

Lease – Chemist

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Tenant Guide

FORM 6

Commercial Tenancy (Retail Shops) Agreements Act 1985

[section 6A]

TENANT GUIDE

FOR NEW RETAIL SHOP LEASES FROM 1 JANUARY 2013

This guide is intended to assist you, as a tenant, to understand some of your legal rights and obligations in relation to a retail shop lease under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the **Act**). This guide does not replace financial, legal or business advice.

The Act and the regulations are available from the State Law Publisher at www.slp.wa.gov.au.

WHAT IS A RETAIL SHOP LEASE

Entering into a lease for a retail shop means that you (the **tenant** or **lessee**) are entering into a legally binding contract with the landlord (or **lessor**). The lease agreement sets out your rights and obligations in relation to the use of the retail shop.

A lease cannot override the requirements of the Act.

The Act regulates some of the provisions which may be contained in your lease agreement, including the following:

- rent reviews
- options to renew a lease
- terminating a lease
- operating expenses (or outgoings)
- trading hours.

Which leases are covered by the Act?

The Act generally applies to leases for premises with a lettable area of 1 000m² or less:

- that are used for carrying on a business and that are in a retail shopping centre
- that are not in a retail shopping centre, but that are used (or predominantly used) for the sale of goods by retail
- that are used for conducting a 'specified business' – specified businesses include, drycleaning, hairdressing, beauty therapy, shoe repair and video or DVD stores (a list of all specified businesses is available from the Department of Commerce at www.commerce.wa.gov.au).

There are some retail shops with a lettable area greater than 1 000m² that are also covered by the Act – a list of these premises can be obtained from the Department of Commerce at www.commerce.wa.gov.au.

The Act generally does not apply to leases to publicly listed companies.

(See section 3(1) of the Act, definition of retail shop lease.)

When is the lease “entered into”?

A lease is usually entered into when both parties have signed it. However, a lease is still valid even if the lease document hasn't been signed by the parties if:

- the tenant takes possession of the shop premises; or
- the tenant starts paying rent.

(See section 3(4) of the Act.)

What you should do:

- ***if necessary, seek advice as to whether your lease is covered by the Act***
- ***establish the area of the retail shop under the lease and have this verified if necessary.***

INFORMATION YOU SHOULD HAVE BEFORE ENTERING INTO A LEASE

Before entering into a lease you should do the following:

- carefully read this ***tenant guide***
- carefully read the ***disclosure statement*** provided by the landlord or the landlord's agent
- carefully read any written ***lease document (including any assignments, extensions or deeds of variation)***
- obtain ***independent financial, legal and business advice.***

Rent, the term of the lease, options, outgoings and related costs are open to negotiation with the landlord. Make sure that you understand these, and all other aspects of the lease, before signing it. To avoid disputes at a later stage, you should make sure that all agreements that you have made are in writing and that the lease documents are consistent with any representations made by the landlord or the landlord's agents.

What you should do before signing or entering into a lease:

- ***seek independent legal and business advice before entering into a lease***
- ***make sure you understand the lease and your rights, liabilities and obligations before signing it***
- ***seek advice from financial experts to ensure you understand the costs of running the business.***

Tenant Guide to be located in lease

A new retail shop lease must include this tenant guide at the front of the lease.

If the landlord does not give you the tenant guide, you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 60 days after the lease was entered into (after this time you may apply to the State Administrative Tribunal for an order to terminate the lease)
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss suffered by you.

(See section 6A of the Act.)

Disclosure statement to be given to you by landlord

At least 7 days before a lease is entered into the landlord must give you a disclosure statement. The disclosure statement sets out important facts about the retail shop and the lease. A copy of this tenant guide, the form of lease and annual estimates of expenditure in relation to operative expenses should be attached to the disclosure statement.

If the landlord does not give you a disclosure statement or gives you a disclosure statement that is incomplete or contains incorrect information you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 6 months after the lease was entered into
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss you have suffered.

The disclosure statement should be in a prescribed form (this form is Form 1 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). It is important to read the statement carefully and make sure it includes all verbal and written agreements, promises or commitments made during negotiations with the landlord or the landlord's agent (for example, any representations about customer traffic).

The disclosure statement should also contain details about the following:

- the landlord's property, such as the total lettable area, tenancy mix and services provided
- the shop premises, such as location, area and services provided
- key terms and conditions of the lease such as rent, term of the lease, options to extend the term and rent review
- permitted use of the premises
- your contribution to the landlord's expenses (operating expenses)
- any additional charges payable by you, such as shop fitout or contributions to marketing and sinking funds.

By signing the disclosure statement you are acknowledging that you understand the basis for the retail shop lease with the landlord. If you do not understand or agree with anything in the disclosure statement you should advise the landlord immediately.

It is vital that you are satisfied that the disclosure statement sets out all relevant information regarding the retail shop and (where applicable) the shopping centre building and property. If necessary, you should check details by making relevant enquires and by seeking appropriate independent legal or expert advice.

(See section 6 of the Act.)

What you should do:

- ***make sure that you understand the disclosure statement before signing it and ensure it includes any agreements you reached during negotiations and any promises made to you by the landlord or their agent.***

Disclosure by the tenant

The landlord may ask for details of your retailing experience and financial capacity to establish and trade profitably and professionally. Any information provided to the landlord by you must also be correct and contain no misleading information.

PERMITTED USE OF THE RETAIL SHOP

The permitted use clause in a lease is very important as it sets out the type of business that you can run from the premises. You should ensure that the description of permitted use is broad enough to cover the type of business that you want to operate and, if anticipated, to allow you to expand the business.

The kind of things to consider about permitted use include:

- for a hairdresser, does the permitted use include providing beauty treatments?
- for a takeaway shop, can the type of food be changed?

- your future plans for the business.

You should also check that any local government approvals are in place for the type of business that you plan to operate. Avoid potential disputes by getting the approvals you need in writing.

A permitted use clause in a lease does not mean that you have the exclusive right to carry on a particular type of business in a shopping centre. Exclusivity is a separate issue that needs to be agreed separately with the landlord and included in the lease agreement.

What you should do:

- ***make sure the lease and the landlord's disclosure statement describes the shop's permitted use and that this description is broad enough so you can expand or sell the business***
- ***check that local government approvals are in place for the business you plan to conduct – get the approvals in writing***
- ***confirm whether or not you have an exclusive right to carry on your particular type of business***

TERM OF THE RETAIL SHOP LEASE

The term of a lease is the length of time for which you can rent the shop. The lease must set out the lease term and may also include one or more options to renew or extend the term.

The length of the term of the lease is critical because it should be long enough to enable you to recover your investment, make a profit and sell the business, if you wish.

Minimum of 5 years

In most cases, the Act gives a tenant who is entering into a new lease a right to a minimum 5 year lease term. The 5 year lease term can be a combination of the initial term and options to extend the lease (for example, an initial term of 2 years and an option to renew of 3 years). The initial term does not need to be 5 years.

If the lease does not provide for options to extend the lease to a 5 year term, you have a legal right to do so (often called a "statutory option"). You can exercise this option by giving the landlord written notice in the standard form at least 30 days prior to the expiry of the term of the lease (the standard form is Form 3 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). Although the Act allows you to extend the lease to a 5 year term, you do not need to extend the lease for the whole of this period if you choose not to.

The right to a 5 year term will only apply to retail shop leases with a term of more than 6 months (this includes any lease where the tenant has been continuously in possession of the premises for more than 6 months).

(See section 13 of the Act).

The term can be longer or shorter than 5 years

Even though the Act gives tenants a right to a 5 year term, you can negotiate a term that is longer than 5 years (for example, a 10 year term, or a 5 year initial term with 2 options to renew for a further 5 years each).

In some circumstances, you may agree to a term shorter than 5 years, but this must be your decision and needs to be approved by the State Administrative Tribunal.

(See section 13(7b) of the Act.)

Exercising an option to renew

It is important that you exercise an option to renew a lease in the way set out in the lease (you may need to let the landlord know in writing and within certain timeframes). If you do not exercise an option to renew properly the landlord may not be obliged to renew the lease.

The Act requires the landlord to give you written notice of the expiry date for any options to renew (the date on which the option to renew is no longer valid). You must receive this notice between 6 and 12 months before the expiry date. If the landlord fails to give you notice the option expiry date may be extended.

(See section 13C of the Act.)

At the end of the lease term

At the end of the term of the lease and the use of any options to renew the lease, the landlord does not have to renew the lease and you will have no further rights to occupy the premises. In some instances the landlord may allow you to continue to occupy the premises on a month to month basis.

Within 12 months before the end of the lease term you can make a written request to the landlord asking whether the landlord intends to renew the lease. The landlord must reply to such a request in writing within 30 days.

(See section 13B of the Act.)

What you should do:

- ***seek advice as to the appropriate lease term for your business***
- ***don't assume that you will get a new lease at the end of the lease term – you need to make sure that the term of your lease is appropriate for your business structure***
- ***seek advice as to the landlord's intentions at the end of the lease term as early as possible so that you can plan accordingly.***

Does the lease include redevelopment or relocation clauses?

Many leases include a clause allowing a landlord to terminate a lease before the end of the agreed lease term if the premises are to be redeveloped. In some instances the landlord may offer to relocate a tenant to alternative premises.

For the initial 5 years of a lease term, a redevelopment or relocation clause may only be included in a lease if:

- it is in the prescribed form (see item 2 of Schedule 1 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au); or

- it has been approved by the State Administrative Tribunal (if the parties have agreed to a provision that is different to the prescribed form).

If 5 years of the term have already expired, then the clause must be in accordance with the provisions of the Act – which sets out requirements in relation to notice, offer of alternative premises, payment of the tenant's reasonable costs and payment of compensation.

(See section 14A of the Act.)

What you should do:

- ***carefully look at any redevelopment or relocation clause in the lease and consider:***
 - ***what commitment is the landlord giving about relocation of the shop – will the new location and rental be comparable to the current premises?***
 - ***what compensation is the landlord offering you if your trade is affected?***
 - ***what effect will it have on your business?***
- ***seek independent financial, legal and business advice on the clause.***

RENT

Rent is usually the largest ongoing payment required under a lease. The Act does not regulate what the rent should be. However, the Act includes some rules relating to rent based on turnover and review of rental.

Types of rent

The initial rent for a shop is a matter of negotiation between the landlord and the tenant. Rental for retail shops can vary considerably depending on the location, the size of the shop, the term of the lease and type of business.

Some common methods of determining rent are:

- net rent – an agreed base rent plus a contribution to the landlord's operating expenses or outgoings
- gross rent – an all inclusive payment for all the shop's occupancy costs
- semi-gross rent – an amount charged for rental inclusive of some outgoings (for example, the tenant may pay the semi-gross rent plus its proportion of rates and taxes)
- turnover rent or percentage rent – a component of rent that is determined as a percentage of the tenant's turnover during a specified period.

What you should do:

- ***seek expert advice as to the basis for determining the rent that best suits your business operations***
- ***pay your rent on time – if you don't pay your rent, the landlord may be able to end your lease***

Rent based on turnover

Some leases based rent (or a part of the rent) on a percentage of the turnover of the tenant's business.

If you have agreed to a rent based on turnover, then:

- the lease must set out an agreed formula
- your agreement must be formalised in writing on the prescribed form before the lease is entered into (the prescribed form is Form 2 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au).

The Act also recognises the confidentiality of turnover figures to a retail business and limits the use of this information.

(See section 7 of the Act.)

The landlord cannot require you to provide turnover figures unless your rent is to be based on turnover.

(See section 8 of the Act.)

RENT REVIEW

Most leases will state that the rent will be reviewed at regular intervals.

At each review time the lease must set out a single basis on which the rent is to be reviewed, this can include:

- the market rent
- an increase by reference to the Consumer Price Index (CPI)
- a set percentage increase
- an agreed formula or combination, for example, CPI + 2%.

The types of review may vary over the life of the lease (the lease may state that reviews are to alternate between CPI and market review). However, the lease cannot give the landlord the right to choose the greatest return from a range of rent types at any one review (for example, the lease cannot state that the increase is to be CPI or 5% whichever is higher).

The lease may specify only one method of review at a time.

Market rent

The Act provides that market rent is the rent obtainable for the retail shop in a free and open market if it were vacant and to be let on similar terms.

The market rent is not to take into account:

- the goodwill of the business
- any stock, fixtures or fittings that are not the property of the landlord
- any structural improvements paid for or carried out by the current tenant.

Market rent review

If your lease specifies a market rent review, the Act provides that both parties can initiate the market review process and if the parties cannot agree on the rental:

- appoint a licensed valuer (agreed to by both parties) to determine the new rental; or
- request that the Small Business Commissioner appoint a valuer to determine the rental; or
- each appoint a valuer to determine the rental.

A landlord is required under the Act to provide a valuer with certain information in relation to retail shops in a shopping centre or in the same building in order to assist the valuer to decide the market rent. A valuer must keep this information confidential.

A disagreement regarding the new rent may be referred to the Small Business Commissioner for mediation or to the State Administrative Tribunal for determination. Until the new rent is agreed, the current rent continues to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date.

No “ratchet” clauses

Any provision in a lease about a market review that seeks to prevent the rent from rising or falling above or below a certain level is void. The lease must allow the rent to rise or fall to a level supported by market evidence, for example, a clause cannot stop the rent from decreasing on a market review.

(See section 11 of the Act.)

What you should do:

- ***make sure that you understand how your rent is to be calculated and what other payments may be required***
- ***consider whether your business can sustain the current rent, review increases and operating expenses over the term of the lease.***

CONTRIBUTION TO THE LANDLORD'S OPERATING EXPENSES OR OUTGOINGS

You may be required to contribute to a proportion of the landlord's expenses. The landlord's expenses are described in the Act as operating expenses. Leases can also refer to them as "outgoings or variable outgoings".

Operating expenses are the costs of operating, repairing or maintaining the landlord's premises including any building common areas. Typically these costs include the rates and taxes, cleaning, air conditioning, security, insurances and other valid expenses of running the property.

Details about the operating expenses and their payment are to be set out in the lease and the disclosure statement.

No capital expenses or management fees

The landlord cannot recover the following from you as an operating expense:

- management fees
- capital expenditures in relation to a retail shopping centre (for example, asset replacement).

Operating expenses are not to exceed the "relevant proportion"

Your contributions to operating expenses are negotiable. The Act provides that a tenant cannot be required to contribute more than the "relevant proportion" in relation to an operating expense. Nothing prevents you from negotiating with the landlord to pay less than the relevant proportion.

The relevant proportion is calculated by comparing the lettable area of your shop to the total lettable area of the shopping centre or the group of premises to which the expense relates.

$$\text{relevant proportion} = \frac{\text{lettable area of shop}}{\text{total lettable area}}$$

Referable expenses

In certain circumstances an operating expense may be incurred in relation to only some of the business in a centre or group of premises, for example, specialised cleaning used by only a few tenants. This is called a "referable expenses" and can be allocated using the total lettable area of only the shops to which the referable expense relates.

What you should do:

- ***make sure that you understand the operating expenses before signing the lease***
- ***budget to meet the operating expenses payments.***

Landlord to provide estimates and statements for operating expenses

In order to recover operating expenses from you, the landlord must provide you with:

- an annual estimate of expenditure for each operating expense

- an audited operating expenses statement for each accounting period detailing all expenditure by the landlord (this statement must be given within 3 months after the end of the accounting period).

(See section 12 of the Act.)

SINKING FUNDS

If your shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These funds are subject to accounting and audit provisions and should not be spent by the landlord on anything other than the purpose for which they are collected. These costs may be in addition to operating expenses charged under the lease.

Capital works must be paid for by the landlord and would include such works as the construction and extensions to the shopping centre and the replacement of major plant and equipment.

(See section 12A of the Act.)

OTHER FUNDS AND RESERVES

The landlord is also required to properly account for the administration, expenditure and auditing of any other funds or reserves that you have agreed to contribute to for specific purposes such as for marketing or promotion. These costs may be in addition to operating expenses charged under the lease.

(See section 12B of the Act.)

FITOUT AND REFURBISHMENT

Tenants are usually responsible for the costs of installing fixtures and fittings in the shop (the **fitout**). There may be a standard of construction required for fitouts. You may also be responsible for some or all of the landlord's costs of preparing the shop for the fitout.

Fitout requirements must be detailed in the disclosure statement.

A provision in a lease requiring a tenant to contribute to the cost of any of the landlord's finishes, fixtures, fittings, equipment or services will be void unless the disclosure statement notifies the tenant about the effect of the provision.

(See Section 12(3A) of the Act.)

The Act provides that a clause about refurbishment or refitting will be void unless it provides the tenant with enough detail about the required refurbishment or refitting as is necessary to indicate the nature, timing and extent of work required.

(See section 14C of the Act.)

What you should do:

- ***ensure that you understand your obligations with regards to the fitout of the premises***
- ***if possible, obtain or prepare a condition report prior to entering into the lease so that you have evidence of its condition***

- ***ensure you have a sufficient fitout budget as some fitout costs (for example cost of moving plumbing) are often overlooked***
- ***discuss variations of standard fitout with the landlord – as this could cost you extra.***

LEGAL FEES

The Act prohibits the landlord from claiming legal or other expenses from you relating to:

- the negotiation, preparation or execution of the lease (or any renewal or extension of the lease)
- obtaining the consent of a mortgagee to the lease
- the landlord's compliance with the Act.

However, if you assign your lease or sub-let the premises, the landlord may claim from you reasonable legal or other expenses incurred in connection with the assignment or sub-letting.

(See section 14B of the Act.)

TRADING HOURS

The trading hours for your shop may be affected by a number of matters.

Retail trading hours legislation in Western Australia sets out those hours that retailers may open (this can vary depending on the type of business that you operate).

If your retail shop is located inside a shopping centre then for practical reasons the opening and closing times for the centre (***core hours***) may be different to the trading hours permitted by law. This should be set out in the disclosure statement by the landlord.

When do you have to open your shop

A clause in a lease which requires you to open your premises at specified hours or for specified times is void under the Act. For example, you cannot be required to open your shop for the core hours for a centre. You can choose which hours to open your shop.

If you believe that your lease has not been renewed because you did not open at certain times you can apply to the State Administrative Tribunal for compensation.

(See section 12C of the Act.)

What you should do:

- ***if your premises are in a shopping centre you should check that the core hours are suitable for your business***
- ***find out whether you can open your shop at any times outside of the core hours and find out about what costs are involved***
- ***remember the lease can't require you to open your shop for specified hours or during specified times.***

Standard trading hours and operating expenses

The Act also sets out “standard trading hours’ which are used only for the purposes of allocating operating expenses.

For the purpose of allocation of operating expense “standard trading hours” are:

- 8.00 a.m. to 6.00 p.m. Monday, Tuesday, Wednesday and Friday
- 8.00 a.m. to 9.00 p.m. Thursday
- 8.00 a.m. to 5.00 p.m. Saturday.

The Act provides that if you do not open outside standard trading hours, then you cannot be charged operating expenses related to the extended hours (for example, additional security costs).

If, however, you do open outside the standard trading hours, you may be required to pay operating expenses related to the extend hours. These expenses should be calculated based on the lettable area of those shops which were open during the extended hours.

If you are closed for a period during the standard trading hours (for example, if you do not open your shop until 10 a.m.), you may still be charged operating expenses for the time that you are closed, that is, between 8.00 a.m. and 10.00 a.m.

(See section 12(1)(c) of the Act.)

Retail trading hours law may allow you to open at times outside of the standard trading hours (for example, Sunday trading) – however:

- ***you can’t be forced to open your business***
- ***you are not required to make a contribution to operating expenses relating to non-standard hours if you choose not to pen during those times.***

VOID CLAUSES

The lease agreement and any other verbal or written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the Act specifically precludes the lease or any other agreement from containing clauses that:

- require a tenant to pay key money, which is any money or other benefit in addition to rent paid to the landlord or others for the right to lease retail shop premises (**See section 9 of the Act.**)
- prevent the tenant disclosing the rent it has agreed to third parties, such as other retail tenants or their valuers (**See section 11(2a) of the Act.**)
- require the tenant to contribute to any fund that applies moneys to capital expenditure in a shopping centre, such as new building works (**See section 12(2) of the Act.**)

- require a tenant to open for specified hours or during specified times (**See section 12C of the Act.**)
- prevent a tenant from joining a tenant's association or similar body (**See section 12D of the Act.**)
- require a tenant to provide turnover figures to the landlord, unless the tenant has agreed to pay rent based on turnover (**See section 8 of the Act.**)

A clause in a lease that is contrary to the provisions of the Act is void and has no effect.

DISRUPTIONS – COMPENSATION BY THE LANDLORD

The Act states that, if your shop is in a shopping centre, you are entitled to seek reasonable compensation from the landlord if the landlord:

- inhibits or prevents your, or customer, access to the shop premises
- disrupts trading conditions, causing loss or profits to your business
- does not properly repair, maintain or clean the shopping centre premises or common areas.

You will only be entitled to compensation from the landlord if you have given the landlord notice in writing to rectify the problem and the landlord had not done so.

If you cannot agree the amount of compensation with the landlord, you can make an application to the State Administrative Tribunal for a decision as to the amount payable.

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See section 14 of the Act.)

UNCONSCIONABLE CONDUCT AND MISLEADING AND DECEPTIVE CONDUCT

The Act provides that neither the landlord nor the tenant can engage in conduct that is:

- unconscionable (conduct that is so harsh, oppressive or unreasonable that it goes against good conscience)
- misleading or deceptive.

The State Administrative Tribunal can hear a claim for unconscionable conduction or misleading or deceptive conduct and may make an order for payment of compensation or another appropriate order (such as an order to vary a lease or an order that a party stop doing something).

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part 11A of the Act.)

ASSIGNMENT AND SUB-LEASING

During the term of the lease, your circumstances may change and you may want to sell your business and assign your lease or sub-let all or part of the premises.

Your responsibilities if you assign your lease

If you assign your lease the new tenant “takes over” and assumes all your rights and responsibilities including rent and any other obligations under the lease from the date of assignment.

Although the Act gives you a right to assign your lease, the landlord may withhold consent on reasonable grounds. Examples of reasonable grounds include:

- if the landlord believes that the new tenant would not be able to meet their financial obligations; or
- if the proposed use of the premises is contrary to the use permitted in the lease.

You will need to write to the landlord seeking consent for the assignment of the lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the assignment.

You may have to pay the landlord's reasonable expenses for assessing a prospective tenant to take over your lease.

Your responsibilities if you sub-lease your shop

If you sub-let all or part of your premises you effectively become the landlord and the person you sub-let to is your tenant. Sub-leasing means that you will still be responsible under the lease to your landlord (for example, you may be liable for the rent if the sub-lessee does not pay).

You will also have obligations to the person you sub-let to, for example, you will need to provide a tenant guide and disclosure statement to your sub-tenant.

Your lease may include restrictions on sub-leasing. You should check your lease and seek advice as to its requirements on sub-leasing.

You may need to write to the landlord seeking consent to sub-lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the sub-lease.

(See section 10 of the Act.)

What you should do:

- ***seek independent legal advice as to the requirements of the Act and seek obligations on assignment or sub-leasing.***

DEFAULT OR BREACH OF LEASE

Most leases allow the landlord to terminate (or end) the lease on a breach of default by the tenant (for example, failure to pay rent). You should ensure that you understand the procedures set out in the lease in relation to default. For example, in many instances, your obligation to pay future rent will continue even after a lease has been terminated.

DISPUTES BETWEEN THE TENANT AND LANDLORD

State Administrative Tribunal

If you are unable to resolve a dispute with your landlord over any aspect of your retail shop lease the Act allows the State Administrative Tribunal to deal with these disputes.

Either your or the landlord may initiate this action with the Tribunal by making an application and paying the appropriate fee. The Tribunal generally deals with matters through an initial directions hearing, a mediation process or in a hearing.

(See section 16 of the Act.)

Small Business Commissioner

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part III of the Act and regulation 10.)

Advice about a dispute can be obtained from lawyers with property experience, the Small Business Development Corporation, industry sources, tenant advocates and retail representative groups.

KEEP RECORDS

You should make sure that you keep records of all agreements, undertakings, correspondence (including emails) and other communications with the landlord. Where possible you should confirm things in writing.

Make sure that you diarise important dates in relation to your lease.

If you need to make a claim in the Tribunal you will need to provide appropriate evidence to support your claim.

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Details

Parties

Shire of Jerramungup

of PO Box 92, Jerramungup, Western Australia

(**Lessor**)

Han Wui & Thuc Huynh

of 34 Yougenup Road, Gnowangerup, Western Australia

(together the **Lessee**)

Background

- A The Lessor is the management body of the Land under the Management Order.
- B Pursuant to the Management Order, the Lessor has the power to lease the Land, subject to the approval of the Minister for Lands first being obtained.
- C The Lessor has constructed the building on the Land and the Lessee has requested a lease of a portion of the Land.
- D The Lessor has, subject to the approval of the Minister for Lands, agreed to grant to the Lessee a lease of the Premises on the terms and conditions of this Lease.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

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

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

Appurtenances means all drains, toilets, wash basins, bathrooms, water, gas and electrical fittings and other services contained in or about the Premises;

Authorised Officer means -

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

Authorised Person means -

- (c) an agent, employee, servant, contractor, licensee or invitee of the Lessee; and
- (d) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

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

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Contaminated Sites Act means the *Contaminated Sites Act 2003* (WA);

Contamination has the same meaning as the word “contaminated” in the Contaminated Sites Act;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

Environmental Harm has the meaning given to that term in the *Environmental Protection Act 1986* (WA);

Fixed Increase means an increase in the amount of Rent payable by 2%;

Further Term means each further term specified in **Item 3** of the Schedule;

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

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor’s general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00, which rate cannot exceed the rate prescribed by, and imposed in accordance with, section 6.13 of the *Local Government Act 1995*;

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

Lease means this deed as supplemented, amended or varied from time to time;

Lessee’s Obligations means the agreements and obligations set out or implied in this Lease or imposed by law to be performed by any person other than the Lessor;

Lessor’s Fixtures and Fittings means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term;

Lessor’s Obligations means the agreements and obligations set out or implied in this Lease or imposed by law to be performed by the Lessor;

Management Order means the management order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of Medical Centre only and with a power to lease, sublease or licence for that purpose for any term not exceeding 21 years subject to the prior written approval of the Minister for Lands;

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

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

Permitted Purpose is described in **Item 7** of the Schedule;

Pollution has the meaning given to that term in the *Environmental Protection Act 1986* (WA);

Premises means the premises described at **Item 1** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule;

Rent Commencement Date means 3 December 2018;

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

Schedule means the Schedule to this Lease;

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

Termination means expiry by lapse of time or sooner determination of the Term or any period of holding over; and

Works means those alterations, additions and improvements to the Premises which the Lessee intends to carry out in order to make the Premises fit for the Permitted Purpose.

1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words using -
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) a reference to -
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulation, award, local or town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) a reference to a right includes a benefit, remedy, discretion, authority or power;

- (g) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to -
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes email and facsimile transmissions;
- (j) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them; and
- (l) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include -
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done.

1.3 Headings

Headings do not affect the interpretation of this Lease.

1.4 Schedules etc

Each Schedule (and an annexure or document incorporated by reference, if any) forms part of this Lease. In the event of any conflict or inconsistency between any part of –

- (a) the terms and conditions contained in the clauses of this Lease;
- (b) a Schedule;
- (c) an annexure, if any; and
- (d) a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this **clause 1.4** has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. Minister for Lands' consent

This Lease is subject to and conditional on the approval of the Minister for Lands under section 18 of the *Land Administration Act 1997*.

3. Grant of Lease

Subject to **clause 2** of this Lease, the Lessor leases to the Lessee the Premises for the Term subject to –

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

Lessee's rights and obligations

4. Quiet enjoyment

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

5. Rent and Other Payments

The Lessee AGREES with the Lessor:

5.1 Rent

To pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions whatsoever.

5.2 Rent Free period

- (1) The Parties acknowledge and agree that the Lessor will permit a three year rent free period commencing on the date that the Lessee takes possession of the Premises (**Possession Date**).
- (2) The Parties acknowledge and agree that the Possession Date is 3 December 2015.

5.3 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises:
 - (a) local government rates, taxes and charges and including charges for rubbish or garbage removal;
 - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;

- (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
 - (d) Fire and Emergency Services Authority (F.E.S.A) levies;
 - (e) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (f) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5.3(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

5.4 Interest

Without affecting the rights, powers and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for fourteen (14) days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

5.5 Costs

- (1) To pay to the Lessor on demand:
- (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;and
 - (b) all registration fees in connection with this Lease.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
- (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (b) any breach of an obligation or agreement by the Lessee or an Authorised Person;
 - (c) the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a court;
 - (d) any work done at the Lessee's request unless such works are the Lessor's responsibility pursuant to the terms of this Lease; and
 - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 5.5** or any matter arising out of this Lease.

6. Rent Review

6.1 Rent to be Reviewed

- (1) Subject to paragraph 2 of this **clause 6.1**, the Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.
- (2) The parties acknowledge and agree that the Rent payable in respect of this Lease shall be capped at ten thousand dollars (\$10,000) plus GST.

6.2 Methods of Review

The review will be based on either a Fixed Increase or a Market Review as identified for each Rent Review Date in **Item 8** of the Schedule.

6.3 Fixed Increase

A rent review based on a Fixed Increase will increase the amount of Rent payable during the immediately preceding period by 2%.

6.4 Market Rent Review

- (1) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the Parties and failing agreement, will be determined in accordance with the following provisions.
- (2) If agreement as to the current market rent for the Premises is not reached at least one (1) month prior to the relevant Rent Review Date then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed, at the request of either Party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (3) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Valuer.
- (4) In this **clause 6**, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (a) any improvements made or effected to the Premises by the Lessee; and
 - (b) any rent free periods, discounts or other rental concessions.

6.5 Lessor's right to review

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

7. Accrual of Amounts Payable & Payment of Money

7.1 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

7.2 Payment of Money

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

8. Insurance

8.1 Insurance required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interests in the Premises) for the time being -

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 6** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance against all risks as the Lessor may require of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value; and
- (c) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

8.2 Details and Receipts

In respect of the insurances required by **clause 8.1** the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately -
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

8.3 Not to invalidate

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

- (a) render any insurance effected under **clause 8.1** or **clause 21** on the Premises, or any adjoining premises, void or voidable; and
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

8.4 Reports

Each Party must report to the other promptly in writing and in an emergency verbally -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person who is lawfully using or may lawfully use the Premises.

8.5 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **clause 8.1**.

8.6 Lessor as attorney

The Lessee appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 8.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 8.1**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

8.7 Lessee may be required to pay excess on insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 8.1**.

8.8 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

9. Indemnity

9.1 Lessee responsibilities

The Lessee is subject to the same responsibilities relating 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.

9.2 Indemnity

- (1) Subject to **clause 9.4**, the Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor or the Minister for Lands, or brought, maintained or made against the Lessor or the Minister for Lands, in respect of:
- (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,
- caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
- (d) the use or occupation of the Premises by the Lessee or Authorised Persons;
 - (e) any work carried out by or on behalf of the Lessee on the Premises;
 - (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
 - (g) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or Authorised Persons;
 - (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
 - (i) an act or omission of the Lessee.

9.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 9.1** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

9.4 No indemnity for Lessor's negligence

The Parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

9.5 Release

- (1) The Lessee:
- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
 - (b) releases to the full extent permitted by law, the Lessor from:

(i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises; and

(ii) loss of or damage to the Premises or personal property of the Lessee;

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

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

10. Use

10.1 Restrictions on use

(1) Generally

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

- (a) use the Premises or any part of it for any purpose other than for the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

(2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(3) No nuisance

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

(4) No dangerous substances

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

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

(5) **No harm or stress**

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) **No signs**

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(7) **No smoking**

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

(8) **Removal of rubbish**

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

(9) **No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(10) **Consumption of alcohol**

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

(11) **Sale of Alcohol**

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises.

10.2 No warranty

The Lessor gives no warranty -

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

10.3 Premises subject to restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

10.4 Indemnity for costs

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

11. Maintenance, Repair and Cleaning

11.1 Generally

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, repair, and keep the Premises (which for the avoidance of doubt includes the Lessor's Fixtures and Fittings and Appurtenances) clean and in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation -
 - (a) to carry out repairs that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and
 - (b) in respect of any structural maintenance, or repair EXCEPT when such maintenance, repair or replacement is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises. For the purposes of clarity, structural maintenance, or repair is strictly limited to maintenance, replacement or repair that affects the integrity of the building as a whole.
- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, or repairing in or on the Premises -
 - (a) any electrical fittings and fixtures;
 - (b) any plumbing;
 - (c) any air-conditioning fittings and fixtures; and
 - (d) any gas fittings and fixtures,

use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

11.2 Cleaning of Premises

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

11.3 Repair Damage

- (1) Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must at its own expense and to the satisfaction of the Lessor promptly repair, replace and make good any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's Fixtures and Fittings which are or which become damaged.
- (2) If any damage which the Lessee is required to repair pursuant to **clause 11.3(1)** is not repaired or replaced, the Lessor may carry out any repairs or replacements that are necessary and the cost will be borne by the Lessee.
- (3) For the avoidance of doubt, the Lessee shall be responsible to carry out at its cost repairs as a result of fair and reasonable wear and tear to the following items, provided that such items are not located on the external walls of the Premises:

- (a) blocked toilets provided that such repair is due to minor blockages;
- (b) doors off hinges;
- (c) leaking taps;
- (d) broken light fittings;
- (e) sticking doors;
- (f) broken locks;
- (g) broken glass; and
- (h) any other repairs that may be required to maintain the Premises in good working order and condition, unless such repair or maintenance is the Lessor's responsibility under **clauses 11.1 or 11.4**.

11.4 Preventative Maintenance

The Lessor shall be responsible to carry out repair and maintenance on the following items:

- (a) air conditioning units (but excluding any small window mounted units or portable units); and
- (b) any other significant fixtures or equipment where such works do not constitute part of the Lessee's obligations under **clause 11.3**.

11.5 Pest Control

The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.

11.6 Maintain Surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.
- (2) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

11.7 Responsibility for securing the Premises

- (1) The Lessee must ensure the Premises, including the Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.
- (2) Subject to prior written approval from the Lessor, the Lessee may install a security system to the Premises, PROVIDED the Lessee –
 - (a) pays for all costs associated with the installation and ongoing monitoring of the security system; and
 - (b) provides the Lessor with access keys and alarm codes.

11.8 Comply with all reasonable conditions

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

11.9 Acknowledgement of state of repair of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

12. Alterations

12.1 Restriction

The Lessee must not without prior written consent:

- (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease; and
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessor under a local or town planning scheme of the Lessor,
- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
 - (b) subject to the performance of the Lessee's obligations in **clause 11**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

12.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 12.1** the Lessor may:
 - (a) consent subject to conditions;
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (c) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant.
- (2) If the Lessor consents to any matter referred to in **clause 12.1**:
 - (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any written law for such matters; and
 - (b) the Lessee must apply for and obtain all such consents, approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

12.3 Cost of Works

All works undertaken under this **clause 12** will be carried out at the Lessee's expense, unless otherwise agreed by the Lessor in writing.

12.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must carry out those other works at the Lessee's expense.

12.5 Compliance with Plans

The Lessee acknowledges that:

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

13. Minimise Nuisance to Neighbours

- (1) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding premises.
- (2) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding premises.

14. Report to Lessor

The Lessee must immediately report to the Lessor -

(1) Vandalism

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

(2) Pollution

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

(3) Notices, etc

All notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

(4) Defects

Any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

15. No assignment, subletting and charging

15.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Minister for Lands, Lessor and any other persons whose consent is required under the terms of this Lease or at law.

15.2 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or sub-letting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Obligations;
- (c) the Lessee procures the execution by -
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Obligations.

15.3 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning Lessee from the Lessee's Covenants, other than to the extent expressly provided in the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

15.4 Property Law Act 1969

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

15.5 Costs for assignment and sub-letting

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

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

whether or not the assignment or sub-letting proceeds.

15.6 No mortgage or charge

The Lessee must not mortgage or charge the leasehold interest in the Premises.

16. No caveat or other interest

16.1 No caveat or other interest

The Lessee or any person on behalf of the Lessee must not lodge any absolute caveat, subject to claim caveat or any other interest including any lease, sublease, mortgage or charge over the Land or Premises or part thereof, without the prior written consent of the Lessor and the Minister for Lands.

16.2 Removal of interest

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally:

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

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

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

16.3 Costs of removal, Indemnity and Ratification

- (1) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.
- (2) The Lessee indemnifies the Lessor against:
 - (a) any loss arising directly from any act done under this clause; and
 - (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under this clause.

17. Statutory obligations and notices

17.1 Comply with Statutes

The Lessee must -

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the Permitted Purpose;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

17.2 Indemnity if fails to comply

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

- (a) failing to perform, discharge or execute any of the items referred to in **clause 17.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 17.1**.

18. Obligations on expiry or termination of lease

18.1 Restore Premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the performance by the Lessee of the Lessee's Obligations under this Lease fair wear and tear excepted.

18.2 Peacefully Surrender

On Termination the Lessee must -

- (a) peacefully surrender and return to the Lessor the Premises in a condition consistent with the performance of the Lessee's Obligations under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

18.3 Remove Lessee's property prior to termination

Prior to Termination, unless otherwise mutually agreed between the Parties, the Lessee must remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

18.4 Lessor can remove Lessee's property on re-entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing such property.

18.5 Clause 18 to Survive termination

The Lessee's obligations under this **clause 18** will survive termination.

Lessor's rights and obligations

19. Lessor's right of entry

19.1 Entry on reasonable notice

The Lessee must permit entry by the Lessor or any Authorised Officer onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice -

- (a) (i) at all reasonable times;
- (ii) with or without workmen and others; and
- (iii) with or without plant, equipment, machinery and materials,
- (b) for each of the following purposes -
 - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

19.2 Costs of Rectifying Breach

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

20. Limit of Lessor's liability

20.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises unless such loss, damage or injury occurs as a result of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

20.2 Limit on Liability for Breach of Lessor's obligations

- (1) The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor is the management body of the Land under a management order.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control, unless such failure is due to any negligent or wrongful act or omission on part of the Lessor, or its servants, agents, contractors or invitees.

21. Building insurance

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks and the Lessor will be responsible for any premiums, excess or other costs arising therefrom.

Mutual agreements

22. Damage or destruction of Premises

22.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

22.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 22.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

22.3 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the Premises are damaged or destroyed by fire or any like casualty the Lessor will have the option to be exercised by notice in writing delivered to the Lessee within ninety (90) days of such occurrence, to elect to cancel and terminate this Lease. The Term will terminate upon the third date after such notice is given and the Lessee must vacate the Premises and surrender the same to the Lessor but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

23. Option to renew

If the Lessee at least one month, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a notice to grant the Further Term as specified in **Item 3** of the Schedule and -

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained;
- (b) there is no subsisting default by the Lessee at the date of service of the notice in -
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Obligations; and
- (c) the Lessor agrees to the grant,

the Lessor may, in its sole discretion, grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this **clause 23** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

24. 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 a monthly tenant of the Lessor at a monthly rent equivalent to one twelfth of the annual Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

25. Default

25.1 Events of Default

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Obligations for 28 days after a notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 1987*, the association is wound up whether voluntarily or otherwise;
- (c) where the Lessee is an association which is incorporated under the *Associations Incorporation Act 1987*, the Lessee passes a special resolution under the *Associations Incorporation Act 1987* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the Permitted Purpose for a six-month period; or

- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

25.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 25.1** the Lessor may -

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 24**,

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

25.3 Lessor may remedy Lessee's default

If the Lessee -

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

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

25.4 Acceptance of Amount Payable By Lessor

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

25.5 Essential Terms

Each of the Lessee's Obligations in **clauses 5** (Rent and Other Payments), **8** (Insurance), **9** (Indemnity), **10** (Use), **11** (Maintenance, Repair and Cleaning), **15** (No Assignment, Subletting and Charging) and **28** (Goods and Services Tax) is an essential term of this Lease but this **clause 25.5** does not mean or imply that there are no other essential terms in this Lease.

25.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;

- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term;
- (c) the Lessee AGREES with the Lessor that if the Term is determined -
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

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

- (d) the Lessee agrees that the obligation set out in this **clause 25.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 25.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by lapse of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

26. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

27. Disputes

27.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* and the Lessor and the Lessee may each be represented by a legal practitioner.

27.2 Payment of amounts payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies overpaid.

28. Goods and services tax

28.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

28.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to in **clause 28.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

28.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 28.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

- (1) No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

- (2) Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

- (3) Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

(4) Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

29. Additional terms and conditions

Each of the terms and conditions (if any) specified in **Item 9** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

General provisions

30. Notice

30.1 Form of delivery

A Notice to a Party must be in writing and may be given or made -

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

30.2 Service of Notice

A Notice to a Party is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 30.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 30.1**, on the second business day following the date of posting of the Notice.

30.3 Signing of Notice

A Notice to a Party may be signed -

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

31. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

32. Variation

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

33. Waiver

33.1 No general waiver

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

33.2 Partial exercise of right power or privilege

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

34. Acts by agents

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

35. Statutory powers

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

36. Further assurance

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

37. Severance

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

38. Moratorium

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

39. Governing law

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

Schedule

Item 1 Land and Premises

Land

Lot 24 on Deposited Plan 207409 being the whole of the land comprised in Crown Land Title Volume LR3018 Folio 524.

Premises

That portion of the Land being 354 m² including the building constructed on the Land located for general identification purposes at 9 Memorial road, Jerramungup as shown on the sketch annexed to this Lease as **Annexure 1**.

Item 2 Term

Six (6) years.

Item 3 Further Term

First Further Term: Three (3) years

Second Further Term: Five (5) years

Item 4 Commencement Date

The date of this lease, which will be the date that both parties have executed this Lease.

Item 5 Rent

1. Rent payments will commence on the Rent Commencement Date and will be determined in accordance with **Item 9.4** of the Schedule.
2. Rent payments will be payable in advance in equal monthly instalments plus GST.

Item 6 Public Liability

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

Item 7 Permitted Purpose

Chemist.

Item 8 Rent Review Dates

1. 3 December 2018: Market Review
2. 3 December 2019: Fixed Increase.

3. 3 December 2020: Fixed Increase.
4. Commencement of the Further Term (if any): Market review
5. First anniversary of the Further Term (if any): Fixed Increase.
6. Second anniversary of the Further Term (if any): Fixed Increase.

Item 9 Additional terms and conditions

1. Statutory Requirements and Testing

The Lessor shall be responsible to ensure that the following items comply with any relevant statutory requirements and testing:

- (a) fire extinguishers;
- (b) exit lights;
- (c) emergency lights;
- (d) Residual Current Devices (RCDs);
- (e) fire alarm; and
- (f) any other equipment (save and except portable equipment of the Lessee) to which legislative safety standards apply.

2. Works to the Premises

The Lessee covenants and agrees to:

- (a) obtain all necessary consents and approvals in accordance with this Lease in order to complete the Works;
- (b) pay for the cost of the Works and any approvals or consents required in order to complete the Works;
- (c) use its reasonable endeavours to complete the Works on the Premises and commence business from the Premises on or before 30 November 2015;
- (d) advise the Lessor as soon as is reasonably practicable following the completion of the Works; and
- (e) take occupation of the Premises and commence business from the Premises as soon as is reasonably practicable following the completion of the Works.

3. Rent Free Period

- (a) There will be a Rent free period for three years commencing on the Possession Date in accordance with **clause 5.2** of the Lease (**Rent Free Period**).
- (b) Rent payments shall commence on 3 December 2018 (**Rent Commencement Date**).

4. Determination of Rent following Rent Free Period

- (a) To determine the Rent payable from the Rent Commencement Date, the current market rent for the Premises will be determined by a valuer licensed under the *Land Valuers Licensing Act 1978* as at the Rent Commencement Date (**Rent Valuation**).
- (b) Subject to paragraph (c) below, the Parties agree that the decision of the valuer following the Rent Valuation will be final and binding on the parties.
- (c) If following the Rent Valuation it is determined that the current market rent for the Premises as at the Rent Commencement Date is higher than \$10,000 plus GST, the parties agree that the Rent will be \$10,000 plus GST.

Signing page

EXECUTED by the parties as a Deed

2016

THE COMMON SEAL of the **Shire of Jerramungup** was hereunto affixed by authority of a resolution of the Council in the presence of:

Signature of Shire President

Full name of Shire President

Signature of Chief Executive Officer

Full name of Chief Executive Officer

Signed by Han Wui
in the presence of :

Signature Of Han Wui

Witness Sign

Name of Witness

Address

Occupation

Signed by Thuc Huynh
in the presence of :

Signature Of Thuc Huynh

Witness Sign

Name of Witness

Address

Occupation

CONSENT OF MINISTER OF LANDS

Annexure 1 - Sketch of Premises



**PROJECT: LEASE AREA FOR PHARMACY
PORTION RESERVE 25164, LOT 24 MEMORIAL ROAD, JERRAMUNGUP**

SCALE: 1:200 @ A4



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