

Senate Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Human Services Portfolio

Health Services Australia

Budget Estimates 2007-08 - May 2007

Question: HS50

Outcome N/A, Output N/A

Topic: HSA – Radiology Negotiations

Hansard Page/Written Question on Notice: Hansard Page F&PA 133

SENATOR WONG asked on 24/05/2007:

Senator WONG—On notice, I would like you to indicate to me the commercial negotiations with Dr McIntosh which preceded the arrangement to refurbish and the involvement of the board. And I would like to know on what terms Dr McIntosh occupies his lease of these premises. Is it a lease arrangement or a sublease arrangement? And I would like you to table a copy of the contract.

Answer:

HSA's radiology contract with its Perth provider was due to expire in September 2006. In February 2006 Mr Kmet approached Dr Macintosh to provide a radiology service in the new HSA Perth clinic. Mr Kmet approached Dr Macintosh directly because he wanted to use someone with a known ability to reliably and cost-effectively deliver the required service.

The terms of the agreement were agreed in late August 2006 and Digital Health Screening commenced operation on 1 October 2006.

Digital Health Screening occupies the radiology space under a licensing agreement between Health Services Australia and Digital Health Screening.

A copy of the Licence Agreement is attached.

LICENCE AGREEMENT

BETWEEN

HEALTH SERVICES AUSTRALIA LIMITED

AND

DIGITAL HEALTH SCREENING PTY LTD



Chamberlains
L A W F I R M

19-23 Moore Street Turner ACT 2612
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THIS LICENCE AGREEMENT is made on the date set out in Item 1 of Schedule 1.

BETWEEN

HEALTH SERVICES AUSTRALIA LIMITED ACN 078 934 791 of 15 Bowes Street Woden in the Australian Capital Territory (“HSA”)

AND the party identified in Item 3 of Schedule 1 (“the Licensee”)

THE PARTIES AGREE FOLLOWS:

1. INTERPRETATION

1.1 In this Licence Agreement, unless the contrary intention appears:

- (a) **“Commencement Date”** means the date set out in Item 4 of Schedule 1;
- (b) **“Head Lease”** means the lease agreement between HSA and *[insert relevant details of Lessor]* a copy of which can be provided on request by HSA to the Licensee;
- (c) **“Improvements”** means all buildings and structures on and within the Licence Area, plant and equipment, mechanical or otherwise, fixtures, furniture and furnishings of whatsoever nature including window and floor coverings, blinds, light fittings in or upon the Premises or any part of the Premises any further improvements or extensions to the Premises supplied or erected by Digital Health Screening] or HSA from time to time;
- (d) **“Licence”** means the occupation of the Licence Area by the Licensee under the terms and conditions set out in this Licence Agreement;
- (e) **“Licence Area”** means such part of the Premises occupied by the Licensee and described in Item 2 of Schedule 1 and as marked in Schedule 3;
- (f) **“Licence Fee”** is the amount payable by the Licensee as set out in Item 8 of Schedule 1;
- (g) **“PACS”** means the Picture Archive Communication System including software and hardware;
- (h) **“Premises”** means the area leased by HSA pursuant to the Head Lease;

- (i) **“Services Agreement”** means the agreement for radiography services dated on or around the date of this Licence Agreement between the parties;
- (j) **“Term”** means the term of this Licence Agreement specified in Item 7 of Schedule 1 commencing on the Commencement Date and ending on the Termination Date; and
- (k) **“Termination Date”** means the date set out in Item 5 of Schedule 1 subject to the terms of this Licence Agreement.

1.2 In this Licence Agreement, unless the contrary intention appears:

- (a) a word or expression in the singular includes the plural and the plural includes the singular;
- (b) words of one gender include any gender;
- (c) a reference to a person includes an individual and a body corporate;
- (d) a reference to a right includes a remedy, power or discretion;
- (e) a reference to a clause, annexure or schedule is a reference to a clause in or an annexure or schedule to this Licence;
- (f) a reference to this Licence Agreement includes the schedule attachments and annexure;
- (g) references to a party include a reference to the representative member of the GST group to which the party belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the party if the party were not a member of a GST group;
- (h) examples in this Licence Agreement are descriptive but not exhaustive;
- (i) headings in this Licence may be used to help interpretation but are not legally binding;
- (j) a provision in this Licence Agreement must not be construed against a party solely because that party was responsible for preparing this Licence Agreement or that provision;
- (k) to confirm the Licence Area of the Premises or any part of it the method of measurement adopted by the Property Council of Australia (at the Commencement Date) is to be used, subject to any amendments required by legislation; and

- (l) references to any law are references to that law as amended, consolidated, supplemented or replaced and include references to regulations and other instruments under it.

2. GRANT

- 2.1 Subject to the Head Lease and this Licence Agreement, HSA grants to the Licensee the Licence for the Term.
- 2.2 The Licence is always subject to the Head Lease and the Licensee specifically acknowledges and agrees to the terms of the Head Lease provided that in the event that there is an inconsistency between this Licence and the Head Lease, this Licence Agreement will prevail to the extent of the inconsistency.
- 2.3 If under the Head Lease HSA ceases to be responsible for the Licence Area or the Head Lease is terminated, this Licence Agreement may be terminated by HSA at that time without any compensation whatsoever payable to the Licensee.

3. LICENCE OR ASSIGNMENT

- 3.1 The Licence is personal to the Licensee and may not be assigned to any other person without the prior written consent of HSA which may be given upon such conditions as HSA may, in its absolute discretion determine.
- 3.2 The Licensee shall be responsible for the whole of the Licence Area notwithstanding the use and occupation of parts of the Licence Area by other persons.

4. RELATIONSHIP

- 4.1 The grant of the Licence does not create any tenancy or any rights in the nature of a tenancy.
- 4.2 The parties agree that this Licence Agreement shall be conclusive evidence in any legal proceedings that the relationship between them is that of Licensor and Licensee and not otherwise.

5. USE OF PREMISES

- 5.1 The Licensee must only use the Licence Area for the purpose described in Item 6 of Schedule 1.
- 5.2 The Licensee must not do anything that is not permitted under the Head Lease.

6. LICENCE FEE

- 6.1 The Licensee agrees to pay the Licence Fee (or such fee as may be varied in accordance with clause 6.3) at the time and in the manner described in Item 9 of Schedule 1 or as HSA otherwise directs in writing.
- 6.2 The License Fee payable will cover the costs of network access, secretarial support, telecommunications and telephone costs.
- 6.3 HSA will review and vary the Licence Fee on the anniversary of the Commencement Date each year during the Term and in the manner specified in Item 10 of Schedule 1.

7. SERVICES

- 7.1 The Licensee will be responsible for water, gas and electricity to the Licence Area including the costs of consumption and connection of such services to the Licence Area as determined by HSA on a pro-rata basis based on the Licence Area as a proportion of the total leased space and a share for common use areas..

8. REPAIRS, MAINTENANCE AND CLEANING

- 8.1 The Licensee accepts the Licence Area in its condition at the Commencement Date and will at all times during the Term at its own expense:
- (a) repair and keep the Licence Area in good and substantial repair and condition, fair wear and tear excepted; and
 - (b) keep the Licence Area in a thoroughly clean and tidy condition to the reasonable satisfaction of HSA.
- 8.2 Where any damage is caused to the Licence Area which is covered by a policy of insurance and those moneys are paid to either the Licensee or HSA then those moneys will be used to repair the damage caused to the Licence Area.
- 8.3 If and whenever the Licensee is in breach of its obligations under clause 8.1 HSA may by notice in writing to the Licensee specifying the repairs, maintenance or works needed require the Licensee to effect the necessary work within 48 hours or such longer period specified in the notice. If the Licensee does not carry out the required work within the time specified in the notice any person or persons duly authorised by HSA with such equipment as is necessary may enter the Licence Area and carry out the necessary work. In this event, all reasonable costs and expenses incurred by HSA in carrying out the work will be paid by the Licensee to HSA on demand. From the date of such demand until paid such costs and expenses will for all purposes of this Licence be considered a debt due and payable to HSA by the Licensee.

- 8.4 The Licensee will take all reasonable precautions against the outbreak of fire in the Licence Area and immediately notify HSA in the event of any fire or other event occurring in the Licence Area.
- 8.5 The Licensee will comply with all obligations in the Head Lease regarding repairs, maintenance and cleaning.

9. SECURITY AND ILLUMINATION

- 9.1 The Licensee will ensure that the Licence Area is secured to the satisfaction of HSA as required from time to time.
- 9.2 Subject to clause 9.1, the Licensee must provide a security system in the Licence Area that is connected both to the building base security system and HSA's security system for the Premises (as the case may be).
- 9.3 If the Licensee does not comply with clause 9.2, the Licensee indemnifies HSA against all losses, claims, demands, actions and costs whatsoever (including a claim, demand or action made by the Licensee) arising from a breach of security in the Licence Area.

10. INSURANCE

- 10.1 The Licensee will comply with all insurance obligations in the Head Lease and will also effect and maintain a public risk insurance policy in the joint names of HSA and the Licensee for a minimum amount specified in Item 14.
- 10.2 The Licensee will provide evidence to HSA of the currency of the insurance policies referred to in clause 10.1 prior to the Commencement Date and on the anniversary date of the Commencement Date each year during the Term.
- 10.3 The Licensee will notify HSA of any damage caused to the Licence Area whether covered by a policy of insurance or not.
- 10.4 The Licensee authorises HSA to conduct all negotiations with the insurer to settle any claim whether for damage to the Premises or public liability. HSA may by notice in writing to the Licensee permit the Licensee to negotiate and settle any claim contemplated above.

11. INDEMNITIES

- 11.1 The Licensee and HSA will indemnify and keep indemnified each other against:
- (a) all losses or damage to the Improvements arising out of the use or occupation of the Licence Area or any part thereof by either party or any other person;

- (b) all losses, damage claims, suits or other actions arising out of the use or occupation of the Licence Area by either party or any other person; and
- (c) damage to any property in the Licence Area or any part thereof of the Licensee or other user of the Licence Area arising from overflow of water supply or rain water which may leak into or flow into any part of the Licence Area provided always that this indemnity will have no application where the damage was caused by negligence on the part of HSA.

11.2 The indemnities in clause 11.1 shall survive the termination or expiration of this Licence.

12. OTHER RIGHTS AND OBLIGATIONS

12.1 Compliance with Laws

The Licensee will comply with all Acts, regulations and ordinances including building codes and practices, occupational health and safety legislation and health legislation in force in the State of Western Australia relating to the use of the Licence Area.

12.2 Legal Costs

- (a) HSA and the Licensee will bear their own legal costs in relation to the preparation, of this Licence Agreement where applicable.
- (b) The Licensee is responsible for the costs of stamping this Licence Agreement.

12.3 No Waiver

All rights remedies and powers of HSA under this Licence will remain in force notwithstanding any neglect forbearance or delay in enforcing such rights, remedies and powers.

12.4 Conduct of Business

The Licensee will at all times in conducting business in the Licensed Area ensure:

- (a) that the Licensee and all persons employed by the Licensee maintain a neat, clean and tidy appearance and comply with the HSA Dress Code as varied from time to time;

- (b) that the walls and floors of the Licence Area and the Equipment and all windows, plant, tools, fittings, fixtures, stock and merchandise which may be in or on the Licence Area shall be kept neat and tidy and free from dirt and dust and that the Licensee and all persons employed by him will observe and carry out all reasonable directions of and such procedures as shall be reasonably prescribed by HSA in connection with the observance and performance of this obligation;
- (c) that the Licensee and persons employed by the Licensee will render businesslike service in a proper and courteous manner to all customers and in so doing will observe and carry out all reasonable directions prescribed by HSA;
- (d) that the Licensee shall at his own cost and expense in all things, comply in all respects with the provisions of all Acts of Parliament regulations rules and by-laws for the time being in force affecting the business and all orders or directions which may be made or given by any Health Commission or Fire Brigade Authority or Department or any authority in respect of or affecting the Licence Area or business or occupation carried on or the storage or use of inflammable liquids or dangerous substances in the Licence Area by the Licensee and in respect of employees engaged in any such business or occupation provided that the Licensee is not responsible for any penalty incurred by contravention of such Act, regulation or by-law prior to the commencement of this Licence (for the avoidance of doubt, the Licensee is only required to comply with obligations in relation to the Licence Area and not the whole building); and
- (e) that the Licensee shall not display in or outside or on the Premises any advertisement or sign to which HSA shall object but the Licensee may put up or affix to the Licence Area such advertisements or signs (and in such position and of such size and design) as HSA shall first approve in writing. If this condition is not adhered to by the Licensee HSA may demand removal of the sign by giving two (2) weeks' notice in writing.

12.5 Operational Hours

The Licensee must keep the Licence Area open for trading as agreed by HSA and the Licensee in writing from time to time.

13. QUIET ENJOYMENT

Subject to the provisions of the Head Lease if the Licensee pays the Licence Fee and complies with the covenants and conditions of this Licence the Licensee will be entitled to quietly enjoy the Licence Area without interruption by HSA or any person lawfully claiming from or under or in trust for HSA.

14. DISPUTE RESOLUTION

- 14.1 The parties acknowledge that in order to minimise any dispute in relation to this Licence Agreement they should first, without delay and in good faith, attempt to resolve such dispute by way of informal negotiations prior to commencing any proceedings.
- 14.2 Where the parties are unable to resolve a dispute in good faith pursuant to clause 14.1 the matter may be referred to a person acting as an expert (and not as an arbitrator) who is a practising expert nominated, at the request of either party, by the President or the senior official for the time being of the professional body most appropriate to determine the dispute, or if the parties cannot agree on such a body, by the President of the Law Society of the State of the Australian Capital Territory and the written determination of such person will be conclusive and binding on the parties.
- 14.3 HSA and the Licensee will share equally the fees and expenses of any expert appointed in accordance with subclause 14.2 but will otherwise bear their own costs in relation to the dispute.
- 14.4 Any dispute arising between HSA and the Licensee in respect of the review of the License Fee, or in relation to any other matter relating to the Licence to which this clause 14 does not specifically apply and which is not resolved by the parties within 2 months of the dispute arising, must be referred for determination, at the request of either party, to a person acting as an expert and not as an arbitrator who will be appointed in accordance with clause 14.2 and the written determination of such an expert will be conclusive and binding on the parties.

15. TERMINATION

- 15.1 HSA may immediately terminate this Licence Agreement without prejudice to any claim which HSA may have against the Licensee for any breach of the covenants by the Licensee, if:
- (a) any amount payable under this Licence Agreement remains unpaid for fourteen (14) days after the date payment is due;
 - (b) the Licensee fails to observe or perform any other of the covenants or obligations of this Licence Agreement and does not remedy such a failure within fourteen (14) days from the date of service on the Licensee of a written notice from HSA specifying the nature of the failure;
 - (c) where the Licensee is a corporation or an incorporated association, action is taken by way of an order, decision or resolution for the winding up or cancellation of registration of the Licensee;

- (d) the Licensee is insolvent or becomes subject to any form of insolvency administration; or
- (e) the Services Agreement is terminated for any reason.

15.2 The Licensee may terminate the Licence Agreement on 2 months written notice to HSA if the Services Agreement is terminated for any reason.

15.3 The acceptance of the Licence Fee or other moneys by HSA during or after any period referred to in clause 15.1 shall not prevent or impede the exercise by HSA of the powers conferred upon it under clause 15.1.

16. NOTICES

16.1 Any notice, payment or receipt required or permitted to be given for the purposes of this Licence will be deemed to have been duly given if delivered personally, or left at, or posted by ordinary prepaid mail or where appropriate sent to the address referred to in clause 16.3.

16.2 A notice, payment or receipt if posted, will be deemed to be received two (2) days after posting.

16.3 Until otherwise notified the address of HSA and the Licensee for the purposes of this Licence Agreement is a set out in Item 15 of Schedule 1.

17. OPTION TO RENEW

17.1 This clause applies where Item 11 of Schedule 1 has been completed and the Licensor agrees to provide a further Licence of the Licence Area after the expiry of the Term for the period indicated and the Licensee is willing to extend the License Agreement.

17.2 This clause is conditional upon:

- (a) the Licensee punctually paying the Licence Fee and observing the covenants throughout the term of this Licence Agreement; and
- (b) the Licensor serving on the Licensee a written notice exercising the option during the period not longer than 6 months and not less than 3 months before the date of expiry of this Licence Agreement.

17.3 Subject to clause 17.2 the Licensee may upon receipt of the notice specified in clause 17.2(b) accept this offer by HSA to grant a renewal of this Licence Agreement ("the New Licence") for the further term ("the New Term") set out in Item 11 of Schedule 1 commencing on the day following the expiry of this Licence Agreement containing identical conditions to the conditions of this Licence Agreement subject to the following alterations:

- (a) the commencement date of the New Term will be inserted in Item 4 of Schedule 1 and shall be the day following the expiry of this Licence Agreement;
- (b) the date of expiration of the New Term will be inserted in Item 5 of Schedule 1;
- (c) the Term to be inserted in Item 7 of Schedule 1 of the New Licence will be the term contained in Item 11 of Schedule 1 of this Licence;
- (d) where the first day of the New Term is not a Licence Fee Review Date set out in Item 13 of Schedule 1, the Licence Fee for the first year of the New Term shall be the previous year's rental amount;
- (e) where the first day of the New Term is a Licence Fee Review Date set out in Item 13 of Schedule 1 the Licence Fee to be inserted in Item 8 of the New Licence will be determined in accordance with the method set out in Item 13 of Schedule 1 and Schedule 2;
- (f) the dates and methods of Licence Fee review to be inserted in Item 10 of the New Licence will be those dates set out in Item 13 of Schedule 1 and include the methods of rent reviews set out next to those dates respectively;
- (g) the Term inserted in Item 11 of Schedule 1 of the New Licence will be the Term in Item 12 of Schedule 1 of this Licence (if any);
- (h) Item 12 of Schedule 1 of the New Licence shall read "Not Applicable"; and
- (i) any alterations considered reasonably necessary by HSA's solicitors consequent upon any change in or decision on the law applicable to this Licence Agreement provided these do not derogate from the grant of the Licence.

17.4 If the Licensee claims this Licence Agreement is to be construed as granting a perpetual right of renewal then this clause does not apply and the Licensee can take no benefit under it.

17.5 In this clause, expiry of this Licence Agreement refers to expiry by effluxion of time.

18. GST

18.1 The Licence Fee and other amounts payable by the Licensee under this Licence Agreement are calculated or expressed exclusive of GST.

18.2 If GST is or becomes payable by HSA for a supply under this Licence Agreement, the Licensee must pay to HSA an amount equal to the GST payable on that supply.

18.3 If:

- (a) the Licensee makes a supply to HSA for which:
 - (i) GST is not payable; and
 - (ii) GST is payable but HSA is entitled to an input tax credit for the GST paid,
- (b) under this Licence Agreement, the Licensee is obliged to reimburse HSA for all or some of the amount paid or payable by HSA for that supply; and
- (c) that reimbursement is not to be included in calculating the price of a supply by HSA under this Licence Agreement;

then, and despite clause 18.2 the Licensee in satisfying its obligation to make that reimbursement is not obliged to pay to HSA any amount on account of GST.

18.4 An amount payable under this clause must be paid:

- (a) if in respect of the supply of a right to possession of the Licence Area, at the same time as the payment of the Licence Fee;
- (b) if in respect of any other supply under this Licence Agreement, at the same time as the payment of the amount payable by the Licensee in respect of that supply is due; and
- (c) in addition to rent and any other amount payable by the Licensee under this Licence.

18.5 If the Licensee fails to pay an amount payable under this clause when due, HSA may recover it from the Licensee as a debt due under this Licence Agreement.

18.6 In this clause:

- (a) "GST" means goods and services tax or any similar tax imposed by reason of a supply under this Licence Agreement; and
- (b) "price" has the meaning given in the legislation of the Commonwealth that implements the system of GST as amended from time to time.

19. GOVERNING LAW

This Licence is governed by the laws of the State of the Australian Capital Territory and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of the Australian Capital Territory.

20. SEVERABILITY

If any clause or part of a clause of this Licence Agreement is unenforceable, then it will not be considered part of this Licence Agreement but that severance will not affect the validity of the remainder of this Licence Agreement.

21. WHOLE AGREEMENT

The parties agree that this Licence Agreement contains the whole agreement between the parties.

22. WAIVER

No custom or practice which has developed between the parties in the course of administering the Licence will be construed so as to waive or lessen the right of a party to insist upon the performance by the other party all or any covenants or agreements contained in this Licence Agreement.

23. FITOUT

23.1 The Licensor will fit out the Licence Area in consultation with the Licensee. The parties agree that the fit out of the Licence Area belongs to the Licensor.

23.2 The Licensee will provide, maintain and own all moveable radiography equipment.

24. PACS

The Licensor will provide the Licensee with access to the PACS. The Licensor will provide all necessary software, hardware and communication access, to the Licensee. All PACS equipment, including all software and hardware will remain the property of the Licensor and the Licensee agrees to comply with all directions regarding its use and maintenance.

SCHEDULE 1

- ITEM 1 DATE OF AGREEMENT:**
- ITEM 2 LICENSED AREA:** That part of Level 2, 553 Hay Street, Perth WA 6000 marked in pink in the Plan at Schedule 3, including the non-exclusive use of walkways, toilet and kitchen facilities marked in blue.
- ITEM 3 LICENSEE:** **DIGITAL HEALTH SCREENING**
ACN: 119 127 338
- ITEM 4 COMMENCEMENT DATE:** 1 October 2006
- ITEM 5 TERMINATION DATE:** 30 September 2008
- ITEM 6 PERMITTED USES:** X-Ray Facilities
- ITEM 7 TERM:** Two (2) Years
- ITEM 8 LICENCE FEE:** [REDACTED]
- ITEM 9 MANNER & PLACE OF PAYMENT OF LICENCE FEE:** [REDACTED]
- ITEM 10 LICENCE FEE REVIEW DATES & METHODS OF REVIEW:** 4% per annum increase in accordance with Schedule 2, with a review to market from the second anniversary of the Commencement Date.
- ITEM 11 TERM OF FIRST OPTION:** One (1) year
- ITEM 12 TERM OF SECOND OPTION:** Not applicable
- ITEM 13 LICENCE FEE REVIEW DATES DURING OPTION:** Each anniversary of the Commencement Date including on the first day of the New Term.
- ITEM 14 PUBLIC RISK LIABILITY INSURANCE:** \$20,000,000.00

ITEM 15 ADDRESS FOR NOTICES: Health Services Australia Limited
PO Box 281
WODEN ACT 2606
Ph: (02) 6269 2103
Fax: (02) 6269 2180
Attention: Chief Financial Officer

Digital Health Screening
1/60 Bower Street
Manley
Attention : General Manager

SCHEDULE 2**LICENSE FEE REVIEW**

“Licence Fee Increase by 4%” (where x is a specified percentage figure) means the Licence Fee adjustment in accordance with the following formula:

$$\text{NYLF} = \text{OYLF} \times \frac{(100+x)}{100}$$

Where NYLF is the new yearly Licence Fee payable by the Licensee to HSA commencing from the Licence Fee Review Date; and OYLF is the Licence Fee (on annualised basis) payable by the Licensee to the HSA immediately preceding the Licence Fee Review Date.

The Licensee shall continue to pay the current instalments of the Licence Fee due until the new Licence Fee is determined. Within 21 days after the new Licence Fee being determined the Licensee shall adjust and pay the amount due to the HSA as Licence Fee from the Licence Fee Review Date notwithstanding that after the Licence Fee Review Date this Licence is surrendered, forfeited or otherwise terminated. In this respect time shall be of the essence.

SCHEDULE 3
LICENCE AREA

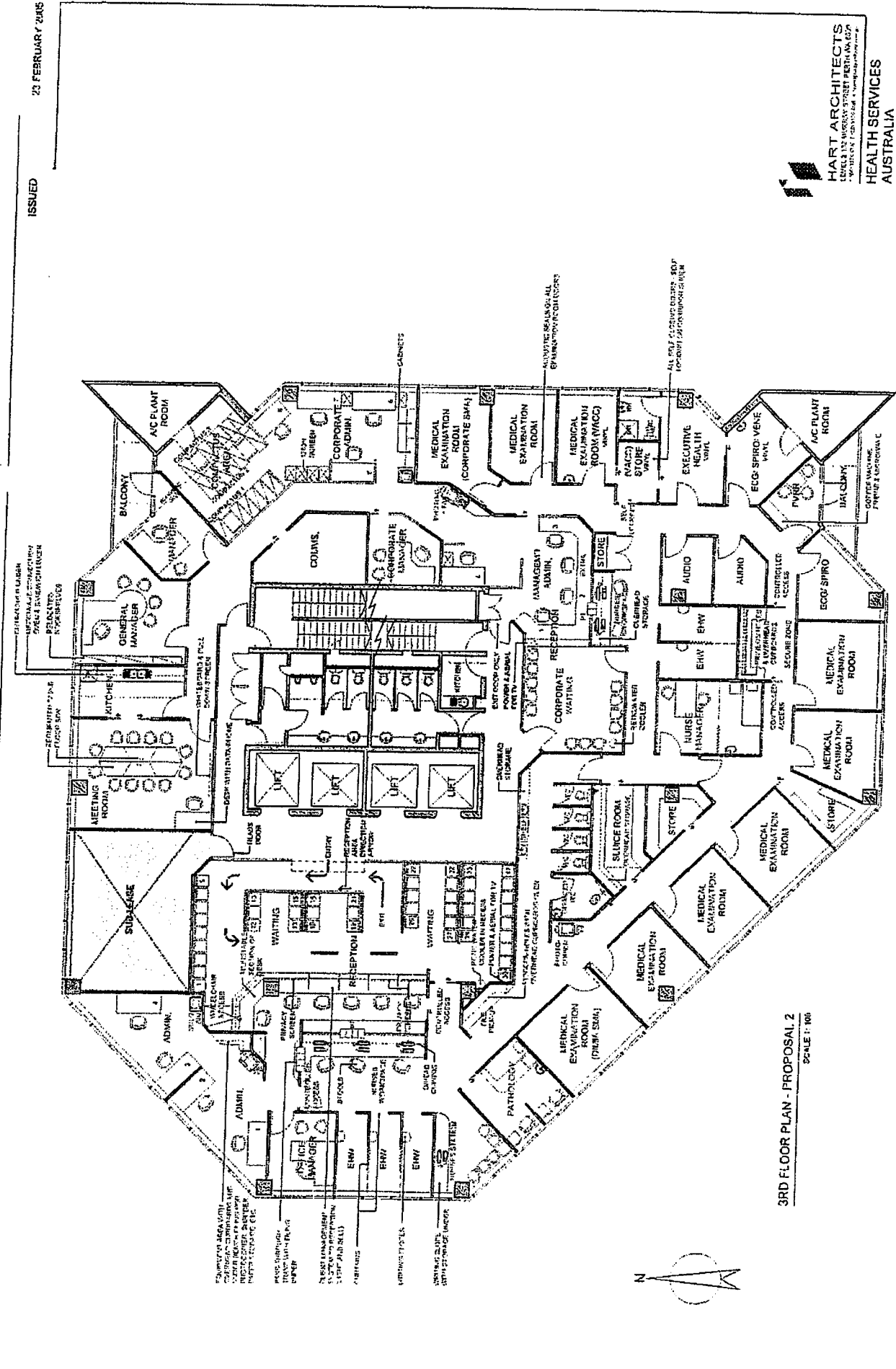
ISSUED 23 FEBRUARY 2015



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HEALTH SERVICES AUSTRALIA

NAVIGATION, CORPORATE &
EXECUTIVE HEALTH MANAGEMENT
OFFICE REFURBISHMENT
3RD FLOOR PLAN - PROPOSAL 2
SCALE 1:100



3RD FLOOR PLAN - PROPOSAL 2
SCALE 1:100

SCHEDULE 4

HEAD LEASE

CLAYTON UTZ

Office Lease
553 Hay Street, Perth

Bollig Pty Ltd

ACN 089 116 441

Lessor

Health Services Australia Limited

ABN 99 078 934 791

Lessee

The Clayton Utz contact for this document is
Christian Willing on + 61 8 9426 8000

Clayton Utz

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Our reference 60007/13963/CRW:IGC:80036004

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Lease made at

on

20 April, 2006

Parties

Bollig Pty Ltd ACN 089 116 441 of Level 1, 8 Kings Park Road, West Perth, Western Australia ("Lessor")

The lessee mentioned in the schedule ("Lessee")

The guarantor mentioned in the schedule (if any) ("Guarantor")

Background

- A. The Lessor is the tenant of the Building under the terms of the Head Lease.
- B. The Lessor has agreed to grant and the Lessee has agreed to take on sublease the Premises, being part of the Building, as hereinafter set out.

Operative provisions

1. Interpretation

1.1 Definitions

In this Lease unless the contrary intention appears:

"Acts" includes all Acts and Statutes (State or Federal) for the time being enacted and all modifications, regulations, bylaws, requisitions or orders made to or under any Act from time to time by any statutory, public or other competent authority.

"Address" means the method and address for payment mentioned in the schedule or any other method or place appointed by the Lessor by notice in writing to the Lessee.

"Aggregate of the Lettable Floor Area in the Building" means the aggregate of all lettable floor areas in the Building (excluding the car parking area and any area designated by the Lessor as a storage area) calculated by the Lessor in accordance with the PCA Method of Measurement.

"Air Conditioning Plant" means any plant, machinery or equipment for heating, cooling or circulating air in the Building.

"Authority" means any governmental or other public body or authority of any kind or any department thereof.

"Building" means all buildings upon the Land, the sealed, bituminised and paved areas, driveways and other improvements on the Land and includes the Lessor's fixtures, fittings, plant and equipment therein situate at and known by the name and address specified in the schedule.

"Car Parking Area" means the basement of the Building designated by the Lessor for parking and includes driveways and entrances to and from the basement.

"Common Parts" means the parts of the Building and Land from time to time set aside by the Lessor as areas open to tenants or occupiers of the Building or the public and those parts of the Building and the Land approved by the Lessor from time to time for common use by the occupants of the Building and includes (but without limiting the generality of the foregoing) the entrances, lobbies, corridors, toilets, stairways, elevators and other common amenities and conveniences including those parts of the car park which are not leased or licensed by the Lessor to any person and includes (for the purposes of calculating Variable Outgoings, Rates

and Taxes and Insurance Outgoings) the Building manager's office, store rooms, workshops, plant rooms and service corridors in the Building not leased to any tenant but intended for the maintenance and administration of the Building.

"**Consumer Price Index**" means the Consumer Price Index All Groups (Perth) published or made available from time to time by the Australian Bureau of Statistics. The reference base for such Index shall be the fiscal year 1989-90. If the Australian Statistician shall update the reference base of such Index, due conversion shall be made to preserve the intended continuity of the calculation by making the appropriate arithmetical adjustments to make the updated index number at the relevant date or dates correspond in reference base at all times.

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

"**Current Market Rent**" means the best current open market annual rental value that can be reasonably obtained for the Premises:

- (a) on the basis that the Premises are available for leasing with a sitting tenant for the Term and any additional options for renewal;
- (b) on the terms and conditions and for the permitted use contained in this Lease;
- (c) on the basis that the Lessee's Covenants have been fully performed at the Rent Review Date;
- (d) without taking into account the Lessee's trade fixtures and fittings and any other improvements and installations erected or installed at the Lessee's expense which the Lessee may remove at the expiration of this Lease, but taking into account permanent structural or other improvements to the Premises installed at the Lessee's expense and which the Lessee is not permitted to remove at the expiration of this Lease;
- (e) having regard to current open market annual rental values of comparable premises, whether vacant or occupied and whether any rental value thereof has been arrived at through new lettings or rent reviews or renewals of existing tenancies or otherwise;

but ignoring:

- (f) any rent free period or other benefit, incentive, financial contribution, concession or bonus customarily or at any time offered or likely to be offered to new tenants of vacant premises or to any tenant of the Building;
- (g) any value attaching to goodwill created by the Lessee's occupation of the Premises;
- (h) any value attaching to any licence or permit in respect of the business carried on by the Lessee at the Premises;
- (i) any decrease in the value of the Premises by reason of the occupancy or use of the same by the Lessee or any person deriving an interest in the Premises through the Lessee.

"**Date of Commencement**" means the Date of Commencement mentioned in the schedule.

"**Elevator**" means any lift or escalator in the Building.

"Encumbrances" means:

- (a) all mortgages, charges, writs, warrants, caveats (and the claims respectively stated therein) and any other right or interest of any third party affecting the Head Lease or the Land or any part thereof;
- (b) all reservations (if any) existing easements and restrictive covenants contained in the Crown Grant of the Land or referred to in or registered as an encumbrance on the Head Lease or the Certificate of Title to the Land; and
- (c) all easements, restrictive covenants and encroachments (if any) affecting the Head Lease or the Land or any part thereof whether or not the same are noted on the Head Lease or the Certificate of Title to the Land,

and includes, without limiting the generality of the foregoing, the encumbrances described in the schedule.

"Final Lease Year" means the period commencing from the last day of July during the Term to midnight on the date of expiry of the Term.

"First Head Lessor" means The Perth Diocesan Trustees and its successors in title and assigns.

"First Head Lease" means:

- (a) lease E102483 (as varied by surrender E102484) dated 11 May 1983 made between the First Head Lessor and Pennant as trustee of the Straits Property Trust (then called the Pennant Property Trust) of part of the Land described in paragraph (a) of the following definition of "Land" for a term of 33 years commencing 30 September 1984;
- (b) deed dated 11 September 1984 whereby Pennant assigned its interest in the First Head Lease to Perpetual Trustees WA Ltd as replacement trustee of the Straits Property Trust;
- (c) deed dated 11 September 1984 whereby Perpetual Trustees WA Ltd assigned its interest in the First Head Lease to Pennant as trustee of the Pennant Property Trust;
- (d) deed of assignment dated 9 November 1984 whereby Pennant assigned its interest in the First Head Lease to National Mutual Life Nominees Limited in its capacity as replacement trustee of the Pennant Property Trust (now called the Global Property Fund); and
- (e) deed of assignment dated 14 April 2000 whereby National Mutual Life Nominees Limited assigned its interest in the First Head Lease to the Lessor.

"Floor Area of the Premises" means the floor area of the Premises measured by the Lessor in accordance with the PCA Method of Measurement and being approximately the floor area described in the schedule.

"Floor Insurance Outgoings" means the same proportion of the Insurance Outgoings as the lettable floor area of the floor of which the Premises form part bears to the Aggregate of the Lettable Floor Area in the Building.

"Floor Rates and Taxes" means the same proportion of the Rates and Taxes as the lettable floor area of the floor of which the Premises form part bears to the Aggregate of the Lettable Floor Area in the Building.

"Floor Variable Outgoings" means the same proportion of the Variable Outgoings as the lettable floor area of the floor of which the Premises forms part bears to the Aggregate of the Lettable Floor Area in the Building.

"Government Authority" means:

- (a) the Commonwealth of Australia or a Commonwealth body, incorporated or not, or any other Commonwealth agency established by or under a law of the Commonwealth of Australia or of any state or territory thereof;
- (b) the Government of, or a State of Australia or a State government body, incorporated or not, or any other State agency established by or under a law of a State of Australia;
- (c) Consulate, High Commission or any similar body or organisation from any country or any United Nations organisation or similar body or organisation of a group of countries; or
- (d) any other Authority.

"Guaranteed Moneys" means the amount mentioned in the schedule.

"Head Lessor" means the First Head Lessor and the Second Head Lessor.

"Head Lease" means the First Head Lease and the Second Head Lease.

"Insolvency Event" means the happening of any of these events:

- (a) in the case of a corporation:
- (b) an application is made to a court for an order or an order is made that the corporation be wound up;
- (c) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of that corporation or one of them is appointed, whether or not under an order;
- (d) a meeting is convened or a resolution is passed to appoint an administrator in respect of that corporation;
- (e) except to reconstruct or amalgamate while solvent on terms approved by the Lessor, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them;
- (f) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors without the consent of the Lessor;
- (g) a resolution is passed to wind up or dissolve that corporation;
- (h) the corporation is dissolved;
- (i) the corporation is or becomes insolvent within the meaning of that expression in section 95A(2) of the Corporations Act or any of the events mentioned in paragraphs (a) to (f) inclusive of section 459C(2) of the Corporations Act occurs in respect of the corporation;

- (j) the appointment of an administrator in respect of the corporation or a receiver or manager or receiver and manager of the whole or part of the assets and undertaking of the corporation; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (l) in the case of an individual:
- (m) the individual proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of his creditors or any class thereof;
- (n) the individual commits an act of bankruptcy; or
- (o) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

"Insurance Outgoings" means the cost of insurance premiums, excess amounts payable, stamp duty, brokerage and fees payable by the Lessor:

- (a) for workers' compensation and employer's liability insurance (both statutory and common law) for all employees of the Lessor and all other employees (other than managerial employees) engaged or employed in the Building;
- (b) for insurance on all structures, plant and other improvements of an insurable nature in the Building (including a Lessor's industrial special risks policy) including plate glass replacements, costs associated with removal of debris, replacement of all structures, plant and other improvements, consultants' fees, loss of Rent, Rates and Taxes, Insurance Outgoings and Variable Outgoings and machinery breakdown;
- (c) for public liability insurance for such amount from time to time nominated by the Lessor; and
- (d) for any other insurance effected by the Lessor in relation to any risk associated with the Lessor's ownership or interest in the Building or the Land whether or not such risk is one in respect of which insurance is available or commonly obtained at the date of this Lease.

"Land" means the Land described in the schedule and, where the context permits, includes any part thereof.

"Lease Year" means each twelve month period commencing on 1 July and expiring on the following 30 June during the Term.

"Lessee's Covenants" means the covenants and agreements contained or implied in this Lease to be observed and performed by the Lessee and permitted assigns.

"Lessor", **"Lessee"** and **"Guarantor"** include their respective successors in title and assigns, the persons respectively deriving title under them and their respective estates.

"Managing Agent" means the agent appointed by the Lessor from time to time to manage the Building.

"Outgoings" means the outgoings and other expenditure mentioned in clause 3.3 of this Lease.

"PCA Method of Measurement" means the method of measuring floor areas in a building as recommended from time to time by Property Council of Australia Limited.

"Pennant" means Pennant Property Holdings Pty Ltd, the trustee of the Pennant Property Trust (now called the Global Property Fund) prior to its replacement as trustee by National Mutual Life Nominees Ltd under the deed dated 26 October 1984.

"person" means and includes a person firm and or corporation.

"Preliminary Period" means the period commencing at midnight on the day immediately preceding the Date of Commencement of the Term and expiring on the 30th day of June next following that date.

"Premises" means that part of the Building on the floor or floors mentioned in the schedule more particularly delineated for the purpose of identification only on the floor plan attached hereto and comprising the floor area mentioned in the schedule extending from the centre line of inter-tenancy walls or partitions to the centre line of external walls and to the internal surfaces of external windows and to (and including) the under face of the ceiling and to (and including) the upper face of the floor slab and includes all carpets, floor coverings, curtains, blinds and other fixtures and fittings belonging to the Lessor therein and all additions, modifications and replacements thereto from time to time.

"Rates and Taxes" means the aggregate of all council rates and charges including rubbish removal charges and levies, land tax (calculated on the basis that the Land is the only Land owned by the Lessor in Western Australia) metropolitan region improvement tax, water, drainage and sewerage rates and charges (including water consumption charges), meter rents, charges for the disposal of storm water and other rates, taxes, charges, assessments and impositions of every kind levied, assessed, charged, paid or payable in relation to this Lease or in respect of the Land or the Building or any part thereof whether governmental, semi-governmental, municipal or not and including any related interest, penalties, fines and expenses including, without limitation, any tax, impost or duty on goods, services or other things introduced by the Commonwealth, a State or Territory after the Date of Commencement which is charged or levied on such rates, taxes, charges, assessments and impositions.

"Rent" means the rent mentioned in the schedule and any variation of that rent determined in accordance with the provisions of this Lease but does not include Variable Outgoings.

"Rent Review Dates" means each of the dates referred to in item 8 of the schedule.

"Rules and Regulations" means the Rules and Regulations of the Building in the appendix to this Lease as varied from time to time pursuant to this Lease.

"Schedule" means the schedule to this Lease.

"Second Head Lessor" means The Public Trustee and its successors and assigns.

"Second Head Lease" means:

- (a) lease E 102489 dated 13 April 1984 made between the Second Head Lessor and Pennant of part of the Land defined in paragraph (b) of the above definition of "Land";
- (b) deed dated 9 November 1984 whereby the interest of Pennant under the Second Head Lease was assigned to National Mutual Life Nominees Ltd; and
- (c) deed dated 26 May 2000 whereby the interest of National Mutual Life Nominees Limited under the Second Head Lease was assigned to the Lessor.

"Term" means the term mentioned in the schedule and any renewal or extension of that term.

"this Lease" includes any schedule or annexure hereto.

"Valuer" means a natural person who:

- (a) is licensed under the *Land Valuers Licensing Act 1978*; and
- (b) has not less than 5 years experience (including not less than 2 years experience in Australia); and
- (c) is a member of the Australian Property Institute (Western Australian Division); and
- (d) has experience in valuing rentals in the locality where the rental to be valued by the person is situate or in valuing rentals of a similar nature.

"Variable Outgoings" means all costs and charges properly or reasonably assessed, assessable, charged, chargeable, paid, payable or otherwise incurred in respect of the Land or the Building and without affecting the generality of the foregoing includes the cost of:

- (a) cleaning the Building the Land, all windows, glass, doors and similar items, the Common Parts and the car parking areas, including the cost of wages, all overheads paid to the cleaning, maintenance and supervisory staff, all materials used in cleaning, toilet requisites, towels, all equipment lease or hire charges, insurance premiums in relation to cleaning equipment, all repairs and maintenance related to cleaning equipment, compaction and removal of rubbish including any charge imposed by the local authority, the supply of storage equipment and removal of rubbish, hiring, leasing, repairing, maintaining, running and insuring, rubbish compactors or other removal equipment and pest control;
- (b) gas, oil, electricity, light, power, fuel, telephone, sewerage and other services or requirements supplied to the Common Parts, the plant or equipment rooms, building and management staff offices and amenities rooms, workshops or other areas used in connection with the management of the Building (including the car parking area) for the general benefit or purpose of any lessee or occupant of the Building including also the running and operating expenses of the Air Conditioning Plant and Elevators and illuminating the Common Parts and the car park;
- (c) landscaping and maintaining the gardens and grounds surrounding the Building;
- (d) running, repairing, maintaining and replacing all services from time to time provided by the Lessor for tenants, occupiers or visitors of the Land and the Building including but without limiting the generality of the foregoing the Air Conditioning Plant, lifts, escalators, lavatories and sanitary conveniences and accessories, including the cost of all service and maintenance contracts associated therewith, fees and premiums paid to consultants or specialist contractors, the cost of purchase and installation of any materials or parts in association with the maintenance, servicing or repair of any service plant or equipment and the cost of running, repairing, maintaining and replacing a motor vehicle for use in connection with all matters set forth in this subclause;
- (e) maintaining, repairing, testing and replacing all fire equipment including all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers and other fire prevention equipment in the Building and all charges rendered by the Western Australian Fire Brigades Board and Telstra Australia in the supply, maintenance, servicing and monitoring of the fire alarm system;

- (f) maintaining, renovating, replacing and repairing the exterior and interior of the Building, the car park, and the Common Parts, except for structural repairs to the Building and the cost of any item which is the responsibility of any lessee in the Building recoverable and actually recovered from any lessee;
- (g) security, caretaking and management, including (but not limited to) wages and overheads paid and uniforms provided to security and caretaking staff, costs and charges rendered by contract security companies, and the cost of leasing, maintaining, repairing and running security equipment including Telstra charges and any fees paid to any managing agents in managing the Building and any fees or costs paid to any accountant or auditor in relation to calculation or certification of the Variable Outgoings;
- (h) providing background music and a public address system;
- (i) providing, maintaining, repairing and replacing all signs including the cost of lighting thereof;
- (j) any other expenditure properly incurred by the Lessor in respect of the Building and the Land (other than structural repairs to the Building);
- (k) any tax, impost or duty on goods, services or other things introduced by the Commonwealth, a State or Territory after the Date of Commencement which is charged or levied on goods, services or other things acquired by the Lessor in connection with this Lease;
- (l) the administration and management of the Building (whether by the Lessor or the Managing Agent or both) including salaries, wages and other employee entitlements and benefits, fees paid to any Managing Agent and any and all other costs necessary for the efficient running of the Building including (but not limited to):
- (m) the costs of postages, telex, facsimile and courier deliveries;
- (n) bank fees and charges and government or statutory duties, taxes, fees and charges including, but not limited to, financial institutions duty and bank account debits tax payable by the Lessor or the burden of which may be passed onto the Lessor relating to any transaction or otherwise imposed, levied, charged, assessed or imposed in respect of the Building; and
- (o) telephone rental and charges for telephone calls;
- (p) consulting experts associated with the provision running maintenance inspection servicing and upkeep of common facilities and amenities for the benefit of tenants of the Building generally including (but not limited to) Elevators ventilation Air Conditioning Plant heating sewerage toilet consumables fire fighting equipment and goods delivery and garbage storage areas;
- (q) obtaining legal advice in relation to the meaning or interpretation of the provisions in this Lease relating to Variable Outgoings;
- (r) audit fees and charges incurred by the Lessor from time to time in connection with the verification of statements of the Variable Outgoings, Rates and Taxes and Insurance Outgoings;
- (s) such sum as is equivalent to 14% per annum return on any moneys expended by the Lessor and not recovered from any Lessee in carrying out work other than structural

alterations required by any authority having jurisdiction or authority over or in respect of the Building and the Land or the use thereof or any part thereof;

- (t) and includes the sum (not exceeding 5% of all other Variable Outgoings for that Lease Year) in each Lease Year which the Lessor sets aside as a fund to cover repairs, renovations, replacements and maintenance of a substantial but infrequent or irregular nature of the Land and the Building (which moneys the Lessor may expend in its absolute discretion);
- (u) the cost to the Lessor of paying all architects, surveyors and valuers fees pursuant to the Head Lease except where such fees are payable by reason of the Lessor's default under the provisions of the Head Lease;
- (v) any other expenditure properly incurred by the Lessor in the management and operation of the Building,

provided that Variable Outgoings will not include any expenditure in the nature of a Variable Outgoing which is a direct responsibility of a lessee pursuant to the terms of any lease of part of the Building or for which, pursuant to any lease of part of the Building, the Lessor has accepted responsibility and provided further that if, pursuant to any lease of part of the Building, the Lessor recovers specific amounts in reduction of any expenditure hereby classified as Variable Outgoings, those amounts recovered by the Lessor shall be deducted when determining the aggregate amount of Variable Outgoings.

1.2 Headings not to affect interpretation

Except in the schedule, the headings do not affect the interpretation of this Lease.

1.3 Weekends and Public Holidays

If, under or pursuant to this Lease, the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or Public Holiday in Western Australia that act, matter or thing is to be done on the working weekday immediately prior to that day.

1.4 General interpretation

Except and to the extent that such interpretation shall be excluded by or be repugnant to the context:

- (a) every covenant or agreement expressed or implied in this Lease in which more persons than one covenant or agree shall bind such persons and every two or more of them jointly and each of them severally;
- (b) reference to any party shall mean and include a reference to that party his successors or personal representatives (as the case may be) and assigns;
- (c) the word "person" shall include a corporation; and
- (d) words importing the feminine gender, masculine gender, singular or plural numbers shall include the masculine gender, feminine gender, plural number and singular number respectively.

1.5 Statutes

Reference to a statute includes all amendments for the time being in force and any other statute enacted in substitution for and the regulations bylaws or other orders for the time being made under that statute.

2. Operative words

The Lessor hereby leases to the Lessee and the Lessee hereby takes on lease the Premises, subject to the Encumbrances, for the Term subject to the payment of the Rent, the Rates and Taxes and the Lessee's proportion of the Variable Outgoings and Outgoings and the observance and performance of the Lessee's Covenants together with the right for the Lessee and its invitees to use the Common Parts in common with other persons entitled to use the same upon the terms and conditions of this Lease but reserving unto the Lessor and persons claiming through or authorised by it the use of the exterior walls and the roof and the right to install, maintain, use, repair, alter and replace, pipes, ducts, conduits and wires leading through the Premises and to pass and run water, air, electricity, sewerage, drainage, gas and other services through all pipes, ducts, conduits and wires and to enter upon the Premises for that purpose and also reserving unto the Lessor all other rights in favour of the Lessor contained or implied in this Lease provided that in exercising those rights the Lessor may not interfere with the Lessee in its use and occupation of the Premises more than is reasonably necessary.

3. Lessee's covenants

The Lessee covenants with the Lessor:

3.1 Rent

To pay the Rent (without set-off whether arising at law or in equity and free and clear of any deduction whatsoever) at the times mentioned in the schedule (subject to review pursuant to clause 3.2) to the Lessor at the Address.

3.2 Rent Review

The Rent to be paid from each Market Rent Review Date shall, subject to the provisions of clause 3.2(d) be calculated pursuant to clause 3.2(a).

- (a) **(Market Rent Review):** the Rent shall be reviewed on the market rent review dates specified in item 8 of the schedule ("**Market Rent Review Dates**"). The Rent to be paid from each Market Rent Review Date shall be determined as follows:
- (i) The Lessor shall not earlier than 6 months prior to each Market Rent Review Date give to the Lessee a notice in writing of the rate at which the Lessor proposes the Rent shall be payable from the Market Rent Review Date ("**Proposed Rent**") and the Lessee, within 14 days of receiving the notice ("**Response Period**") shall give to the Lessor notice that it agrees or does not agree to pay the Proposed Rent. If the Lessee neglects to give the Lessor such notice within the Response Period (in relation to which time shall be of the essence) the Lessee shall be deemed to have agreed to pay the Proposed Rent. If the Lessee agrees or is deemed to have agreed to pay the Proposed Rent then such rental shall apply from that Market Rent Review Date.
 - (ii) If within the Response Period, the Lessee gives to the Lessor notice that the Lessee does not agree to pay the Proposed Rent ("**Disagreement Notice**") then the following shall apply:
 - A. the Lessee must, in the Disagreement Notice, or immediately after the delivery thereof, give full details to the Lessor of:

- 1) the Lessee's reasons for not agreeing to pay the Proposed Rent; and
 - 2) the annual rent the Lessee is prepared to pay;
- B. the Rent to be paid from that Market Rent Review Date shall be the then Current Market Rent determined by a Valuer acting as an expert and not as an arbitrator, and by whose decision each of the Lessee and the Lessor agree to be bound. The Lessor shall appoint a panel of 3 Valuers and the Lessee shall nominate one of those Valuers to determine the Rent in accordance with this clause. The Lessee shall make its nomination within 14 days after receiving a list of the panel of appointed Valuers. If the Lessee fails to make its nomination within that 14 day period, the Lessor may nominate one of the panel on behalf of the Lessee and such nomination shall be binding on the Lessee;
- C. until the Rent from that Market Rent Review Date is determined, the Lessee shall pay to the Lessor the Proposed Rent and any adjustment which may be necessary in respect of the Rent shall be made immediately the same shall be determined;
- D. the costs of so determining the Rent shall be borne equally by the Lessee and the Lessor provided that the costs of so determining the Rent shall be wholly borne by the Lessee if the Rent so determined shall exceed an amount equal to the Proposed Rent;
- E. if any Valuer (excluding any Valuer appointed to act as an arbitrator) so nominated pursuant to clause 3.2(a)(ii)B:
- 1) fails to accept the nomination to act; or
 - 2) fails to determine the Current Market Rent within 28 days of accepting the nomination to act; or
 - 3) becomes incapacitated or dies; or
 - 4) resigns as the nominee,

then the Lessee shall make a further nomination from the panel appointed by the Lessor, within 14 days after the occurrence of the event hereinbefore described. If the Lessee fails to make its nomination within that 14 day period, the Lessor may nominate one of the panel on behalf of the Lessee and such nomination shall be binding on the Lessee.

(b) (CPI Rent Review):

- (i) The Rent shall be reviewed as at the CPI rent review dates specified in item 8 of the schedule ("CPI Rent Review Dates"). The Rent to be paid from each CPI Rent Review Date shall be calculated according to the following formula:

$$\text{BR new} = \text{BR previous} + (\text{CPI movement} \times \text{BR previous})$$

Where:

"BR new" is the Rent to be paid from the CPI Rent Review Date;

"BR previous" is the Rent payable (or which, but for any rent reduced or rent free period, would have been payable) immediately preceding the CPI Rent Review Date;

"CPI movement" is the difference (expressed as a percentage) between the Consumer Price Index as determined for the quarter ending immediately prior to the CPI Rent Review Date and the Consumer Price Index as determined for the quarter ending immediately prior to the Commencing Date or the previous Rent Review Date (as the case may be).

- (ii) In the event of the discontinuance or suspension of the Consumer Price Index, then the method of adjustment of the Rent in relation to the Consumer Price Index shall cease and thereafter, the basis of any variation in lieu of the Consumer Price Index shall be the principal measure of the rate of economic inflation determined by a Valuer acting as an expert and by whose decision the Lessee and the Lessor shall be bound. Where the Lessee and the Lessor do not agree upon the person to act as such Valuer, then such Valuer shall be nominated in the manner provided in clause 3.2(a)(ii)B.

(c) **(Fixed Increase Rent Review):**

The Rent shall be increased on the fixed increase rent review dates specified in item 8 of the schedule ("Fixed Increase Date") and shall be an amount equal to the Rent payable immediately prior to the Fixed Increase Date plus 4% of that Rent.

(d) **(General Provisions - Rent Reviews):**

- (i) The Lessor shall not by reason of its failure to give notice of the Proposed Rent in accordance with clause 3.2(a)(i) of this Lease or by reason of any other failure on its behalf to review the Rent in accordance with any mode of review in this clause 3.2 forfeit its right to so review the Rent and the Rent once so reviewed shall backdate to and be payable from the Rent Review Date.

- (ii) The Rent as from any Rent Review Date shall not be less than the Rent payable by the Lessee immediately prior to that Rent Review Date.

3.3 Calculation of Variable Outgoings

- (a) To pay to the Lessor in addition to Rent, but subject to clauses 3.3(b), 3.3(c) and 3.3(d) hereof, the same proportion of the Variable Outgoings as the Floor Area of the Premises bears to the Aggregate of the Lettable Floor Area in the Building.

(b) If:

- (i) two or more tenants shall occupy the floor in the Building of which the Premises form part; and
- (ii) in the opinion of the Lessor, those two or more tenants effectively occupy the whole or substantially the whole of that floor,

the Lessee shall pay the same proportion of the Floor Variable Outgoings as the Floor Area of the Premises bears to the total lettable floor area of that floor measured by the Lessor in accordance with the PCA Method of Measurement,

- (c) Until such time as 80% of the Aggregate of the Lettable Floor Area in the Building is let the Lessee's proportion of the Variable Outgoings will be the same proportion as the Floor Area of the Premises bears to the aggregate of the floor areas of the premises in the Building which are actually let from time to time (as certified by the Lessor or the Managing Agents).
- (d) If a particular amount included in the definition of Variable Outgoings is not contributed to by all the tenants of the Building, the Lessor may make a separate calculation as to the Lessee's contribution to that particular amount forming part of the Variable Outgoings but in calculating the proportion of that particular amount of the Variable Outgoings payable by the Lessee, that percentage will be the same proportion as the Floor Area of the Premises bears to the floor area of the premises leased by the tenants of the Building who contribute to that particular amount of the Variable Outgoings (as certified from time to time by the Lessor).

3.4 Commencement and payment of Variable Outgoings

To pay to the Lessor at the Address the Lessee's proportion of Variable Outgoings in the following manner:

- (a) for the Preliminary Period:
 - (i) one payment on the Date of Commencement of the Term equivalent to the Lessee's proportion of the amount which the Lessor estimates will be the total of the Variable Outgoings ("Estimated Variable Outgoings") for the Preliminary Period during which the remaining number of days in the month during which the Date of Commencement of the Term falls bears to the number of days in the Preliminary Period; and
 - (ii) on the first day of the month next following that in which the Date of Commencement of the Term falls and of each month thereafter the balance of the Lessee's proportion of the Estimated Variable Outgoings for the Preliminary Period by equal monthly payments in advance;
- (b) for each Lease Year, on the first day of each Lease Year and thereafter on the first day of each month, one-twelfth of the Lessee's proportion of the Estimated Variable Outgoings in each Lease Year;
- (c) for the Final Lease Year, an amount calculated by first computing the sum which would be payable by the Lessee in respect of the Lessee's proportion of Estimated Variable Outgoings if that period were a full Lease Year, then by multiplying the figure so found by the number of days in the Final Lease Year and then by dividing the figure so found by 365 to be paid by the same number of instalments as there are complete calendar months in the Final Lease Year; and
- (d) for the Preliminary Period, each Lease Year and the Final Lease Year the amount of any shortfall between the Lessee's proportion of Variable Outgoings and the Lessee's proportion of the Estimated Variable Outgoings within 14 days of receipt of a detailed statement from the Lessor.

3.5 Rates and Taxes - Insurance Outgoings

(a) **(Rates and Taxes):** duly and punctually to pay all Rates and Taxes separately assessed or charged on the Premises and to pay to the Lessor on demand by the Lessor the percentage, being from time to time the percentage which the Floor Area of the Premises bears to the Aggregate of the Lettable Floor Area in the Building as certified by the Lessor, of all Rates and Taxes assessed or levied in respect of the Land and the Building not being separately assessed or charged on the Premises or forming part of Variable Outgoings, all electricity, gas and other power and illuminant charges and expenses which, in accordance with assessments or meter readings, are payable in respect of the Premises, all meter rents, the cost of future installation of any meter, wiring or other apparatus necessitated by the use of electricity, gas or other power on the Premises assessed or charged on or in respect of the Premises and all telephone rental and charges provided that if:

- (i) two or more tenants shall occupy the floor in the Building of which the Premises forms part; and
- (ii) in the opinion of the Lessor those two or more tenants effectively occupy the whole or substantially the whole of that floor,

the Lessee shall pay the same proportion of the Floor Rates and Taxes as the Floor Area of the Premises bears to the total lettable floor area of that floor measured by the Lessor in accordance with the PCA Method of Measurement.

(b) **(Insurance Outgoings):** to pay to the Lessor on demand by the Lessor the percentage, being from time to time the percentage which the Floor Area of the Premises bears to the Aggregate of the Lettable Floor Area in the Building as certified by the Lessor, of all Insurance Outgoings provided that if:

- (i) two or more tenants shall occupy the floor in the Building of which the Premises forms part; and
- (ii) in the opinion of the Lessor those 2 or more tenants effectively occupy the whole or substantially the whole of that floor,

the Lessee shall pay the same proportion of the Floor Insurance Outgoings as the Floor Area of the Premises bears to the total lettable floor area of that floor measured by the Lessor in accordance with the PCA Method of Measurement.

(c) **(Other Liabilities):** to the extent permissible at law forthwith upon demand to pay to the Lessor by way of reimbursement an amount equal to any moneys paid or outlaid by the Lessor in respect of any liability imposed on the Lessee under or by virtue of this Lease.

(d) **(Cost of Cleaning):** to pay upon demand the cost of cleaning the Premises by contractors appointed by the Lessor.

3.6 Interest on overdue money

Without affecting the rights, powers and remedies of the Lessor under this Lease, to pay to the Lessor on demand interest on any money due by the Lessee to the Lessor pursuant to this Lease but unpaid for 7 days, computed from the due date for payment until payment in full and recoverable in like manner as Rent in arrears and computed at the rate per cent per annum which is from time to time four percentage points above the prime rate of interest (expressed as a rate per cent per annum) charged by the Lessor's principal trading bank from time to time.

3.7 Reimbursement of Lessor's Expenses

To the extent permissible at law, on demand to pay to the Lessor by way of reimbursement, an amount equal to any money paid or outlaid by the Lessor in respect of any liability imposed on the Lessee under or by virtue of this Lease.

3.8 Lessor's legal and other costs

- (a) **(Cost of Lease):** to pay on demand the Lessor's costs (including solicitors' costs) and all duties, fees, charges and expenses of and incidental to the instructions for and the preparation and completion of this Lease, any consent required from any Head Lessor or mortgagee of the Land or from any statutory authority, any agreement executed in respect of any rent review, all stamp duty payable hereon or thereon and on any renewal of the Term, any application for the consent of the Lessor hereunder, each breach or default by the Lessee hereunder and the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lessor under or by virtue of this Lease and the fees of all professional consultants reasonably incurred by the Lessor in consequence of or in connection with any breach or default by the Lessee hereunder.
- (b) **(Litigation Costs):** if the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessor and the Lessee) and arising directly or indirectly out of the Lessee's occupancy of the Premises, the Lessee shall pay to the Lessor on demand by the Lessor all legal fees and disbursements (as between solicitor and client) incurred by the Lessor in connection with such litigation.

3.9 Maintain and repair Premises

- (a) **(Generally):** to maintain, replace, repair and keep the Premises in good and substantial repair, order and condition, damage by explosion, earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest, act of God, war and any other risk insured against by the Lessor excepted unless the damage is caused by the neglect, default or misconduct of the Lessee or the Lessor's insurances are invalidated by an act, neglect or default of the Lessee provided that:
 - (i) this clause does not impose on the Lessee any obligation in respect of structural maintenance, replacement or repair except when rendered necessary by any act, neglect, default or omission on the part of the Lessee or its invitees or by the Lessee's use or occupancy of the Premises; and
 - (ii) all electric globes and fluorescent tubes in the Premises which are damaged or broken or fail for any reason are to be replaced by the Lessee at its expense.
- (b) **(Paint and decorate):** at intervals of not more than 6 years and during the last 3 months of the Term to paint with 2 coats at least of good paint (the quality and colour of which are to be approved by the Lessor in writing) and in a proper manner those parts of the Premises usually painted, to paper or repaper all parts usually papered and to re-decorate in any other fashion (with suitable materials of good quality approved by the Lessor in writing and in a proper manner) all parts of the Premises usually so decorated.
- (c) **(Window Treatments):** not without the prior written consent of the Lessor to install any form of window treatment to the windows of the Premises either in

addition to or in replacement of any existing curtain or blind unless and until the same become worn or damaged in which case the Lessee shall, if that wear or damage is caused by the Lessee's own act or omission, at its cost replace those curtains and blinds with curtains or blinds of similar quality, colour and design to the satisfaction of the Lessor and all replacements will become and remain the property of the Lessor.

- (d) **(Carpets):**
- (i) To maintain the carpet installed by the Lessor in the Premises ("**Lessor's Carpet**") in good, clean and substantial repair and condition, fair wear and tear and damage by fire, flood, lightning, storm, tempest, earthquake, water leakage from water apparatus and pipes or malicious damage (other than by the Lessee, its employees, agents, contractors, invitees or licensees) excepted.
 - (ii) Except with the approval of the Lessor in writing not to cut or alter the Lessor's Carpet and to ensure that any approved cutting or alteration is only carried out by the Lessor and at the Lessee's expense.
 - (iii) To use key mats or other protective devices approved by the Lessor to protect the Lessor's Carpet.
 - (iv) To make good any damage caused to the Lessor's Carpet by the use of castors or rollers on unprotected carpet surfaces in the Premises.
 - (v) Except with the Lessor's approval in writing, not to install or lay any other carpet or floor covering in the Premises.
- (e) **(Common Parts):** the Lessee will pay on demand the costs of repairing any damage to the Common Parts or any part thereof caused by any act neglect or default of the Lessee or its servants, agents, invitees, officers, employees, contractors or customers.

3.10 Use of Premises

- (a) **(Generally):** not to use or permit to be used the Premises for any purpose other than commercial or professional offices, not to permit or suffer the use of the Premises for any residential purpose whether temporary or permanent and not to permit or suffer any storage space forming part of the Premises to be used for any purpose other than storage.
- (b) **(Offensive activities):** not to do, exercise or carry on or permit or suffer any person to do, exercise or carry on in the Premises any noxious, noisome, offensive, illegal or immoral act, trade, business, damage or disturbance to the Lessor or any tenant or occupier of the Building and to take all reasonable precautions not to do or cause or permit any disturbance of public worship in or about St George's Cathedral but so that the provisions of this clause do not restrict the use of the Premises by the Lessee permitted by the Lessor.
- (c) **(Removal of rubbish):** to keep the Premises free from dirt and rubbish and to store and keep all trade waste, trash and garbage in proper receptacles and not to permit the Premises to be cleaned by any person except the cleaning contractors appointed by the Lessor.
- (d) **(Aerials and amplified noise):** not without the prior written consent of the Lessor to:

- (i) construct or place in or outside the Premises any radio or television aerial or antenna; or
- (ii) use or permit to be used any radio, record player, tape recorder, television, loudspeaker, screen or other equipment or like media so as to be audible from outside the Premises,

provided however that any consent given by the Lessor may at any time be withdrawn if the Lessor reasonably so determines having regard to the interests of the Lessor in the Premises and the rights or interests of the owners or occupiers of the Building and nearby properties.

- (e) **(Floor overloading):** not to do or permit or suffer to be done upon the Premises anything which might result in excessive stress, strain or floor loading to any part of the Premises or to permit or suffer a weight of more than that mentioned in the schedule to be brought into or upon any part of the Premises.
- (f) **(Lavatories and plumbing facilities):** not to use or permit or suffer to be used the lavatories, toilets, sinks, drainage and other plumbing facilities in the Premises or the Common Parts for any purpose other than that for which they were constructed or provided and not to deposit or permit to be deposited therein any sweepings, rubbish or other matter and promptly at the cost of the Lessee to make good any damage thereto caused by misuse.
- (g) **(Chemicals):** not (except for normal applications in connection with the use of the Premises permitted by the Lessor) to use or store or permit or suffer to be used or stored any chemical or inflammable gas, fluid or substance in or upon the Premises or Common Parts.
- (h) **(Signs):** not without the prior written consent of the Lessor to construct, display, affix or exhibit on or to the exterior of the Premises or to the interior of the Premises so as to be visible from outside the Premises any sign, light, embellishment, advertisement, name or notice and not to display any sign in or about the Premises other than in accordance with the Rules and Regulations.
- (i) **(Pest control):** to take all reasonable precautions to keep the Premises free of rodents, vermin, insects, pests, birds and other animals and, if required by the Lessor, at the cost of the Lessee to employ from time to time pest exterminators approved by the Lessor.
- (j) **(Air Conditioning Plant and elevators):** to comply with and observe the reasonable requirements of the Lessor in respect of the Air Conditioning Plant and the Elevators and not to do or permit to be done anything which might interfere with or impair the efficient operation of the Air Conditioning Plant and the Elevators.
- (k) **(Not to overload electrical circuits):** not without the prior consent in writing of the Lessor first obtained to install any electrical equipment on the Premises which might overload the cables, switchboards or sub-boards through which electricity is connected to the Premises.

Provided that if the Lessor grants its consent, any alteration necessary to comply with the requirements of the Lessor's insurance underwriters or the Fire Brigades' Board or with any Act relating thereto will be effected by the Lessor at the expense of the Lessee and the Lessee shall pay the entire cost to the Lessor of the alteration on demand by the Lessor and the Lessor may require the Lessee to deposit with the Lessor the estimated cost thereof before the commencement of any alteration.

- (l) **(Deliveries):** to comply with and observe the following conditions and restrictions as to delivery of goods or furniture to and from the Premises:
 - (i) goods or furniture may be delivered to and from the Building only at the times and in the manner which will ensure minimum interference with persons using the entrance halls, passages, stairways, landings and lifts and will be subject to the prior approval of and under the supervision of the Lessor;
 - (ii) in carrying goods or furniture in any of the lifts to give priority at all times to passenger traffic;
 - (iii) before goods or furniture are carried in any lift to cover the sides of the lift in the manner directed by the Lessor to prevent scratching or damage thereto; and
 - (iv) not to leave goods or furniture in corridors or on stairways and that any goods or furniture so left may be removed by the Lessor or its employees at the Lessee's expense and risk.
- (m) **(Natural light):** not to cover or obstruct or permit its employees or agents to cover or obstruct in any manner or by any article or thing any of the floor windows or skylights that reflect or admit light into any of the Common Parts.
- (n) **(Tobacco, betting, drugs):** not use or permit the use of the Premises:
 - (i) for the sale by wholesale of tobacco in any form;
 - (ii) in any way connected with betting; and
 - (iii) in any way connected with narcotic drugs.
- (o) **(Head Lessor's doctrines):** not use or permit or suffer to be used the Premises or any part thereof for any illegal or immoral purpose or for any other purpose which the Head Lessor, in its reasonable discretion, having regard inter alia to its doctrines, considers unacceptable.
- (p) **(Trade on Sundays):** not permit or suffer the Premises or any part thereof to be used on Sundays for the purposes of trade except as the law may at any time and from time to time permit, authorise or make lawful for the Lessee's permitted business under this Lease.
- (q) **(Trading name):** not without the consent of the Head Lessor and the Lessor include in its trading name any name in any way imputing a connection with the Head Lessor or St George's Cathedral.

3.11 Entry by Lessor and others

To permit entry to the Premises by:

- (a) **(To inspect):** the Head Lessor, the Lessor and their agents and servants at all reasonable times upon giving to the Lessee reasonable notice (except in case of emergency when notice will not be required) to view the state of repair thereof for the purpose of ensuring compliance by the Lessee with the Lessee's Covenants.
- (b) **(To repair)** the Head Lessor, the Lessor and its Managing Agent, servants and contractors at all reasonable times upon giving to the Lessee reasonable notice

(except in the case of emergency when notice will not be required) with workmen and others and all necessary materials for the purpose of complying with any request, requirement, notification or order of any Authority having jurisdiction or authority over or in respect of the Premises for which the Lessee is not liable under this Lease or for carrying out repairs, renovations, maintenance, modifications, extensions, alterations or replacements to the Building and all plant, machinery and other equipment within the Premises and the Building,

provided that in the exercise of this right the Head Lessor and the Lessor use reasonable endeavours not to cause any undue inconvenience to the Lessee.

- (c) **(To maintain services):** the Head Lessor and the Lessor's engineers or mechanics at any time to examine, maintain, give attention to, repair, install or remove any Air Conditioning Plant or Elevator provided that in the exercise of this right the Head Lessor and the Lessor use their reasonable endeavours not to cause any undue interference to the Lessee.
- (d) **(To show Premises to prospective tenants):** the Lessor and its agents, intending lessees and others with written authority from the Lessor at all reasonable times during the last 6 months of the Term for the purpose of viewing the Premises.
- (e) **(To affix signs):** the Lessor and its agents to affix re-letting signs or notices to the Premises during the last 6 months of the Term and not to remove, damage or obscure any sign or notice or allow or cause any sign or notice to be removed, damaged or obscured.
- (f) **(Cleaning):** the cleaning staff provided by the Lessor for the purpose of cleaning the Premises.

3.12 Alterations and installations

- (a) **(Generally):** not to make or suffer to be made to the Premises any alteration, external projection or structural alteration and not to cut, maim, or injure, or suffer to be cut, maimed or injured any of the principal structure or walls without the prior written consent of the Lessor and, if such consent is requested, to pay the Lessor's consultants' fees in respect of considering any such request.
- (b) **(Plant and equipment):** not to make any alteration or addition to any plant, equipment, fixture or fitting forming part of the Building or the Premises (including the Air Conditioning Plant, electrical fittings, plumbing and fire warning or prevention systems) without the consent in writing of the Lessor and any other relevant authority first obtained and, if in setting up any fixture or fitting in the Premises it is necessary or desirable to make alterations or additions to or otherwise affect the performance of any plant, equipment, fixture or fitting forming part of the Premises, to carry out the work under the supervision of the Lessor's architects, to pay all fees incurred by the Lessor in inspecting or supervising the work (including issuing approvals and arranging contracts) and on the expiry or earlier termination of the Term, if the Lessor so requests, to reinstate and restore as nearly as possible having regard to the age of the Premises consistent with the Lessee's Covenants herein contained to its original state, so much of the Premises altered, added to or removed by the Lessee pursuant to the terms of this clause.
- (c) **(Fixtures and fittings)** to repair and make good any damage caused to the Premises by the installation or removal of any fixture or fitting supplied and fitted by or on behalf of the Lessee.

- (d) **(Partitions):** not to erect any partition in the Premises or make any alteration or addition to any partition without the prior written consent of the Lessor (which consent may not be unreasonably withheld), the local authority and any other relevant authority and to supply with each application for consent detailed plans and specifications and if approved by the Lessor, to construct the partition under the supervision of the Lessor's architects or agents at the cost and expense of the Lessee in all things including the fees of all architects and agents.
- (e) **(Entrances):** when requested by the Lessor in writing at any time to repair, redecorate or replace that part of the Premises (including partitioning) visible to the public from any public area in the Building in the manner and design or style required by the Lessor within three months of the Lessor's written request.

3.13 To report certain matters to the Lessor

- (a) **(Broken glass and equipment):** to report promptly to the Lessor any breakage of glass including exterior windows and all damaged or broken heating, lighting, electrical equipment and plumbing installed upon the Premises and, if a breakage is caused or contributed to by the Lessee or its invitee or licensee, to bear the cost of repair or replacement.
- (b) **(Defects):** to give to the Lessor prompt notice in writing (and, in the case of emergency, verbally) of any accident to or defect or want of repair in any service, fixture, fitting, plant or equipment in the Premises and of any circumstance likely to be or to cause any danger, risk or hazard to the Premises, the Building or any person therein or thereon.
- (c) **(Infectious diseases):** upon becoming aware of any notifiable infectious disease occurring in the Premises to notify the Lessor and the proper public authorities and, if necessary, thoroughly to fumigate and disinfect the Premises to the reasonable satisfaction of the Lessor and any public authority.
- (d) **(Pass on notices):** forthwith to give notice in writing to the Lessor of any notice received by the Lessee from any statutory public or other authority relating to the Premises or part thereof.
- (e) **(Bomb threats):**
 - (i) Forthwith to notify the Lessor or the Managing Agents of any threat or demand including (but not limited to) bomb threats received by the Lessee, its employees or agents and which in any way relate to the Premises, the Building or to the safety of any person or property within the Premises or the Building.
 - (ii) Forthwith to obey and to cause its employees, agents, contractors, licensees and invitees to obey any direction given by the Lessor or the Managing Agents relating to the control of persons within the Building and the evacuation or closure of any part of the Building including (but not limited to) the Premises following the giving to any person of a threat or demand of the kind referred to in clause 3.13(e)(i) or in the event of any fire, earthquake or other emergency and in respect of practice exercises for any such emergency.
 - (iii) If civil defence and fire drill is conducted in the Building at any time, to co-operate fully in regard to the planning, control of and participating in civil defence exercises and procedures and fire drills and to supply the Lessor with the names of the persons responsible for the carrying out of

all duties of civil defence planner, organiser, warden, co-ordinator and fire officer in relation to the Premises and the person responsible on each floor level thereof.

3.14 No assignment

Not to assign, sublet (which expression shall be deemed to extend to and include permitting any licensee or concessionaire to conduct business on his own account in any part of the Premises), mortgage, charge, part with possession or control of or dispose of the Premises or any part thereof or the benefit of this Lease without the prior written consent of the Lessor and the Head Lessor (where it is required as a condition of the Head Lease) provided that:

- (a) in the case of a subletting of part of the Premises:
 - (i) the Lessee may not sublet less than a 20% proportion of the Floor Area of the Premises at any one time; and
 - (ii) the Lessee may not sublet more than 50% of the Floor Area of the Premises cumulatively;
- (b) in the case of a subletting of the whole of the Premises or of a subletting of part of the Premises permitted under clause 3.14(a), the Lessor and the Head Lessor may not unreasonably withhold their consent if:
 - (i) the rent payable under the sublease is at a rate per square metre being not less than the rate per square metre of the Rent for the Premises from time to time;
 - (ii) the terms of the sublease are not inconsistent with the terms of this Lease; and
 - (iii) the sublessee is a respectable and responsible person (the onus of proof of which shall be upon the Lessee);
 - (iv) the Lessee pays to the Lessor all costs reasonably incurred by the Lessor and the Head Lessor of and incidental to any enquiry made by or on behalf of the Lessor and the Head Lessor and of granting the Lessor's and the Head Lessor's consent to the sublease; and
 - (v) the sublessee is not a Government Authority.
- (c) if the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor and the Head Lessor will not unreasonably withhold its consent to the assignment if:
 - (i) the proposed assignee is a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee);
 - (ii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's Solicitors at the cost of the Lessee in all respects;
 - (iii) all Rent, Outgoings and Variable Outgoings then due or payable have been paid and there is no existing unremedied breach of any of the Lessee's Covenants;

- (iv) the assignment contains a covenant by the assignee with the Lessor that the assignee will at all times during the remainder of the Term duly pay the Rent, the Outgoings and the Variable Outgoings and perform and observe all the Lessee's Covenants;
 - (v) the Lessee pays to the Lessor and the Head Lessor all costs, charges and expenses reasonably incurred by the Lessor and the Head Lessor of and incidental to any enquiry made by or on behalf of the Lessor and the Head Lessor as to the respectability, responsibility and solvency of any proposed assignee and of granting the Lessor's and the Head Lessor's consent to the assignment; and
 - (vi) the proposed assignee is not a Government Authority.
- (d) If the assignee or sub-lessee is a company, the shares in which are not quoted on any Stock Exchange in Australia, then it will be a term of the Lessor's consent to any deed of assignment or sublease that the directors or the substantial shareholders of that company guarantee to the Lessor:
- (i) in the case of an assignment, the observance and performance by the assignee of the Lessee's Covenants including payment of the Rent, the Outgoings, the Variable Outgoings and any other money payable by the Lessee arising from this Lease; or
 - (ii) in the case of a sublease, the observance and performance by the sub-lessee of the Lessee's Covenants excluding the covenant by the Lessee to pay the Rent, the Outgoings and Variable Outgoings.
- (e) In the case of a sublease the form thereof will be subject to the approval of the Lessor.
- (f) The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not in any way relieve or be deemed to relieve the Lessee from the Lessee's Covenants throughout the Term and any renewal or extension thereof which may be granted to the Assignee pursuant to this Lease, provided further that if the Lessee is a corporation (other than a public listed company), any change in the beneficial ownership of shares in the corporation or any related corporation within the meaning of Section 50 of the Corporations Act will be deemed to be an assignment of the Premises and the benefit of this Lease provided further that the Lessee shall not without the prior consent in writing of the Lessor hold the Lessee's interest in this Lease on trust for any party other than pursuant to the trust (if any) described herein or declare a trust of the Lessee's interest pursuant to this Lease or in the event of approval of a trust by the Lessor pursuant to the terms hereof vary, amend, alter or revoke the terms contained in any trust deed or add to or vary the beneficiaries thereunder or distribute or join in the distribution of any or all of the capital of the said trust or in any other way vest the said trust and any such holding or declaration, amendment, alteration, revocation or distribution shall be deemed to be an assignment to which the provisions of this clause apply.

It is expressly agreed and declared that Sections 80 and 82 of the *Property Law Act* 1969 are hereby expressly excluded.

3.15 Comply with Acts

- (a) (Generally): notwithstanding anything to the contrary contained or implied in this Lease, to comply promptly with all Acts relating to the Premises or the use thereof

provided that the Lessee will not be under any liability in respect of any structural alteration required by any Act other than those caused or contributed to by the Lessee's use or occupation of the Premises.

- (b) **(Fire regulations):** in the positioning of partitions upon or within the Premises, to comply with all Acts, regulations and ordinances relating to fire detection and alarm and to pay to the Lessor the cost of effecting any alteration to the thermal detectors or other fire alarm or extinguishment installations required or necessary to comply with any Act, regulation or ordinance or the requirements of the Insurance Council of Australia and the Fire Brigades Board of Western Australia.
- (c) **(Rules and Regulations):** promptly to observe, comply with and cause to be continuously observed and complied with by all invitees of the Lessee and any person claiming through or under the Lessee, the Rules and Regulations and not to do or permit or suffer to be done anything contrary thereto and the Lessee acknowledges, agrees and declares that failure of the Lessee or of any of the abovementioned persons promptly to observe and comply with any of the Rules and Regulations will constitute a breach of the terms of this Lease in the same manner as if the Rules and Regulations were Lessee's Covenants and the Lessee hereby accepts full responsibility for all acts and neglects of its servants, employees, contractors, agents, invitees and visitors in respect of any breach of the Rules and Regulations.

3.16 Public risk insurance

- (a) **(Maintain policy):** to effect and maintain in respect of the Premises adequate public risk insurance in the names of the Lessor and the Lessee for their respective rights and interests for the time being in an amount not less than \$20,000,000 in respect of any one claim or any higher amount required by the Lessor from time to time with an insurance company approved by the Lessor (which approval may not be unreasonably withheld) and to supply to the Lessor details thereof and to ensure that the insurance conforms with the reasonable requirements from time to time of the Lessor of which the Lessee is given notice.
- (b) **(Produce policy):** if required by the Lessor to produce the policy in respect of public risk insurance to the Lessor.
- (c) **(Certificate of currency):** to deliver to the Lessor on or before the expiry of each Lease Year and at any other time upon the request of the Lessor a Certificate of Currency issued by the insurance company in respect of the public risk insurance.
- (d) **(No variation to policy):** not to alter the terms or conditions of any policy without the written approval of the Lessor and to deliver promptly to the Lessor particulars of any change or variation of the terms and conditions in respect of the public risk insurance policy.

3.17 Not to invalidate insurance

Not to do or suffer to be done any act, matter or thing upon the Premises or bring or keep anything therein whereby the insurance on the Building against damage by fire and other insured risks might be rendered void or voidable or whereby the rate of premium is or is liable to be increased and if the Lessor approves in writing any proposal of the Lessee to add to or increase any insured risk, to pay all additional premiums of insurance on the Building required on account of the additional or increased risk caused by the use to which the Premises are put by the Lessee.

3.18 Indemnities

- (a) **(Lessee's responsibility):** to take and be subject to the same responsibilities in regard to persons and property to which the Lessee would be subject if, during the Term, the Lessee were the owner and occupier of the freehold of the Premises.
- (b) **(Indemnity against loss generally):** without affecting the generality of the foregoing provision (to the extent that the terms and conditions of any insurance effected by the Lessee or any money paid to the Lessor out of insurance effected by the Lessee do not fully indemnify the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor becomes liable in respect of any of the matters referred to in this sub-clause), to indemnify and keep indemnified the Lessor against all actions, claims, demands, notices, losses, damages, costs and expenses for which the Lessor becomes liable in respect of any loss or damage to property or death or injury of whatever nature or kind and however or wherever sustained as a consequence of or incidental to the Lessee's use or occupation of the Premises and the Level 2 northern balcony area including, but without being limited to that which:
 - (i) results from any act, default, or omission of the Lessee hereunder; or
 - (ii) results from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease.
- (c) **(Indemnity against loss from water leakage):** without limiting the generality of clauses 3.18(a) and 3.18(b), to indemnify the Lessor against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor becomes liable in respect of or arising from the overflow or leakage of water or other fluids in or from the Premises except to the extent that the same is caused or contributed to by the negligence of the Lessor.

3.19 Insurance - Lessee's fixtures

To insure and keep insured to the full insurable value on a replacement or reinstatement basis the Lessee's fixtures, fittings, materials, goods, furniture and partitions in the Premises against fire, storm, tempest, earthquake, civil commotion, extraneous risks including rain water and other water damage, flood, riots, strikes, malicious damage, concussion, explosion, impact by vehicles or aircraft, articles dropped from aircraft and all other risks reasonably required by the Lessor with a public insurance company approved by the Lessor (which approval may not be unreasonably withheld) and to deliver a true copy of the policy and all receipts for premiums to the Lessor upon demand.

3.20 Workers' compensation insurance

To effect and maintain with a public insurance company approved by the Lessor (which approval may not be unreasonably withheld) a policy of employers' indemnity insurance (including workers' compensation insurance) in respect of all employees of the Lessee employed in, about or from the Premises and to deliver the policy of insurance together with the receipts for all premiums paid to the Lessor upon demand.

3.21 No absolute caveat

Not to lodge an absolute caveat over the Land to protect the interest of the Lessee hereunder and the Lessee irrevocably appoints the Lessor and every manager and other officer of the Lessor for the time being authorised by the Lessor jointly and severally to be the true and lawful attorney for the Lessee in his name and on his behalf and as the act and deed of the

Lessee to sign and lodge at the Office of Titles Perth a withdrawal of any absolute caveat and upon the expiration or sooner determination of the Term to sign and lodge at the Office of Titles Perth a withdrawal of any "subject to claim" caveat and the Lessee ratifies and confirms and agrees to ratify and confirm all that the attorney does or causes to be done under or by virtue of this clause and indemnifies the Lessor in respect of any loss arising from any act done under or by virtue of this clause and the Lessor's costs and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land.

3.22 Not to cause Rent reduction

Not by any act, matter or deed or any failure or omission to impair, reduce nor diminish directly or indirectly the Rent hereby reserved or impose or cause or permit to be imposed on the Lessor any liability of the Lessee under or by virtue of this Lease or by virtue of any statute, ordinance, proclamation, order, regulation or moratorium (present or future) or otherwise except with the written consent of the Lessor.

3.23 Access

To keep safe all keys and other devices permitting entry to the Building or the Premises and not to permit these to come into the possession or control of any person other than responsible persons authorised by the Lessee and to use his best endeavours to protect and keep safe the Premises and any property contained therein and to keep all doors and windows securely fastened when not in use but so that nothing herein entitles the Lessee to hold a key of any outside door of the Building.

3.24 Yielding up

Upon the expiry or earlier termination of the Term:

- (a) peaceably to surrender and yield up to the Lessor the Premises clean and free from rubbish and in good and substantial repair and condition as nearly as possible in the same condition as at the commencement of the Term or if any part is replaced or renewed during the Term, as nearly as possible in the same condition as at the date of replacement or renewal damage by explosion, earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest, war damage, other risks which the Lessor has insured against and act of God only excepted; and
- (b) to surrender to the Lessor all keys and other devices permitting entry to the Building or the Premises including security access cards held by the Lessee whether provided by the Lessor or made or procured by the Lessee for his own use.

3.25 Removal of Lessee's fixtures

At or prior to the expiry or earlier termination of the Term to take, remove and carry away from the Premises and the Building all signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises and the Building by the Lessee and in that removal promptly to make good to the satisfaction of the Lessor any damage occasioned and that all tenants' fixtures not removed at the expiry or earlier termination of the term or any extension thereof will become the absolute property of the Lessor and may be disposed of by the Lessor as it thinks fit at the Lessee's cost. If the Lessee shall fail to comply with the provisions of this clause, until such time as the Lessee shall have complied with the provisions of this clause, the Lessee shall pay to the Lessor Rent at the rate previously payable by the Lessee, calculated on a daily basis.

3.26 Bank guarantee

Prior to the Date of Commencement the Lessee shall (if it has not already done so) provide the Lessor with a bank guarantee from an Australian bank approved by the Lessor (which approval shall not be unreasonably withheld) ("Bank") on the following terms and conditions:

- (a) the Bank will undertake to unconditionally pay on demand to the Lessor any sum or sums which may from time to time be demanded in writing by the Lessor in respect of the Lessee's obligations to the Lessor to an amount not less than the Guaranteed Moneys;
- (b) the bank guarantee will remain in force until the earlier of:
 - (i) notice in writing having been received by the Bank from the Lessor that the bank guarantee is no longer required by the Lessor; and
 - (ii) payment to the Lessor by the Bank of the whole of the maximum amount payable thereunder or the balance remaining after any part payment or payments to the Lessor;
- (c) if the Lessee defaults under this Lease in the payment of Rent or any other moneys in a manner that would entitle the Lessor to terminate this Lease the Lessor shall be entitled to claim and the Bank shall be entitled to make payment under the bank guarantee without reference to the Lessee and notwithstanding any objection claim or direction by the Lessee to the contrary;
- (d) upon each occasion when the Lessor has recourse to the bank guarantee, the Lessor shall be entitled by notice in writing to the Lessee to require the Lessee to top up the bank guarantee in relation to the call (and any previous calls) made by the Lessor ("**Deficiency**"). Within 7 days of receipt by the Lessee of each such notice the Lessee must:
 - (i) provide evidence to the Lessor of the reinstatement of the existing bank guarantee to the full amount prior to the occurrence of the Deficiency; or
 - (ii) provide to the Lessor a supplemental guarantee equal to the amount of the Deficiency, and the terms of this special term shall apply mutatis mutandis in relation to that supplemental guarantee;
- (e) the rights of the Lessor pursuant to this special term shall not derogate from the other rights and remedies available to the Lessor under this Lease, at law and in equity in relation to any default of the Lessee pursuant to the terms of this Lease;
- (f) upon the expiration of the Term of this Lease and the vacation of the Premises by the Lessee in accordance with the terms of this Lease, provided the Lessee has duly and punctually observed and is not then in default of the Lessee's Covenants, the Lessor shall release the bank guarantee to the Lessee;
- (g) the guarantee provided by the Lessee under this special term:
 - (i) extends to all extensions and renewals of this Lease; and
 - (ii) extends to claims by the Lessor for loss or damage arising from the repudiation of this Lease or from breaches of the terms of this Lease, including, but not limited to:

- A. the Lessee vacating (otherwise than in accordance with the terms of this Lease) or abandoning the Premises; or
 - B. the Lessor re-entering or terminating this Lease, including for the Lessee's repudiation of this Lease;
- (h) the rights of the Lessor under the bank guarantee are not prejudiced or otherwise affected by anything which might otherwise affect the Lessor in law or in equity, including, but not limited to, one or more of the following:
 - (i) the Lessor granting time or other indulgence to the Lessee;
 - (ii) acquiescence, delay, acts or omissions on the part of the Lessor;
 - (iii) an assignment, extension, sublease or variation of this Lease;
 - (iv) the death, dissolution or other incapacity of the Lessee;
 - (v) the bankruptcy or liquidation of the Lessee or the appointment of a provisional liquidator or receiver or receiver and manager or any arrangement or composition for the benefit of the Lessee's creditors;
 - (vi) the invalidity or unenforceability of an obligation or liability of the Lessee under this Lease; or
 - (vii) the disclaimer of this Lease by a liquidator or trustee of the Lessee;
- (i) if a claim that a payment to the Lessor in connection with this Lease is void or voidable under laws relating to insolvency or protection of creditors is upheld, conceded or compromised, the Lessor is immediately entitled as against the Bank to the right for payment to which it would have been entitled under the bank guarantee if all or part of the payment had not been made;
- (j) if the benefit of this Lease is transferred or assigned by the Lessor to any person, the benefit of the bank guarantee extends to and is to be taken to be assigned to the transferee or assignee;
- (k) the Lessor is entitled to recover from the Lessee the Rent and any other money due and owing under this Lease, and damages arising out of the Lessee's breach or breaches without being limited to the bank guarantee;
- (l) a reference in this special term to "Lease" includes a reference to any tenancy or other rights whether legal or equitable under which the Lessee occupies or is entitled to occupy the Premises, including but not limited to a tenancy for a fixed term, a periodic tenancy or a tenancy at will

4. Lessor's covenants

The Lessor covenants with the Lessee subject to the Lessee paying the Rent, the Outgoings and the Variable Outgoings and observing and performing the Lessee's Covenants.

4.1 Variable Outgoings

- (a) **(Estimated Variable Outgoings):** on or before the Date of Commencement of the Term or as soon as possible thereafter to notify the Lessee in writing of the Lessee's proportion of the Estimated Variable Outgoings payable in respect of the Preliminary Period and thereafter, on or before the date of commencement of each

Lease Year and the Final Lease Year, to notify the Lessee in writing of the Lessee's proportion of the Estimated Variable Outgoings payable in respect of the next succeeding Lease Year.

- (b) **(Actual Variable Outgoings):** by notice in writing to the Lessee on the last day of the Preliminary Period, each Lease Year and the Final Lease Year or as soon as practicable thereafter in each case to notify the Lessee of the Lessee's proportion of the actual Variable Outgoings.
- (c) **(Adjustments):** if the Lessee's proportion of the actual Variable Outgoings for any Lease Year is less than the Lessee's proportion of the Estimated Variable Outgoings to give credit to the Lessee by deducting the excess from the next payment of the Lessee's proportion of Variable Outgoings and in the case of the Final Lease Year to pay that amount to the Lessee.

4.2 Quiet enjoyment

That the Lessee may, except as provided in this Lease, peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any person lawfully claiming, by from or under the Lessor.

4.3 Rates and Taxes

To pay or cause to be paid all Rates and Taxes payable by the Lessor (other than those payable by the Lessee hereunder) in respect of the Land or the Building.

4.4 Clean Premises and Common Parts

To cause the Premises and the Common Parts to be cleaned according to normally accepted standards of office cleaning by a service or services provided by the Lessor at such times as the Lessor in its absolute discretion determines provided that the Lessor will not be liable for any failure to observe or perform this covenant due to any reason beyond the direct control of the Lessor nor shall the Lessor be liable for any loss or damage to the property of the Lessee whilst the Premises are unoccupied.

4.5 Naming rights

The Lessor may name the Building or grant to any tenant in the Building the right to name the Building upon and subject to any conditions which the Lessor considers fit.

5. Mutual agreements

The parties hereto agree that:

5.1 Default by Lessee

If:

- (a) the Rent or Variable Outgoings or Outgoings are unpaid for 7 days after becoming due (whether demand for payment is made or not);
- (b) the Lessee breaches any of the Lessee's Covenants and the breach continues for 14 days after notice has been served on the Lessee by the Lessor;
- (c) an Insolvency Event occurs in respect of the Lessee;
- (d) any execution or process is made against the property of the Lessee; or

- (e) the Lessee breaches any of the terms, covenants and conditions contained in any licence agreement whereby the Lessor grants to the Lessee licence to use a car bay or car bays in the Building or on the Land,

the Lessor may at any time thereafter and without any notice or demand, enter and repossess the Premises and thereby the Term and the estate and interest of the Lessee in the Premises will immediately terminate but without affecting any right of the Lessor under this Lease and without releasing the Lessee from liability in respect of the Lessee's Covenants and upon re-entry the Lessor will have the right to remove any property of the Lessee left in or about the Premises and the Lessee shall indemnify the Lessor against all damage to that property and the cost of storing the same and non-payment of Variable Outgoings or Outgoings by the Lessee will be treated and recovered by the Lessor as Rent in arrears.

5.2 Essential terms

Each of the covenants by the Lessee contained in each of the following clauses is and is deemed to be an essential term of this Lease:

- (a) the covenant to pay the Rent, Outgoings and Variable Outgoings as specified in clauses 3.1, 3.3, 3.4 and 3.5;
- (b) the covenant to repair as specified in clause 3.9;
- (c) the covenants relating to use of the Premises as specified in clause 3.10;
- (d) the covenant against making alterations without the Lessor's consent as specified in clause 3.12;
- (e) the covenants restricting assignment and sub-letting of the Premises as specified in clause 3.14;
- (f) the covenant against invalidating insurance as specified in clause 3.17; and
- (g) the covenants as to yielding up the Premises upon expiration or sooner determination as specified in clause 3.24.

5.3 Non waiver

In respect of the obligation of the Lessee to pay the Rent in the manner provided in this Lease, the acceptance by the Lessor of any arrears or of any late payment of such Rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay the Rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay the Rent during the whole Term.

5.4 Compensation and damages

The Lessee shall compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The entitlement of the Lessor under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

5.5 Repudiation and breach

In the event that the conduct of the Lessee (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any of the Lessee's Covenants, the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

5.6 Entitlement not affected

The entitlement of the Lessor to recover damages shall not be affected or limited by any of the following:

- (a) if the Lessee shall abandon or vacate the Premises;
- (b) if the Lessor shall elect to re-enter or to terminate this Lease;
- (c) if the Lessor shall accept the Lessee's repudiation;
- (d) if the conduct of the Lessor and Lessee shall constitute a surrender by operation of law.

5.7 Lessor may relet

In the event of the Lessee abandoning or vacating the Premises prior to the expiration of the Term whether with or without the Lessor's consent and without lawful excuse, the Lessor may in its absolute discretion and without any obligation so to do seek to find another tenant for the Premises and the conduct of the Lessor taken in pursuance of the exercise of its discretion under this clause shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

5.8 Entitlement to damages

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term of this Lease including the periods before and after the Lessee has vacated the Premises and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 5.6 whether the proceedings are instituted either before or after such conduct.

5.9 Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be or, if necessary, be deemed to be a monthly tenant of the Lessor at a monthly rent equivalent to one twelfth of the aggregate of the Rent together with the Variable Outgoings and Outgoings which would be payable by the Lessee if an extension of the Term had been granted at the expiry of the Term and otherwise on the same terms and conditions as this Lease.

5.10 Lessee's obligations at risk and expense of Lessee

Whenever the Lessee is obliged or required by this Lease to do, effect or omit to do any act, matter or thing then the doing of or the omission to do that act, matter or thing will unless this Lease otherwise provides, be at the sole risk and expense of the Lessee.

5.11 Abatement of Rent

If the Premises or the Building or any part thereof is so destroyed or damaged as to render the Premises unfit for occupation or use (unless the damage or destruction was caused by or in consequence of any act or default of the Lessee) the Rent or a fair and just proportion according to the nature and extent of the damage sustained will, from the date of damage or destruction until the Premises are reinstated and made fit for occupation and use, abate and cease to be payable and any dispute concerning this provision is to be determined by a single arbitrator in accordance with the provisions of the Commercial Arbitration Act 1985 and in any arbitration proceedings either party may be represented by his solicitor or other legal representative provided that the Lessee shall pay the Rent without any abatement until the date

of the award of the arbitrator or agreement between the parties (whichever is the earlier) whereupon the Lessor shall refund to the Lessee any Rent overpaid by the Lessee.

5.12 Destruction of Building

If the Building or the Premises are so destroyed or damaged as to require major rebuilding or reconstruction of the Building then the Lessor may elect whether or not to reinstate, rebuild, repair and make good the destruction or damage provided however that if the Lessor is prevented for any reason from reinstating, rebuilding, repairing or making good the destruction or damage, either the Lessee or the Lessor may by notice in writing to the other, terminate the Term from the date of giving that notice provided further that if the Lessor elects not to reinstate, rebuild, repair and make good the Building or the Premises, the Lessor may by notice in writing within 6 months of the damage or destruction, terminate the Term from the date of giving that notice and any termination will not affect the Lessor's rights in respect of any antecedent breach by the Lessee of any covenant, term or condition contained or implied in this Lease and nothing hereinbefore contained will require or oblige the Lessor to reinstate, rebuild, repair or make good the Building or the Premises.

5.13 Other payments by Lessee

- (a) **(Suppliers of electricity and other services):** the Lessor, from bulk supplies purchased from appropriate authorities for consumption within the Building, shall supply to the Lessee all electricity, water or other like supplies ("**Supplies**" which expression, where the context so requires, includes any individual service supplied) reasonably required by the Lessee for use or consumption in or upon the Premises and the Lessee shall purchase the Supplies from the Lessor upon and subject to the following conditions:
- (i) the price which the Lessor may charge for the Supplies will be calculated at the rate which would be charged by the relevant Authority if it supplied the same quantity of the Supplies to the Lessee at the Premises over the same period;
 - (ii) the Lessor may impose upon the Lessee the same conditions as each relevant Authority from time to time imposes when or before supplying the Supplies to consumers at similar premises and the Lessee shall at all times comply with those conditions;
 - (iii) the Lessor may render accounts for the Supplies to the Lessee from time to time during the Term which accounts are to be paid to the Lessor within 14 days of delivery and on the expiry or sooner determination of the Term the Lessor may render an account up to the date of determination or expiry and the Lessee shall pay that account to the Lessor promptly upon receipt;
 - (iv) if the Lessee fails to pay any account rendered pursuant to the last preceding sub-paragraph within the time therein mentioned the Lessor may (without affecting any other right or power of the Lessor) terminate the supply of the Supplies to the Premises until the account has been paid in full;
 - (v) the Lessor will not be responsible for any failure to provide the Supplies arising by default of any relevant Authority to provide the Lessor with bulk supplies or arising from any cause beyond the reasonable control of the Lessor known or unknown except due to the Lessor's default or want of due care; and

- (vi) to the extent that the Supplies are not provided from the Lessor's bulk supply the Lessee shall make its own arrangements direct with each relevant Authority.
- (b) **(Additional services):** if the Lessee uses the Premises at times other than the period mentioned in the Rules and Regulations, the Lessor may make an apportionment of the expenses, charges and outgoings in respect of air conditioning and maintenance, payment for overtime and for additional staff in the opinion of the Lessor required for the security of the Building or otherwise, cleaning of the Common Parts and other expenses directly affected or incurred by the extra hours during which access to the Building and use of the Premises by the Lessee is involved and may charge the amount thereof to the account of the Lessee and may recover that amount as if the same were Rent in arrears.

5.14 Acceptance of Rent not to prejudice Lessor's right

Demand for or acceptance of Rent or the Lessee's Variable Outgoings by the Lessor after default by the Lessee under this Lease (other than on the grounds of non-payment of that Rent or the Lessee's Variable Outgoings, as the case may be) will not affect the exercise by the Lessor of the rights and powers conferred upon it by clause 5.1 hereof or any other right, power or privilege of the Lessor under this Lease and will not operate as an election by the Lessor either to exercise or not to exercise any right, power or privilege.

5.15 Lessor may remedy Lessee's default

If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee covenants to pay, do or effect then on each occasion the Lessor may, without affecting any right or power arising from that default, pay that money or do or effect that thing itself as if it were the Lessee and the Lessor may enter upon and remain on the Premises for that purpose and the Lessee shall pay to the Lessor upon demand the Lessor's costs of remedying the breach or default.

5.16 Whole agreement

The covenants and provisions contained in this Lease whether express or by statutory implication cover and comprise the whole of the agreement between the parties hereto and it is expressly agreed and declared that no further or other covenant or provision whether in respect of the Premises or not will be deemed to be implied herein or to arise between the parties hereto by way of collateral or other agreement.

5.17 Waiver

No waiver by the Lessor of any of the Lessee's Covenants will operate as a waiver of another breach of the Lessee's Covenants.

5.18 Notices

Any notice required to be served hereunder may be signed by the party giving the notice or, in the case of the Lessor, by any director, manager, secretary, solicitor or agent of the Lessor and will be sufficiently served:

- (a) on the Lessee if left addressed to the Lessee on the Premises or forwarded to the Lessee by post to the last known place of business of the Lessee; or
- (b) on the Lessor if addressed to the Lessor and left at or sent by post to the Lessor's registered office in Western Australia for the time being,

and a notice sent by post will be deemed to be given 2 business days after the date of posting.

5.19 Amendment to Rules and Regulations

The Lessor reserves the right at any time to amend, vary, cancel, add to or suspend the Rules and Regulations and to make such other rules and regulations either in lieu of or in addition to the Rules and Regulations as the Lessor requires for the management, safety, care or cleanliness of or for the preservation of good order in the Building and for the convenience of the occupiers of and invitees to the Building provided that no amendment, addition or variation to the Rules and Regulations may be inconsistent with the rights of the Lessee expressed in this Lease and that each amendment, addition and variation to the Rules and Regulations will bind the Lessee when notice is given by the Lessor and that if there is any inconsistency between the provisions of this Lease and any amendment, addition or variation to the Rules and Regulations the provisions of this Lease will prevail.

5.20 No liability of Lessor for Rules and Regulations

The Lessor will not be liable for any loss or damage howsoever caused arising out of any non-enforcement of the Rules and Regulations.

5.21 Easements

- (a) **(Lessor may grant easements):** the Lessor may for the purpose of providing public or private access to or egress from the Building or the Land support of structures hereafter erected on adjoining land or services including water, drainage, gas, electricity and telephonic or electronic communications or services grant rights of support or enter into any arrangement or agreement with any owner, lessee, tenant or occupier of or person interested in any land adjacent or near to the Building or with any Public Authority and may dedicate, transfer, grant or create any land, easement or privilege in favour of any person any adjoining or neighbouring land or any Public Authority over or affecting the Premises and this Lease will be deemed to be subject to each agreement, arrangement, right, easement or privilege.
- (b) **(Temporary access):** if any toilet or washroom in the Building is not available for use for any reason the Lessor may temporarily permit the use of any toilet or washroom in the Premises by authorised persons and no rent adjustment will be made during the temporary arrangements.

5.22 Non-merger

The terms and conditions of this Lease or any act, matter or thing done under, by virtue of or in connection with this Lease or any other agreement between the parties hereto will not operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any other agreement all of which will continue in full force and effect.

5.23 Lessor not liable to third parties

- (a) **(Generally):** the Lessor will not be responsible for loss, damage or injury to the Lessee or any person or property or the effects or business of the Lessee or any other person in or about the Premises or the Building however occurring whether arising from the operation of or failure to operate any of the Elevators, automatic doors, Air Conditioning Plant, public utility services or other machinery therein or not or occasioned by water, heat, fire, electricity, vermin, explosion, bursting pipes or by the entry of water from any source whatsoever or by the blockage of any sewers, wastes, drains, gutters, downpipes or storm water drains except to the extent

the same arises from negligence on the part of the Lessor, its servants, agents or workmen.

5.24 Bomb threats

The Lessor shall not be liable to the Lessee or to the Lessee's employees, agents, customers, invitees or licensees for any loss or damage suffered in consequence of any action taken by the Lessor or the Managing Agents or by any authorised body following the giving of any threat or demand of the kind referred to in clause 3.13(e) hereof and including (but not limited to) from the evacuation and or closure of any part of the Building or the Premises or from any looting or vandalism.

5.25 No warranty by Lessor as to use

The Lessor gives no warranty as to the use to which the Premises may be put and the Lessee accepts the Premises for the Term with full knowledge of and subject to any prohibition or restriction on the use thereof under or pursuant to any Act or other statutory authority and if the business carried on by the Lessee at the Premises is permissible only with consent pursuant to any Act or other statutory authority, the Lessee shall obtain that consent at his own expense.

5.26 Severance

If any part of this Lease is or becomes void or unenforceable then that part is or will be severed from this Lease so that all parts not void or unenforceable remain in full force and effect and unaffected by that severance.

5.27 Arbitration

Any dispute arising out of this Lease is to be determined by a single arbitrator in accordance with the provisions of the *Commercial Arbitration Act 1985* and the Lessee shall pay the Rent without abatement until the date of the award of the arbitrator or agreement between the parties (whichever is the earlier) whereupon the Lessor shall refund to the Lessee any Rent paid by the Lessee not required to be paid within the terms of the award of the arbitrator or the agreement between the Lessor and Lessee. In any arbitration proceedings arising out of this Lease either party may be represented by his solicitor or other legal representative.

5.28 Lessor may act by agent

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

5.29 Exercise of powers

The Lessor may exercise all rights conferred upon the Lessor by this Lease ("**Lessor's Powers**") without any proof of default by the Lessee, the continuance of that default or any notice being required (other than as provided in this Lease) and notwithstanding any laches, neglect or previous waiver by the Lessor in respect of any of the Lessee's Covenants or the exercise of any of the Lessor's Powers.

5.30 Statutory powers

The powers conferred by or under any statute (except to the extent inconsistent with the terms and provisions expressed in this Lease) are in augmentation of the powers conferred on the Lessor by this Lease.

5.31 Proper law

This Lease is governed by the laws of Western Australia.

5.32 Effect of execution

Upon execution by the Lessor this Lease is binding upon each person who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it
- (b) the avoidance or unenforceability of any part of this Lease; or
- (c) the avoidance or unenforceability of this Lease or any part of this Lease against any signatory or intended signatory.

5.33 Lessee's right to renewal

If the Lessee wishes to renew the Term and gives to the Lessor notice in writing at least 6 calendar months prior to the expiry of the Term and if at the time of giving notice and at any time during and up to the expiry of the Term there is no outstanding breach or non-observance of any of the Lessee's Covenants, notice of which has been served on the Lessee, the Lessor will at the cost of the Lessee grant to the Lessee a new lease of the Premises for the further period specified in the schedule on the same terms and conditions as this Lease (subject to review of the Rent in accordance with clause 3.2 of this Lease) other than this right of renewal or if more than one period is specified in the schedule, for the further period or periods specified in the schedule subject always to the provisions of this clause and with such other variations as the Lessor requires to ensure that the terms and conditions of the new lease are the same as the terms and conditions which the Lessor would offer to new tenants in the Building at the date of commencement of the Further Term provided that the Lessee will not have the right to renew the Term for any period after the last date mentioned under the heading "Term of Renewal" in the schedule. Upon the valid exercise of the option to extend this Lease, the Lessee and the Guarantor (if any) shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease. Such deed shall be prepared by the Lessor's solicitors in a form approved by them at the expense of the Lessee in all respects including all stamp duty.

5.34 Exclusion of trespassers

Notwithstanding anything contained or implied within this Lease to the contrary, the Lessor may at any time and from time to time and for so long as it shall think fit, exclude and restrain any person or persons from entering upon any part of the Building or from using or occupying any of the Common Parts other than bona fide clients, customers, patrons, delivery men or service suppliers of the Lessee or of the other tenants of the Building who make use of the same in accordance with the Rules and Regulations of the Lessor relating to the Building. Without in any way limiting the meaning of the term "bona fide" any person who has entered upon the Building or made use of the Common Parts or any part of the Common Parts in breach of the Lessor's Rules and Regulations relating to the Building and who having been notified of such breach shall commit a further breach of the said Rules and Regulations (whether the like nature or not) shall for the purpose of this clause be deemed to be not bona fide.

5.35 Revocation of licence to enter

The Lessee shall, whenever requested so to do by the Lessor, give notice in writing to any person who purports to enter upon any part of the Building to make use of the Common Parts as a client, customer, patron or invitee of the Lessee and who does not observe the Rules and

Regulations or who is deemed not to be bona fide, revoking the licence of such person to enter upon any part of the Building.

5.36 Consents and approvals

Save as otherwise specifically provided in this Lease any consent or approval which may be granted by the Lessor pursuant to this Lease may be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.

5.37 Directory boards

Any directory boards provided by the Lessor shall be under the sole control of the Lessor who may allot space therein for the names and descriptions of the lessees of the Building. The form of the Lessee's name and description shall be approved by the Lessor and erected by the Lessor at the expense of the Lessee. At the expiration or sooner determination of the Term or upon an assignment of this Lease the name and description of the Lessee shall be removed by the Lessor at the Lessee's expense.

5.38 Managing Agents

The Managing Agents appointed by the Lessor from time to time shall represent the Lessor in all matters relating to this Lease except insofar as the Lessor shall otherwise in writing direct and provided always that any communications from the Lessor shall, to the extent of any inconsistency, supersede any communication from the Managing Agents.

5.39 Security

In addition to the appointment of Managing Agents the Lessor may from time to time appoint staff or engage contractors for caretaking and security of the Building and all such staff and contractors shall be afforded the rights of entry to the Premises hereby conferred upon or reserved by the Lessor and who shall also be charged with the policing and administration of the Rules and Regulations.

5.40 Trustee covenants

Where any party enters into this Lease in the capacity of a trustee pursuant to any trust deed, will, deed of settlement or other instrument whatsoever ("**Trust Deed**") such party ("**Trustee**") warrants and undertakes to and covenants with the Lessor that:

- (a) as trustee it has power under the Trust Deed:
 - (i) to enter into and execute this Lease; and
 - (ii) to be or become indebted to the Lessor and to enter into all other obligations in the manner and to the extent contemplated by this Lease;
- (b) it is not a party to any partnership, joint venture or any profit sharing or like arrangement with any other person or corporation;
- (c) it is not now a trustee and during the currency of this Lease it will not act as trustee of any trust or settlement other than that constituted by the Trust Deed without the written consent of the Lessor;
- (d) it is the sole trustee of the trusts created by the Trust Deed;
- (e) during the Term of this Lease (and any extension thereof) it will not without the prior written consent of the Lessor:

- (i) cause to vest or distribute prior to the final date for distribution under the Trust Deed the whole or any part of the trust property other than the income thereof;
 - (ii) vary, alter or revoke either wholly or in part any of the terms of or powers under the Trust Deed whether by Order of a Court or otherwise howsoever;
 - (iii) appoint or procure or consent to or concur in the appointment of any person firm or corporation as a new or substitute or custodian trustee under the Trust Deed;
 - (iv) as trustee under the Trust Deed delegate any power or powers or duty or duties conferred upon it under the Trust Deed; or
 - (v) do any act or thing or omit to do any act or thing so as to harm or impair or be likely to harm this Lease or the covenants, terms and conditions thereof; and
- (f) in the event of a new, substitute or custodian trustee being appointed under the Trust Deed it will procure that such new, substitute or custodian trustee shall enter into a deed in like form mutatis mutandis with this Lease, which deed shall be prepared and stamped by the Lessor's solicitors at the cost in all respects of the Lessee.

5.41 Release of Lessor

The term "Lessor" as used in this Lease, so far as the covenants or obligations of the Lessor are concerned, shall be limited to and mean only the registered proprietor for the time being of the Land and in receipt of the rents and profits of the Land at the time in question and if the Lessor's interest therein is assigned or transferred in any way (other than by way of security only) the Lessor named herein (and in the case of any subsequent assignments or transfers other than by way of security only the then assignor or transferor) shall be automatically freed and discharged from and after the date of such assignment or transfer from all personal liability for the performance of any covenant or obligation on the part of the Lessor herein contained and under this Lease thereafter to be performed.

5.42 Western Australian Planning Commission consent

If for any reason this Lease requires by law the consent of the Western Australian Planning Commission then this Lease is made expressly subject to and is conditional upon the granting of such consent, which consent shall be sought by the Lessor at the Lessee's expense.

5.43 Mortgagee's consent

If this Lease requires the consent of any mortgagee of the Land then such consent shall be sought by the Lessor at the Lessee's reasonable expense.

5.44 Treasurer's approval

If this Lease requires the approval of the Treasurer under the provisions of the *Foreign Acquisitions and Takeovers Act 1975* as amended, then this Lease is made expressly subject and conditional upon the granting of such approval, which approval shall be sought by the Lessor at the Lessee's expense.

5.45 Smoking

The Lessee shall not smoke or permit any of its employees to smoke cigarettes or other substances on any part of the Land. The Lessee shall direct its customers and visitors not to smoke in or about the Premises or on the Land.

5.46 Moratorium negated

The application to this Lease of any moratorium or other Act or statute, whether State or Federal, having the effect of extending the Term, reducing or postponing the payment of the moneys payable hereunder or any part thereof or otherwise affecting the operation of the covenants, conditions and stipulations on the part of the Lessee to be performed or observed, or providing for compensation, rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is expressly excluded and negated.

6. Guarantee

6.1 Guarantee and indemnity

In consideration of the Lessor executing this Lease at the request of the Guarantor (which request is testified by the Guarantor's execution of this Lease) the Guarantor:

- (a) hereby guarantees to the Lessor the due and punctual payment to the Lessor of any moneys which may become due and payable to the Lessor by the Lessee directly or indirectly pursuant to the terms of this Lease (and any variation, renewal or extension hereof) and also the due observance and performance of all other terms, covenants and conditions expressed or implied in this Lease (and any variation, renewal or extension hereof) and on the part of the Lessee to be observed and performed; and
- (b) as an independent liability, hereby indemnifies the Lessor and agrees to keep it indemnified from and against all loss, damage, costs and expenses suffered or incurred by the Lessor by reason of any breach or non-performance by the Lessee of any of such terms, covenants and conditions. This indemnity shall not be limited or affected in any way whatsoever by the fact that any moneys payable by the Lessee cannot or could never be recovered from or enforced against the Lessee for any reason.

6.2 Guarantor's covenants

The Guarantor further agrees that:

- (a) this guarantee and indemnity shall continue for the duration of this Lease and for any extension or renewal hereof and any holding over hereunder and shall extend to the acts and defaults of the Lessee during such duration, extension, renewal or holding over;
- (b) any payment made to the Lessor and later avoided by any statutory provision or discounted, refunded or reduced by any subsequent proceedings shall be deemed not to have discharged the Guarantor's liability and in any such event the Lessor, the Lessee and the Guarantor shall be restored to the rights which each respectively would have had if the payment had not been made;
- (c) the Lessor may proceed against the Guarantor (or any one or more of them) before or instead of, proceeding against the Lessee without affecting the liability of the Guarantor as herein provided;

- (d) the liability of the Guarantor shall not be abrogated, prejudiced or affected by the granting of time, credit or any indulgence or concession to the Lessee or by any compounding, compromise, release, absolute or partial discharge (whether by operation of law or otherwise) abandonment, waiver, variation, novation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities on the part of the Lessee or by any omission or neglect or by any other dealing, matter or thing which, but for this provision, could or might operate to abrogate, prejudice or affect this guarantee and indemnity it being the intention of the parties hereto that this guarantee and indemnity and obligations of the Guarantor herein shall be absolute and unconditional in any and all circumstances;
- (e) this guarantee and indemnity shall not be affected by any laches, acts, omissions or mistakes on the part of the Lessor;
- (f) until the Lessee shall have fully performed and observed the Lessee's covenants in this Lease (and any variation, renewal or extension thereof) and until the Lessor shall have received in full all rent and other moneys due from the Lessee under this Lease (and any variation, renewal or extension thereof), the Guarantor shall be bound by this guarantee and indemnity and in the event of the Lessee becoming bankrupt or entering into any scheme of arrangement in favour of creditors, or being a company entering into liquidation, either voluntarily or involuntarily:
 - (i) the Guarantor shall not be entitled to prove or claim against the official receiver or liquidator in competition with the Lessor so as to diminish any dividend or any payment which the Lessor may receive, but may prove or claim for and on behalf of the Lessor, if so authorised by the Lessor, and any such proof or claim by or on behalf of the Lessor shall not prejudice or affect the right of the Lessor to recover from the Guarantor any payment of rent or other moneys to be made by the Lessee to the Lessor under this Lease;
 - (ii) the Guarantor authorises the Lessor to prove for all moneys which the Guarantor has paid under this guarantee and indemnity and to retain or to appropriate at the Lessor's discretion, any amount received by the Lessor; and
 - (iii) the Guarantor hereby indemnifies the Lessor and agrees to keep it indemnified from and against all loss, damage, costs and expenses suffered or incurred by the Lessor by reason of the Lessee becoming bankrupt or entering into any scheme of arrangement or going into liquidation including, without limitation, any amount paid to the Lessor that the Lessor may subsequently be obliged to pay out on the ground that the payment of such amount was a preference. This indemnity extends to the amount of any interest that does not accrue from the date of such bankruptcy, scheme of arrangement or liquidation and is not recoverable by reason of the happening of such event and that would otherwise would have accrued and have been recoverable from the Guarantor under this guarantee and indemnity;
- (g) this guarantee and indemnity is to continue to be binding upon the Guarantor notwithstanding:
 - (i) the death, bankruptcy, insolvency or liquidation (as the case may be) of the Lessee or the Guarantor or any one or more of them;

- (ii) any change or alteration in the constitution of the Lessor the Lessee or the Guarantor;
 - (iii) the happening of any matter or thing which under the law relating to sureties would, but for this provision, have the effect of releasing the Guarantor from this guarantee and indemnity or of discharging this guarantee and indemnity;
 - (iv) any part of this Lease being severed;
 - (v) any amendment of or variation to the terms of this Lease;
 - (vi) any security taken by the Lessor is or becomes void or defective or any loss or impairment of such security;
 - (vii) any transfer or assignment of this Lease by the Lessee or any sub-letting or parting with possession of or control of the Premises with or without the consent of the Lessor in any such case; or
 - (viii) any surrender of this Lease by operation of law;
- (h) in the event of any part of this Lease being severed in accordance with the provisions in that behalf contained or implied in this Lease, then the Guarantor shall not be entitled to rely on or claim the benefit of any such severance;
- (i) this guarantee and indemnity shall be a continuing guarantee and indemnity and shall not be considered as wholly or partially discharged by the payment of any moneys or the performance of any of the Lessee's covenants or any other matter or thing whatsoever;
- (j) the liability of the Guarantor shall not be affected by any collateral rights or obligations which may exist between the Guarantor and the Lessor or between the Guarantor and the Lessee nor shall the same be affected by:
- (i) any variation or avoidance of any such collateral rights or obligations; or
 - (ii) any other security or securities which the Lessor may hold or hereafter take from the Lessee or the Guarantor or any other person in respect of the compliance with and observance of the Lessee's obligations;
- (k) in the event of the Guarantor becoming bankrupt or entering into any scheme of arrangement in favour of creditors or, being a company, entering into liquidation, either voluntarily or involuntarily, the Lessor shall be entitled to prove for the total indebtedness of the Lessee under this Lease for the duration of the Term then current notwithstanding that any sums of money payable by the Lessee to the Lessor under this Lease are not due and payable at the date of the bankruptcy, entering into the scheme of arrangement or liquidation;
- (l) the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee;
- (m) the Lessor may transfer or assign the rights and benefits of the Lessor under this guarantee and indemnity either absolutely or by way of security without the need for the Lessee's or the Guarantor's consent whereupon this guarantee and indemnity shall be fully enforceable by the transferee or assignee;

- (n) as long as any moneys are owing or payable by the Lessee to the Lessor (whether or not the Guarantor has become liable for those moneys under this guarantee and indemnity) the Guarantor shall not:
 - (i) claim any set-off or make any counterclaim against the Lessee or the Lessor;
 - (ii) invoke any defence available to the Lessee against the Lessor;
 - (iii) make any claim or enforce any right against the Lessee or any other Guarantor or, where the Lessee or any other Guarantor dies, against his estate;
 - (iv) prove in competition with the Lessor if the Lessee or any Guarantor becomes insolvent, whether in respect of any amount paid by the Guarantor under this guarantee and indemnity, in respect of any other amount (including the proceeds of any security) applied by the Lessor in reduction of the Guarantor's liability under this guarantee and indemnity, or otherwise; or
 - (v) be entitled to the benefit of any security or guarantee or any share therein now or subsequently held by the Lessor in respect of any moneys payable by the Lessee to the Lessor; and
- (o) the Guarantor's liability under this guarantee and indemnity shall not be affected by:
 - (i) the fact that any other person who was intended to execute this document or otherwise to become a co-surety for the payment of moneys payable by the Lessee or any of them has not done so or has not done so effectively; or
 - (ii) the discharge under statute or any principle of law or equity of any person who is a co-surety or co-indemnifier for payment of any moneys payable by the Lessee or any part thereof.

6.3 Extended operation of guarantee

A reference in clauses 6.1 or 6.2 to "this Lease" is a reference to any tenancy or other right whether legal, equitable or otherwise under which the Lessee occupies or is entitled to occupy the Premises including without limitation a tenancy for a fixed term, a periodic tenancy, a tenancy at will or a tenancy at sufferance.

7. Goods and services tax

7.1 Definitions

In this Lease:

"Basic Consideration" means the Consideration to be paid or provided by the Lessee for any Taxable Supply provided by the Lessor under this Lease (other than GST payable pursuant to this clause).

"Consideration" has the meaning which it bears in section 195-1 of the GST Act.

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

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

"GST Law" has the meaning which it bears in section 195-1 of the GST Act.

"GST Rate" means 10%, or such other percentage equal to the rate of tax imposed by the GST Law.

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

"New Tax System Changes" has the meaning which it bears in the TPA.

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

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

"TPA" means *A New Tax System (Trade Practices Amendment) Act 1999* and any legislation substituted for, replacing or amending that Act.

7.2 Lessee must pay

If, upon the introduction of GST, GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with any Taxable Supply provided under this Lease then, as from the date of any such introduction or application:

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

7.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to clause 7.2, the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice to the Lessee.

8. Strata title lot

8.1 Registration of Strata Plan

- (a) The Lessee acknowledges and agrees that should the Lessor elect at any time to register a Strata Plan in respect of the whole or part of the Land including the Premises then, forthwith upon receiving a request to do so from the Lessor, the Lessee shall withdraw any caveat lodged by the Lessee and, in consideration of the Lessor granting this Lease, the Lessee hereby irrevocably appoints the Lessor (and if the Lessor is a company each and every one of the directors and other officers of the Lessor jointly and severally) to be the agent and attorney of the Lessee to sign and register a withdrawal of any such caveat. The Lessee may lodge a "subject to claim" caveat to replace the caveat so withdrawn after the registration of the Strata Plan. The Lessor shall pay the Lessee's reasonable and proper costs of withdrawal and relodgment.
- (b) If this Lease shall be registered, the Lessee acknowledges and agrees that, should the Lessor elect at any time to register a Strata Plan in respect of the whole or part of the Land including the Premises then, forthwith upon receiving a request to do so from the Lessor, the Lessee shall on the day before the date of registration of the

Strata Plan surrender this Lease and in consideration of the Lessor granting this Lease, the Lessee hereby irrevocably appoints the Lessor (and if the Lessor is a company each and every one of the directors and other officers of the Lessor jointly and severally) to be the agent and attorney of the Lessee to sign and register a surrender of this Lease. The Lessor and the Lessee shall, at the time of the execution of such surrender of this Lease, execute a new lease ("New Lease") to replace this Lease which shall commence on the date of registration of the Strata Plan and shall be on the same term and conditions as this Lease provided that:

- (i) the lot on the Strata Plan substantially comprising the Premises shall be substituted for the Premises where mentioned in the New Lease;
- (ii) the terms of this Lease shall be amended to accommodate and reflect the provisions of clause 8.2; and
- (iii) all consequential amendments in connection with the application of the Act shall apply and follow.

The Lessor and the Lessee shall do all things reasonably necessary to register the New Lease as soon as practicable after registration of the Strata Plan. The Lessor shall pay the Lessee's reasonable and proper costs of and incidental to the surrender of this Lease and the preparation, execution, stamping and registration of the New Lease.

- (c) (**Further assurance**): each party shall as soon as practicable execute all documents and do all things that any other party from time to time requires of it to effect, perfect or complete the registration of the Strata Plan and to effect, perfect or complete the matters contemplated by this clause in connection with the registration of the surrender of this Lease, registration of the Strata Plan and registration of the New Lease.

8.2 Additional covenants to apply

Should the Premises at any time comprise the whole or part of a Strata Lot, the following shall apply:

- (a) unless the context otherwise requires the words and expressions defined in the *Strata Titles Act 1985* (as amended or replaced) ("**Strata Titles Act**") shall have the same meaning herein and each of the following expressions shall have the meaning set opposite:

"**Bylaws of the Company**" means the Bylaws as adopted by the Company or by virtue of the Strata Titles Act and includes any amendments thereto;

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

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

"**General Levies**" means all contributions levied by the Company in respect of the Premises pursuant to section 36(1) of the Strata Titles Act including (but without limiting the generality of the foregoing) all contributions payable to the administrative fund established by the Company pursuant to the Strata Titles Act to cover the costs, charges and expenses for the operation, maintenance, control and management of the Common Property or the building or buildings comprised in the Strata Plan, and for the cost of all premiums of insurance paid or payable by the

Company, and for the discharge of any other obligation undertaken by the Company and whether or not such contributions are levied on a periodical basis;

"Reserve Levies" means all contributions levied by the Company pursuant to section 36(2) of the Strata Titles Act in respect of any reserve fund established by the Company to cover contingent expenses, other than those of a routine nature, and other major expenses of the Company likely to arise in the future;

"Strata Plan" means the Strata Plan to be registered pursuant to the Strata Titles Act and all matters contained or endorsed upon or annexed to the Strata Plan and includes any amendments thereto;

- (b) this Lease shall be subject in all respects to all easements, rights, reservations and powers referred to in the Strata Titles Act except insofar as they are herein modified or negated;
- (c) notwithstanding anything to the contrary herein contained or implied, any power, right, remedy or authority reserved or granted to the Lessor by the Lessee, any consent or approval of the Lessor required by the Lessee to perform or do or permit the performance or doing of any act or thing by the Lessee, any notice, document or other writing required to be given by the Lessee to the Lessor and any indemnity to be given by the Lessee to the Lessor which relates to the Common Property or the building or buildings comprised in Strata Plan shall be deemed to be reserved, granted, required or given by the Lessee to or from either or both the Company and the Lessor as the circumstances require;
- (d) subject to the bylaws of the Company, the Lessee shall have the non-exclusive licence for the Lessee and its employees, agents, contractors, invitees, licensees and tenants to pass and repass over and across those parts of the Common Property giving access to and egress from the Premises and to use the communal toilets and washrooms (if any) in the Common Property in common with the Lessor and all others authorised (whether expressly or impliedly) by the Lessor and the registered proprietors (if any) of other lots comprised in the Strata Plan;
- (e) to the extent that any item of expenditure comprised in the Variable Outgoings is included in any contribution levied by the Company pursuant to clause 8.2(f) hereof, the Lessee's liability to pay the Lessee's Variable Outgoings shall be proportionately adjusted;
- (f) the Lessee shall pay to the Company (or as the Company shall direct) on demand all General Levies and all Reserve Levies provided that if no separate assessment issues for any of such contributions the amount payable by the Lessee on account thereof shall be that sum which bears to the total of the assessment the same ratio as the unit entitlement of the Premises bears to the aggregate of the unit entitlement of the lots comprised in the Strata Plan which are the subject of the assessment;
- (g) the Lessee shall duly and punctually observe and comply with the provisions of the Strata Titles Act the Bylaws of the Company and all other bylaws for the time being in force in respect of the Premises the Common Property and the building or buildings comprised in the Strata Plan. On registration of the Strata Plan the Lessor shall furnish the Lessee with a complete copy of bylaws of the Company and thereafter of any amendments thereto;
- (h) if the Company passes a resolution or if the Supreme Court makes a declaration or an order pursuant to the provisions of Sections 30 or 31 of the Act then, and so often as the same shall happen, the Lessor shall have the right to terminate this Lease without compensation by giving 30 days notice in writing to the Lessee, but

such termination as aforesaid shall be without prejudice to the rights of either party against the other in respect of any antecedent breach, matter or thing.

9. Head lease

- (a) The Lessee will observe and comply with the requirements of the Head Lease and indemnifies the Lessor against any loss, damage, action, claim, demand, cost or expense arising from or incidental to any breach of this covenant.
 - (b) The Lessee shall not impede the exercise of any of the rights, remedies and powers in favour of the Head Lessor contained or implied in the Head Lease or granted by law.
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10. Additional terms

The additional terms, covenants and conditions set out in the schedule (if any) shall be deemed to be incorporated in this Lease as if fully set out herein.

Appendix

Rules and Regulations

1. General Behaviour Controls

Persons using the Building may not:

- (a) obstruct or permit the obstruction of the pavements, entrances, arcades, vestibules, corridors, passages, halls, elevators, stairways, fire doors or escape doors in or about the Building or use any of them for any purpose other than that for which they were constructed or provided;
- (b) cover or obstruct the floors, skylights, glazed panels, ventilators or windows which reflect or admit light or air into passageways or any other part of the Building or cover or obstruct any light or other means of illumination in the Building or permit any goods, structure, shelving or fitting to be visible through the glass of any corridor or dividing partition;
- (c) inscribe, paint, display or affix any sign, advertisement, name or notice on or to any part of the Premises visible from the exterior of the Building or from any Common Part within the Building except with the prior written consent of the Lessor and then only of the colour, size and style and in the place or places first approved by the Lessor provided that the Lessor's consent and approval may not be unreasonably withheld. The cost of affixing the name and description of a person, firm or company on directory boards in the main foyer of the Building in standard design is to be paid by that person, firm or company;
- (d) erect or install any window blind, window screen, awning or floor covering without the prior written approval of the Lessor;
- (e) play any musical instrument in or about the Building except with the prior written consent of the Lessor and except background recorded music the volume of which is kept at a level which does not cause a nuisance or annoyance to users of the Building;
- (f) keep any animal or bird in the Building except with the prior written consent of the Lessor;
- (g) throw or drop anything down any elevator shaft, passage or stairway or deposit waste paper or rubbish anywhere except in proper receptacles or place upon any sill, ledge or other like part of the Building or the Common Parts any article or substance;
- (h) use or permit or suffer to be used any method of lighting, cooling or heating other than as supplied by the Lessor or under special agreement made with the Lessor for the purpose;
- (i) burn any rubbish or waste in the Building at any time except in a place approved by the Lessor in writing;
- (j) conduct or permit to be conducted any auction, bankrupt or fire sale;
- (k) use or permit to be used the Common Parts for any business or commercial purpose or the display or advertisement of any goods or services or generally for any purpose other than a purpose for which the same was intended or provided;

- (l) drive nails, screws, bolts, hooks or fastenings into part of the Building without the Lessor's prior written consent or use any explosive power driven method of fixing articles to ceilings, walls or floors;
- (m) except as authorised by the Lessor enter or go upon the roof, any plant room or any other part of the Building other than the Common Parts except in the case of an emergency; nor
- (n) except as expressly permitted by the Lessor in writing store within the Premises or any other part of the Building any chemical or inflammable gas, fluid or substance.

2. **Deliveries**

Delivery or movement of any goods, wares, merchandise or other articles of bulk or quantity in the Common Parts may only be at times permitted by the Lessor (which permission may not be unreasonably withheld) and generally in compliance with all reasonable requirements of the Lessor.

3. **Opening hours of Building**

The Lessor may close the doors of the Building opening into any street and keep the same closed on Saturdays, Sundays and declared public holidays and between the hours of 6.00 p.m. and 8.00 a.m.

4. **Operation of Air Conditioning Plant and Elevators**

The hours of operation or use of the Air Conditioning Plant and Elevators will be 8.00 a.m. to 6.00 p.m. on every weekday excluding public holidays, Saturdays and Sundays until further notice.

Should the Lessee use the Premises at times other than prescribed by Regulation 3 the Lessor may make an apportionment of the expenses, charges and outgoings in respect of air conditioning and maintenance payment for overtime and for additional staff in the opinion of the Lessor required for the security of the Building or otherwise and cleaning of the Common Parts and of such other expenses as are directly affected or incurred by the extra hours during which access to the Building and use of the Premises by the Lessee is involved and such amount thereof as shall be referable to such extra access and use by the Lessee during hours other than normal hours abovementioned may be charged to the account of the Lessee and notified to the Lessee in addition to the Rent and be payable by the Lessee and be recoverable by the Lessor as if the same were Rent in arrears

5. **Fire drills**

If a civil defence or fire drill is conducted in the Building at any time each occupier must co-operate fully in regard to the planning and control of and participation in the exercise and procedure and each occupier must supply the Lessor with the names of the persons responsible for carrying out the duties of civil defence planner, organiser, warden, co-ordinator and fire officer in relation to the Premises and of the person responsible on each floor level thereof.

6. **Lessor not liable for Lessee's property**

The Lessor is not responsible for any loss or damage occasioned to property left in the Premises or in or about the car parking bays whilst the Premises are unoccupied.

Schedule

1. **The Lessee**

Health Services Australia Limited ABN 99 078 934 791 of Level 1, 15 Bowes Street, Phillip, ACT

2. **The Guarantor**

Subject to special covenant 13.1, Not Applicable.

3. **Land**

3.1 **Name and address of Building**

553 Hay Street, Perth.

3.2 **Title description**

(a) Lot 23 the subject of Diagram 39050 the whole of the land comprised in Certificate of Title Volume 377 Folio 117A

(b) Lot 22 the subject of Diagram 39052 the whole of the land comprised in Certificate of Title Volume 1845 Folio 320

4. **Premises**

4.1 **Floor number**

Whole of Level 3 and part of Level 2 including the right of access and use of the level 2 northern balcony area.

4.2 **Floor area**

1103.90m² (subject to survey) being the approximate areas of 813.90m² in respect of Level 3 and 290m² in respect of Level 2.

5. **Term**

5.1 **Number of years**

Ten (10) years

5.2 **Date of Commencement**

The 1 day of May 2006, being the earlier of:

(a) the date of occupation of the Premises for the purposes of ^{commencement of trade} the Lessee's Works; and

(b) 1 May 2006.

5.3 **Date of Expiry**

The date immediately prior to the tenth anniversary of the Date of Commencement.

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6. Term of Renewal

6.1 First Term of Renewal

Five (5) years

6.2 Date of Commencement

The tenth anniversary of the Date of Commencement.

6.3 Date of Expiry

The date immediately prior to the fifth anniversary of the date of commencement of the First Term of Renewal.

6.4 Second Term of Renewal

Nil

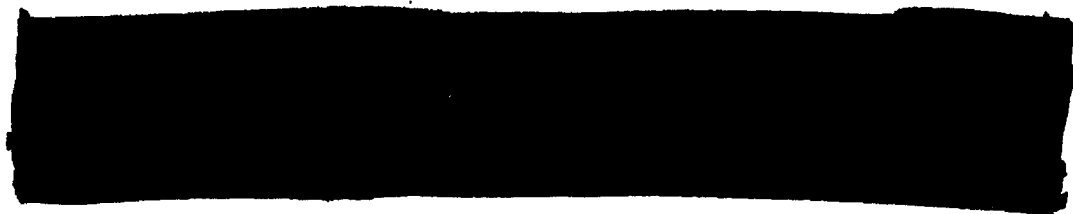
6.5 Date of Commencement

Not applicable

6.6 Date of Expiry

Not applicable

7. Rent



8. Rent Review Dates (Clause 3.2)

8.1 Market Rent Review Dates

The third, sixth, ninth and twelfth anniversary of the Date of Commencement.

8.2 CPI Rent Review Dates

Nil

8.3 Fixed Increase Rent Review Dates

Each anniversary of the Date of Commencement but excluding any Market Rent Review Date.

9. Maximum permitted floor loading

3 KPA

10. Address for Payments - Method of Payments

Payments shall be made by the Lessee's bank directly crediting a bank account nominated by the Lessor or the Managing Agent.

11. Encumbrances

The encumbrances registered on the Certificates of Title to the Land.

12. Guaranteed moneys

Not applicable

13. Additional terms, covenants and conditions**13.1 Guarantee**

Only while Health Services Australia Limited is the Lessee under this Lease and in actual occupation of the Premises and while the Commonwealth of Australia continues to own 100% of the shares in the Lessee, clause 6 of this Lease will not apply.

13.2 Bank Guarantee

If at any time while the Lessee is Health Services Australia Limited or a related body corporate listed in item 13.10(h) and the Commonwealth of Australia reduces its share holding in that company, within 30 days after reduction of such shareholding, the Lessee must provide a bank guarantee in accordance with clause 3.26 of this Lease for the Guaranteed Moneys in an amount equal to nine (9) months Rent (plus GST).

13.3 Rent Free Period

- (a) If the Lessee complies throughout the Term with all the terms, covenants and conditions on its part herein contained or implied, then during the period of 10 months from the Date of Commencement of the initial Term of this Lease ("Period") the Lessee shall not be required to pay Rent.
- (b) In the event of default by the Lessee under the provisions of this Lease, all Rent unpaid for the Period shall become immediately due and payable to the Lessor.

13.4 Lessor's Works

The Lessor will, prior to the Date of Commencement, undertake and complete at its own cost works to only the partitioned area of Level 3 of the Premises in a form to be agreed by the Lessor and Lessee acting reasonably.

13.5 Existing Fitout

The Lessee shall have the full use and benefit of the existing fitout (partitioning) of Level 3 of the Premises as at the Date of Commencement. The Lessee shall not be required to remove that existing fitout on termination or earlier determination of this Lease.

13.6 Lessee's Works

The Lessee wishes to complete, finish and fitout the Premises to the Lessee's trading and occupational requirements at the Lessee's sole cost in all respects ("Lessee's Works") and

agrees to do so in accordance with plans and specifications first approved by the Lessor ("Lessee's Plans and Specifications") and in accordance with the following.

- (a) **(Lessee's Plans and Specifications must be approved):** prior to commencing any of the Lessee's Works, the Lessee must obtain the Lessor's written approval to the Lessee's Plans and Specifications.
- (b) **(Comply with Tenancy Fitout Guide):** in preparing and submitting the Lessee's Plans and Specifications, the Lessee shall in all respects have regard to and comply with the Tenancy Fitout Guide (if any) supplied or to be supplied by the Lessor and shall engage only qualified, competent and experienced persons for such purpose.
- (c) **(Approval Authorities):** such of the Lessee's Plans and Specifications approved by the Lessor as require the approval of any Relevant Authority shall be submitted by the Lessee to all Authorities for approval at the cost of the Lessee in all respects.
- (d) **(Lessor's costs):** the Lessee shall pay on demand to the Lessor all costs and expenses incurred by the Lessor and the Lessor's architect and other consultants:
 - (i) inspecting, conferring upon, approving or disapproving the Lessee's Plans and Specifications; and
 - (ii) in undertaking any of the Lessee's Works or associated with the supervision and/or administration of any of the Lessee's Works.
- (e) **(Lessee's Works):** subject to the approval of the Lessor as herein provided, the Lessee shall, prior to the Date of Commencement, at its own expense, promptly complete, finish and fitout the Premises to its own trading and occupational requirements including, but not limited to, the following:
 - (i) provide, erect and install all interior partitions which the Lessee may require other than those provided by the Lessor;
 - (ii) paint, paper, tile and otherwise finish all interior surfaces requiring finishing in finishes and colours to be approved by the Lessor (which approval shall not be unreasonably withheld);
 - (iii) provide and install all counters, shelves, floorcoverings and other fittings and fixtures of every description required by the Lessee for the conduct of its business;
 - (iv) provide and erect all Lessee's signs in compliance with all necessary permits and consents required by the Lessee from the Lessor and all Authorities;
 - (v) make all necessary applications and pay all fees to the appropriate Authorities for final connections for gas, electricity and telephone for the Premises; and
 - (vi) alter the railings to the northern balcony area of level 2 to comply with the requirements of all relevant Authorities and current building codes.

If the Lessee carries out any works which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this clause, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and

remove any such works and to carry out the same in accordance with the Lessor's approval and in compliance with the provisions of this clause.

- (f) **(Workmanship and materials):** the Lessee's Works shall be erected or installed using new materials only and ensuring workmanship of the highest standard, all of which is to be completed to the satisfaction of the Lessor at the Lessee's expense in all respects by reputable and appropriately qualified contractors engaged by the Lessee.
- (g) **(Building Services Work):** if, for the purpose of any of the Lessee's Works, any mechanical, electrical, hydraulic, fire services or structural works are required, the Lessee, if required to do so by the Lessor, shall engage and employ only the building services consultants and contractors approved in writing by the Lessor, which approval shall not be unreasonably withheld.
- (h) **(Lessee responsible for damage):** the Lessee shall repair and make good to the satisfaction of the Lessor, any damage which may be caused to the Building or any part thereof as a result of the erection or installation of the Lessee's Works.
- (i) **(Indemnity):** the Lessee shall indemnify the Lessor and keep the Lessor indemnified against all claims, demands, loss, damage, costs and expenses of every description which the Lessor may suffer or incur in connection with or arising directly or indirectly from the Lessee's entry upon and occupation of the Premises or the construction, installation or carrying out of the Lessee's Works (whether undertaken by the Lessee or the Lessor) or any contractor on behalf of or at the direction of either the Lessee or the Lessor).
- (j) **(Lessee's insurance):**
 - (i) The Lessee, in the joint names of the Lessor, the Lessee and all contractors employed or engaged by the Lessee in carrying out the Lessee's Works shall take out and maintain insurance which shall at all times cover liability to the public (including the Lessor) for an amount not less than \$10,000,000 in respect of any injury, loss or damage whatsoever arising to any real or personal property belonging to any person (including the Lessor).
 - (ii) The Lessee shall insure against and ensure that all of its contractors engaged in carrying out the Lessee's Works, insure against any liability, loss, claim or proceeding whatsoever arising by virtue of any statute relating to workers' compensation or employer's liability, by any person employed in or about the execution of the Lessee's Works and shall also insure for the Lessee's and its contractors' common law liability to all such persons for such amount as shall be nominated by the Lessor.
 - (iii) The Lessee shall, on request, produce to the Lessor true copies of all cover notes, policies, premium receipts or other evidence of compliance as the Lessor may reasonably require.
- (k) **(Assumption of risk by Lessee):** The installation of all Lessee's Works (whether undertaken by the Lessee or the Lessor or any contractor on behalf of or at the direction of either the Lessee or the Lessor) and the preparation of the Premises shall be at the risk of the Lessee in all respects and the Lessee hereby releases and discharges the Lessor from all claims for loss of or damage to the plant, equipment, fixtures, fittings, merchandise and stock-in-trade of the Lessee contained in or about the Premises and from any loss of profits resulting therefrom.

- (l) (Vehicles): The Lessee shall not, and shall not permit its contractors or employees, to bring onto or park on the Land any vehicle, motorised or otherwise, except with the prior approval of the Lessor and then only for the purpose of deliveries to the Premises.
- (m) (Materials storage): Materials required by the Lessee shall be stored within the Premises and shall not be left in any service corridor, Common Part or in any other part of the Land without the prior approval of the Lessor.

13.7 Lessee's benefit

The Lessor and the Lessee both acknowledge that:

- (a) the rights and obligations of the Lessee with respect to carrying out the Lessee's Works described in this clause do not form any part of the consideration for the grant of this Lease and are not in any other way connected with the Lessor's decision to enter into this Lease;
- (b) the Lessee has requested the Lessor's permission to carry out the Lessee's Works and the Lessor has granted its permission subject to the Lessee's compliance with the terms and conditions set out in this clause.
- (c) neither the Lessor nor the Lessee intends the Lessee's Works to convey any benefit on the Lessor, however if a benefit does arise in favour of the Lessor as a result of the Lessee's Works that benefit will be wholly incidental upon the Lessee's request to carry out the Lessee's Works and the Lessor's consent to that request.

13.8 Application of Lease terms during possession for Lessee's Works

- (a) The Lessee may have access to, and may commence the Lessee's Works on the Premises in accordance with special condition 13.6 following receipt by the Lessor of:
 - (i) this Lease in a form approved by the Lessor and duly executed by the Lessee; and
 - (ii) insurance certificates in respects of insurances to be effected by the Lessee under this Lease,

and subject to the Lessor completing works to that part of Level 3 of the Premises referred to in item 13.4.

- (b) Subject to the Lessee complying with special condition 13.8(a), for the period expiring on the day preceding the Date of Commencement ("Licence Period") the Lessee is granted a licence to undertake the Lessee's Works on the Premises and to that part of Level 3 of the Premises referred to in item 13.4 following completion of the Lessor's works.
- (c) The parties agree that during the Licence Period:
 - (i) the terms and conditions of this Lease, to the extent the same are sensibly capable of application, will apply to the Licence (with necessary modifications) as covenants between the Lessor and the Lessee as if set out at length in this special condition 13.8(c); and
 - (ii) nothing in this clause special condition 13.8(c) requires the Lessee to pay Rent or Variable Outgoings during the Licence Period, but the Tenant

will be required to pay for all consumables including electricity and water.

13.9 Yielding Up and Make Good

Despite clauses 3.24 and 3.25 of the Lease the Lessee's make good requirements upon expiry or earlier termination of the Term will include the removal of all partitioning and other fixtures, removal of all wiring and the return of Building services to a base building configuration.

13.10 Variations to Lease

While Health Services Australia Limited is the Lessee under this Lease and in actual occupation of the Premises, the Lease is varied as follows:

- (a) the definition of Variable Outgoings in clause 1.1 of the Lease is amended by paragraph (f) having the following words inserted ", the carpark and the Common Parts" after "Building" in line 3;
- (b) clause 3.2(a)(ii)(D) is amended by deleting all words following "Lessor" at line 2";
- (c) clause 3.5(d) is amended by inserting the word "reasonable" before "cost" in line 1;
- (d) despite any other provision of this Lease, the Lessee may following written notice to the Lessor use its own cleaners to clean the Premises provided that such cleaners comply with the Lessor's reasonable requirements;
- (e) despite clause 3.10(a), the Lessee may use the Premises for medical and professional suites;
- (f) clause 3.10(n) is amended by adding the following words at the end of the sub-paragraph, "(except in the course of the Lessee's usual business undertakings)";
- (g) clause 3.13(c) is amended by inserting the following words at the beginning of the sub-paragraph, "In accordance with, and subject to restrictions on disclosure at law, the Lessee will";
- (h) despite clause 3.14, the Lessee may assign its interest in the Premises or sublet the whole or part of the Premises to a related body corporate (within the meaning of section 50 of the Corporations Act) which is 100% owned by the Commonwealth of Australia or an entity of the Commonwealth of Australia without the Lessor's consent.

Such related body corporates include Travellers Medical and Vaccination Centre Pty Ltd ACN 003 457 289, Work Solutions Australia Pty Ltd ACN 059 950 695 and IQ Consultants Pty Ltd ACN 100 020 531.

The Lessee must advise the Lessor in writing as soon as practicable following such assignment or subletting and a deed of assignment must be prepared and completed by the Lessor's solicitors;
- (i) despite clause 3.16(d), the Lessee may change insurance companies in respect of any policy provided that the risk profile to the Lessor does not in the Lessor's reasonable opinion change, the new insurance company is a reputable insurer, and the Lessee obtains the prior written approval of the Lessor;

- (j) despite clause 5.13(i), the Lessor will charge for the Supplies at the same rate or tariff as that which would be charged by the relevant supplier or Authority in respect of the Lessees relevant consumption level over the same period;
- (k) Clause 5.16 is amended by inserting the words, "and the car park licence agreement for 553 Hay Street, Perth between the Lessor and the Lessee" after "Lease" in line 1.
- (l) despite clause 5.18 all notices to be sent to the Lessee must be sent to:
 "Address: Health Services Australia, Level 1, 15 Bowes Street, Woden, ACT 2606
 Postal: P.O. Box 281
 Woden, ACT 2606
 Facsimile: (02) 6269 2180
 Attention: Bill Hall, Facilities and Services Manager"
- (m) clause 5.21(b) is deleted.
- (n) despite any other provision of the Lease, including clause 5.39, access to the Premises will only be available following prior written notice, except in the case of an emergency (in the reasonably opinion of the Lessor);
- (o) **Goods and Services Tax**
 - (i) **Consideration is exclusive of GST**
 The consideration for a Supply under this Lease is exclusive of any GST imposed on the Supply.
 - (ii) **Recovery of GST**
 If a Supply under this Lease is subject to GST:
 - A. the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
 - B. the Recipient must pay the additional amount to the supplier at the same time as the other consideration.
 However, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.
 - (iii) **Adjustment of additional amount**
 If the additional amount differs from the amount of GST payable by the supplier on the Supply:
 - A. the supplier must promptly issue an Adjustment Note to the Recipient; and
 - B. an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

(iv) **Reimbursement**

If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a member is entitled to an Input Tax Credit.

(v) **Definitions**

In this clause, Adjustment Note, GST, GST Group, Input Tax Credit, Member, Recipient, Representative Member, Supply and Tax Invoice have the meanings given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13.11 After Hours Trading

(a) In this special condition:

"**After Hours Trading**" means trading or opening for business during hours other than the hours referred to in rule 3 of the Rules and Regulations.

(b) The Lessee may only engage in After Hours Trading if it has obtained the Lessor's prior written consent.

(c) The Lessee agrees to comply with the Lessors reasonable requirements, must engage the Building security contractor at all times during After Hours Trading and pay the contractors costs directly to the contractor in respect of attending at the Building during such After Hours Trading.

13.12 Health Services Australia Special Conditions

While Health Services Australia Limited is the Lessee under this Lease and in actual occupation of the Premises, the following special conditions will apply:

(a) **Warranty of Fitness**

(i) The Lessor warrants that the Premises will be fit for use and occupation in accordance with the permitted use as at the Date of Commencement.

(ii) Nothing in this clause obliges the Lessor to undertake any further works or to alter the Building, the Premises or the services if any building code is altered after the Date of Commencement, unless the Lessor is required to do so in accordance with a statute, ordinance, by-law, regulation or notice or requirement of a competent authority in which case the Lessor will cause notice to that effect to be given to the Lessee.

(iii) **Obligation to Maintain and Repair**

Subject to the covenant on the part of the Lessee to repair contained in clause 3.9, the Lessor will at all times during the Term and otherwise so long as the Lessee may remain in possession of the Premises, use its reasonable endeavours to maintain and keep:

- A. the Premises and the Lessor's fittings and furnishings; and
- B. the Building, including the Common Parts and services,

clean, in a safe and secure condition and in good and substantial repair and working order (subject to fair wear and tear) and the Lessor will remedy all defects in the Building which result from faulty design supervision or materials or from construction not having been carried out in a proper and workmanlike manner.

(b) Air-Conditioning and other Services

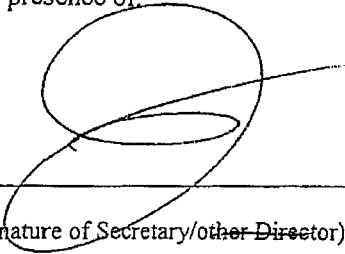
- (i) The Lessor shall throughout the Term at the Lessor's expense:
- (ii) subject always to any failure in the supply of water, gas or electricity to the Building which is outside the control of the Lessor, provide and operate the services for the Lessee's enjoyment of the Premises and in accordance with usual commercial standard for a building of the same standard as the Building during usual business hours; and
- (iii) if any of the services become unusable or otherwise incapable of being operated in accordance with those standards from any cause, within a reasonable time and using all reasonable endeavour repair the same or substitute by way of renewal other fixtures, installations or systems or part thereof (as the case may require) of equivalent type and quality.

(c) At the Lessee's request the Lessor will provide:

- (i) at the reasonable expense of the Lessee, air conditioning services to the Premises (or where practicable to a nominated part of the Premises) outside usual business hours. Such expense will not include charges for:
 - A. the repair or maintenance of the services;
 - B. the provision of any services other than to the Premises; and
- (ii) full details of the method by which the expense of services referred to in paragraph (c)(i) is calculated together with copies of all documents reasonably necessary to support the figures used in that calculation.

Executed as a deed.

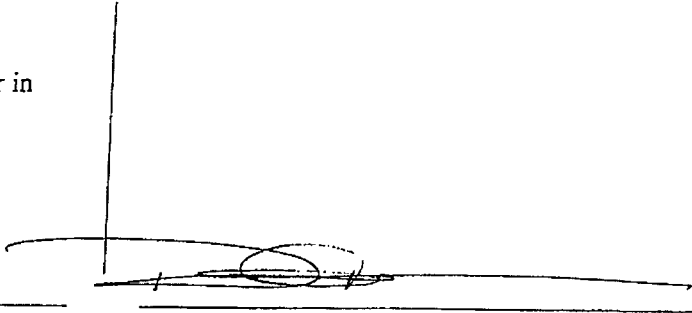
Executed by Bollig Pty Ltd
ACN 089 116 441 in accordance with
section 127 of the Corporations Act by or in
the presence of:



(Signature of Secretary/other Director)

Annmaria VIGNOLA

(Name of Secretary/other Director in full)

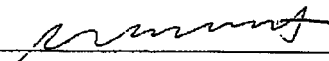


(Signature of Director or Sole Director and Secretary)

ROONEY, A SUE A

(Name of Director or Sole Director and Secretary in full)

Executed by Health Services Australia
Limited ACN 078 934 791 in accordance
with section 127 of the Corporations Act by or
in the presence of:




(Signature of Secretary/other Director)

Walter Kent

(Name of Secretary/other Director in full)
Managing Director

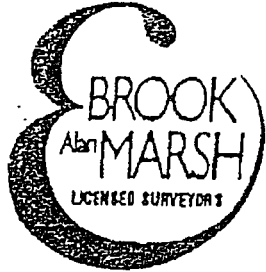




(Signature of Director or Sole Director and Secretary)

PETER WAYNE MOODY

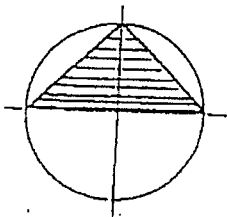
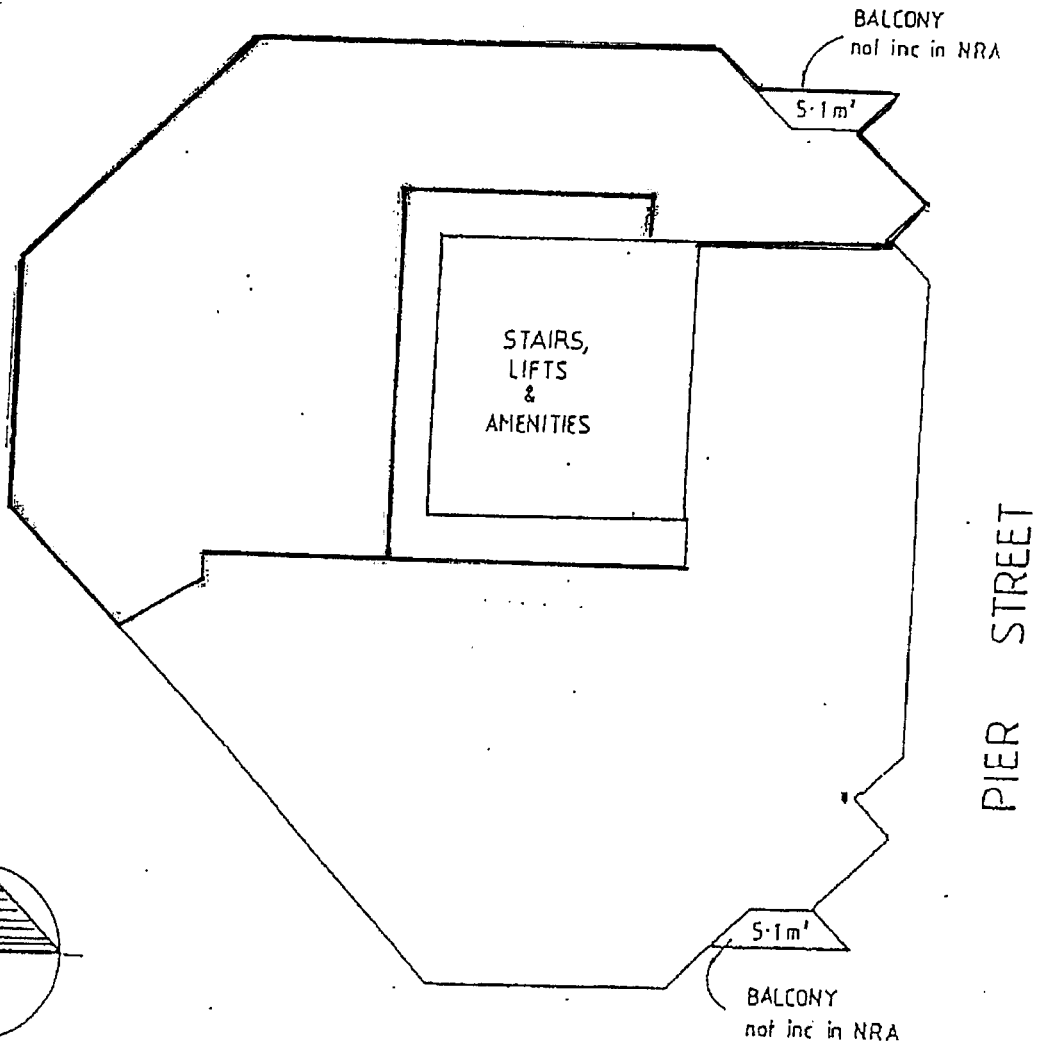
(Name of Director or Sole Director and Secretary in full)



NETT RENTABLE AREA
'BROADLANDS CENTRE'
SECOND FLOOR

Alan Marsh, L.B., A.I.T., M.I.S.

HAY STREET



DATE 28.1.86
SCALE 1:250



ACN 054 353 687

Alan Marsh (Director)
L.S., A.I.T., M.I.S.

NETT LETTABLE AREA

BOMA 1989 SECTION 7.

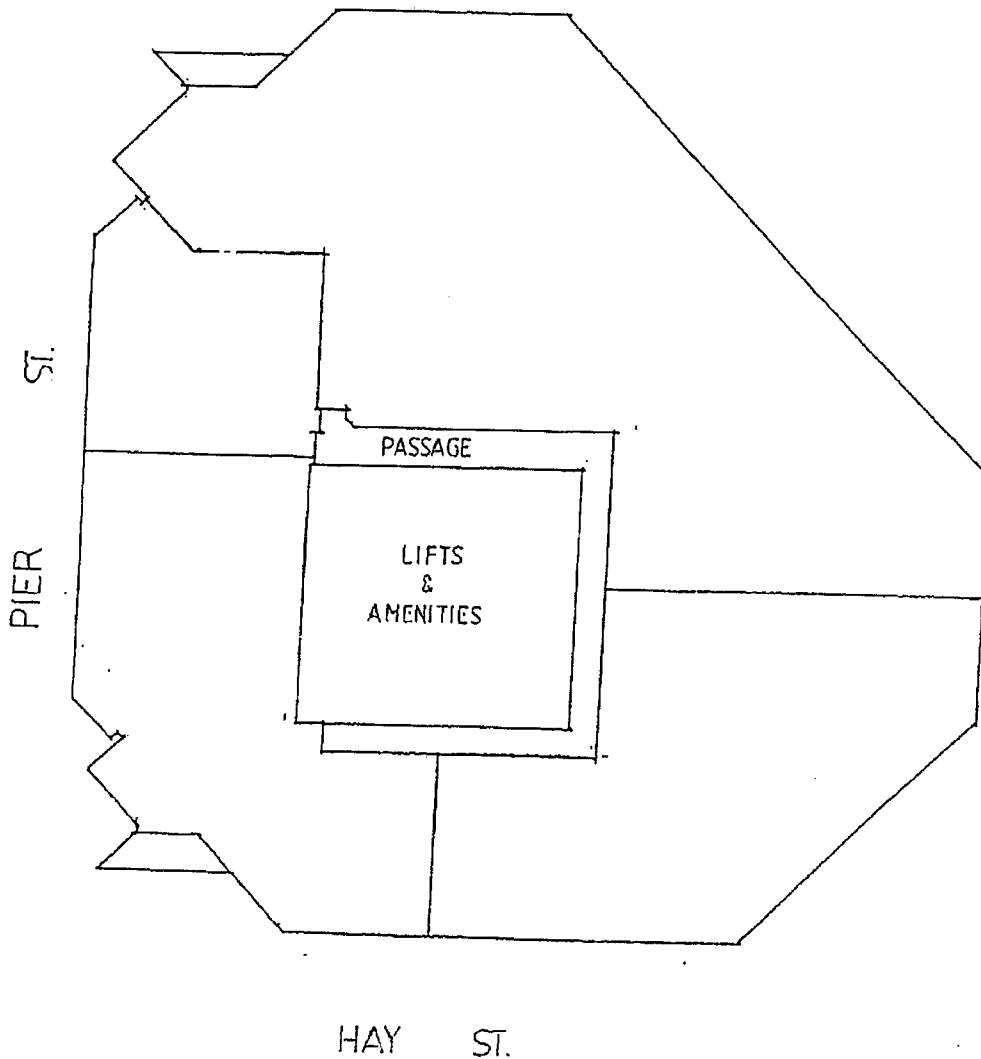
DELOITTE TOUCHE TOHMATSU CENTRE

LEVEL 3

CNR. HAY & PIER STS. PERTH

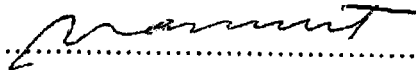
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DATE 23.2.96



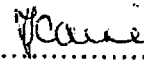
EXECUTION PAGE

Executed by an Authorised Officer of
HEALTH SERVICES AUSTRALIA LIMITED


.....
(Signature of Authorised Officer)

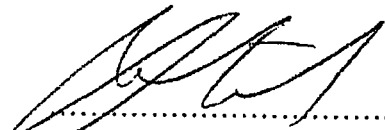
WALTER KMET
.....
(Name of Authorised Officer in Full)

in the presence of:


.....
(Signature of Witness)

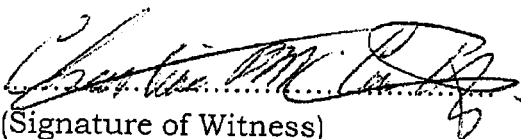
TRACY J CAINE
.....
(Name of Witness in Full)

Executed by an Authorised Officer of
DIGITAL HEALTH SCREENING PTY LTD


.....
(Signature of Authorised Officer)

Peter Macintosh
.....
(Name of Authorised Officer in Full)

in the presence of:


.....
(Signature of Witness)

CHARLENE P. MCCARTHY
.....
(Name of Witness in Full)