

Signature

In the presence of:

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Print name of witness

Signature of witness

EXECUTED by Fullarton Investments Pty Ltd  
ACN 167 249 194 in accordance with the  
requirements of section 127 of the  
*Corporations Act 2001* by:

COLIN JOHN STEINERT

Name of Director

Signature

In the presence of: JOY MONTGOMERY  
JM

and by:

COLIN JOHN STEINERT

Name of Director/Secretary

in the presence of:

x JOY MONTGOMERY

Name of Witness

Signature of Witness



**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT CERTIFICATION**

It is certified that this Lease does not contravene Section 32 of the Development Act 1993

*Mortgagee Consent*

**NATIONAL AUSTRALIA BANK LTD**

as Mortgagee under and by virtue of Memorandum of Mortgage No. 12215088 HEREBY  
CONSENTS to the within Lease

DATED ..... 1 December ..... 2015

**EXECUTION**

*Lessor*

EXECUTED by  
**FULLARTON INVESTMENTS PTY LTD**  
ACN 167 249 194  
by authority of the Director(s)

[Redacted Signature]

Director

(Executed under Section 127(1) Corporations Act)

Director/Secretary

**LESSEE**

**SIGNED** in my presence for and on behalf  
of **COMMONWEALTH OF AUSTRALIA** by the  
Director, Ministerial and Parliamentary Services,

**GREG LEMMON**

[Redacted Signature]

[insert full name in block letters],  
a duly authorised delegate of the Department of  
Financial Services and Consumer Protection has  
signed

Signature of Witness

**LYALLE PATTERSON**

Name of Witness (print)

Address of Witness

Business Hours Telephone No. of Witness

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF LEASE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &  
STAMP DUTY PURPOSES ONLY**

Prefix
L
Series No

**BELOW THIS LINE FOR AGENT USE ONLY**

<p>CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886</p> <hr/> <p>Solicitor/Registered Conveyancer/Lessee</p>
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Lodged by: AGENT CODE

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

- 1.....
- 2.....
- 3.....
- 4.....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

- 1.....
- 2.....
- 3.....
- 4.....

**DELIVERY INSTRUCTIONS** (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

R-G 010107

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	