

Lease – Reserve 31381, 3 Spitfire Avenue Jerramungup – Skylar Early Learning Jerramungup – Child Care Premises

Shire of Jerramungup

Purple Butterfly Pty Ltd (ACN 669 291 329) T/A
Skylar Early Learning

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Details

Parties

Shire of Jerramungup

of 8 Vasey Street, Jerramungup, Western Australia 6337

(Lessor)

Purple Butterfly Pty Ltd (ACN 669 291 329) T/A Skylar Early Learning

of 103 Aberdeen Street, Albany, Western Australia 6330

(Lessee)

Andrew Lyle Talmage and Joanne Erin Talmage

of 531 Surrey Downs Road, Porongurup WA 6324

(Guarantor)

Background

- A The Lessor is the management body of the Land under the Management Order.
- B Under the Management Order the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the consent of the Minister for Lands first being obtained.
- C The Lessee has requested that the Lessor grant it a lease of that portion of the Land comprising the Premises, and the Lessor has agreed subject to the terms and conditions of this agreement.

Agreed terms

1. Definitions

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

Amounts Payable means the Rent, outgoings, Operating Expenses 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 Person means:

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

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

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

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*;

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

CPI Review means the rent review process described in **clause 6.3**;

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

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;

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

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

Lease year means:

- (a) the Commencement Date to the day before the first anniversary of the Commencement Date; or
- (b) an anniversary of the Commencement Date to the day before the next anniversary of the Commencement Date;

Lessee's Agents includes:

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

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

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

Management Order means a 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 "Kindergarten Site" with the power to lease for a term not exceeding 21 years;

Market Review means the rent review process specified in **clause 6.4**;

Month or **month** means a calendar month;

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;

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

Relevant Proportion means the proportion that the floor area of the Premises bears to the total lettable area of the Building at the commencement of the Lease year;

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

Rent Review Date means a date identified in **Item 6** of the Schedule;

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

Schedule means the Schedule to this Lease;

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

Termination means expiry by effluxion of time or sooner determination of the Term or any period of holding over.

2. Interpretation

In this Lease, unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) 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;
 - (v) a statute, includes an ordinance, code, regulation, award, local or town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) 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;
 - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to:
 - (A) both express and implied provisions; and
 - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and emails;
 - (x) 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; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;

- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) covenants not to permit that act or thing to be done or omitted to be done by a Lessee's Agent; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them 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.

3. Grant of lease

3.1 Grant of Lease

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

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

3.2 Minister for Lands' Consent

The grant of this Lease is made expressly subject to and is conditional on the consent of the Minister for Lands to this Lease, a copy of which consent shall be annexed as **Annexure 2** to this Lease.

4. Quiet enjoyment

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

5. Rent and other payments

5.1 Rent

The Lessee covenants with the Lessor to pay to the Lessor during the Term the Rent in the manner set out at **Item 5** of the Schedule and subject to review in accordance with **clause 6** clear of any deductions, set-off or abatement whatsoever otherwise than as provided in this Lease.

5.2 Outgoings

- (1) The Lessee covenants with the Lessor to pay punctually to the Lessor, or to such person as the Lessor may from time to time direct, all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises:

- (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
 - (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 or telephone connection AND where possible 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; and
 - (d) 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 **subclause (1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

5.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, the Lessee must pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 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.

5.4 Costs

- (1) The Lessee agrees to pay to the Lessor on demand:
- (a) all costs for the preparation and drafting of this Lease;
 - (b) 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;
 - (c) all registration fees in connection with this Lease; and
 - (d) all costs associated with the preparation of a surveyed plan of the Premises for the purposes of the Lease.
- (2) The Lessee agrees 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 covenant by the Lessee or the Lessee's Agents;
 - (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; and
 - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 5.4** or any matter arising out of this Lease.

5.5 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

6. Rent Review

6.1 Rent to be Reviewed

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

6.2 Methods of Review

The basis for each rent review is as identified for each Rent Review Date in **Item 6** of the Schedule.

6.3 CPI Review

- (1) A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date.
- (2) If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period.
- (3) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with **clause (d)6.4(d)**.

6.4 Market Review

A rent review based on a market review will establish the current market rent for the Premises by agreement between the Parties and failing agreement will be determined in accordance with the following provisions:

- (a) The Lessor shall notify the Lessee of the amount that it reasonably considers is the current market rent for the Premises.
- (b) If the Lessee does not dispute the amount notified, that amount becomes the Rent.
- (c) If the Lessee disputes the current market rent, it must notify the Lessor of that dispute (**Dispute Notice**) within 14 days after receiving the Lessee's notification. The Lessee must comply with this time limit to dispute the notified amount.
- (d) If the Lessee gives a Dispute Notice to the Lessor, 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* (WA), 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).

- (e) 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.
- (f) In this clause, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises were unoccupied and offered for rental for the use for which the Premises are permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (i) any improvements made or effected to the Premises by the Lessee; and
 - (ii) any rent free periods, discounts or other rental concessions.

6.5 Rent will not decrease following Review

Notwithstanding the provisions in this clause, the Rent following any Rent review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

6.6 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. Insurance

7.1 Insurance to be effected

- (1) The Lessee must effect and keep current with a recognised and reputable insurer and noting the interest of the Lessor for its respective rights and interests:
 - (a) adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require; and
 - (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;
 - (c) insurance against plate glass damage for not less than its full replacement value in respect of any one claim or such greater amount; and
 - (d) 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.
- (2) The Lessee must promptly expend all money recovered in respect of any insurance under paragraph (1) in the satisfaction of the payment of damages or the reinstatement or replacement of the items of which that money is received to the extent that that money is sufficient for that purpose.

7.2 Building Insurance to be effected by Lessor

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 Lessee will reimburse the Lessor for any premiums, excess or other costs resulting in a claim under the Lessor's building insurance and arising from an act or omission of the Lessee.

7.3 Details and receipts

In respect of the insurances required by **clause 7.1** the Lessee must:

- (a) upon renewal of any insurance policy immediately forward to the Lessor copies of certificates of currency and details of the insurances as held by the Lessee;
- (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.

7.4 Lessee 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 7.1** and **clause 7.2**.

7.5 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 7.1** and **clause 7.2** on the Premises, or any adjoining premises, void or voidable; or
- (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).

7.6 Report

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 in or on the Premises.

7.7 Settlement of claim

The Lessee may not without the prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clause 7.1**.

8. Indemnity

8.1 Lessee responsibilities

- (1) 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.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

8.2 Indemnity

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 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 the Lessee's Agents;
- (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 the Lessee's Agents;
- (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) any negligent act or omission of the Lessee or the Lessee's Agents.

8.3 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 8.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.4 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.

8.5 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 and the Minister for Lands from:

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

(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.

9. Limit of Lessor's liability

9.1 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 however occurring.

9.2 Limit on liability for breach of Lessor's covenants

(1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease, which occur while the Lessor is management body of the Land.

(2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

10. Maintenance, repair and cleaning

10.1 Generally

(1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's Fixtures and Fittings) and Appurtenances in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT subject to **clause 10.4** this subclause shall not impose on the Lessee any obligation:

(a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee or the Lessee's Agents, 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, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act 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.
- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:
- (a) any electrical fittings and fixtures;
 - (b) any plumbing;
 - (c) any air-conditioning fittings and fixtures; or
 - (d) any gas fittings and fixtures,

in or on the Premises 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.

10.2 Cleaning

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

10.3 Repair

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, 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.

10.4 Lessee's Responsibility

- (1) The Lessee's maintenance, cleaning and repair obligations in respect of the Premises pursuant to **clauses 10.1, 10.2 and 10.3** includes but is not limited to the maintenance, cleaning and repair of:
- (a) any electrical fittings and fixtures, including light fittings and fixtures;
 - (b) any glass and windows;
 - (c) any plumbing;
 - (d) any air-conditioning fittings and fixtures;
 - (e) any gas fittings and fixtures;
 - (f) any exit signs;
 - (g) any fire equipment;
 - (h) any ceiling tiles;
 - (i) any signage;
 - (j) any security systems;

- (k) any hot water services; and
 - (l) any roller doors, shutters, blinds and curtains.
- (2) For the purposes of **clauses 10.1, 10.2 and 10.3**, the term “Premises” includes the glass perimeter walls, the interior of all windows, doors, all other glass and other fixtures excluding the exterior façade and exterior of all windows.

10.5 Responsibility for Securing the Premises

The Lessee must ensure the Premises, including the Lessor’s and Lessee’s fixtures and fittings, are appropriately secured at all times.

10.6 Lessor’s Fixtures and Fittings

The Lessee covenants and agrees that the Lessor’s Fixtures and Fittings will remain the property of the Lessor and must not be removed from the Premises at any time.

10.7 Pest control

The Lessee must keep the Premises free of any pests and vermin and the cost of extermination will be borne by the Lessee (other than the cost of one inspection/treatment for termites and one inspection/treatment per year for general pest control which shall be borne by the Lessor).

10.8 Painting

- (1) The Lessee must on or before each repainting date as stated in **Item 9** of the Schedule paint with at least 2 coats of paint those parts of the Premises usually painted internally.
- (2) All painting carried out on the Premises must be carried out by a registered painting contractor and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
 - (a) do so in a proper manner using good quality materials;
 - (b) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
 - (c) comply will all reasonable directions given or requests made by the Lessor; and
 - (d) be finished in a proper and workmanlike manner.

10.9 Drains

- (1) The Lessee must keep and maintain the waste pipes, drains and conduits originating in the Premises or connected thereto in a clean, clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

10.10 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.

10.11 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it fully responsible at its cost for ensuring that the Premises and any fixtures or fittings installed by the Lessee are regularly tested, maintained and inspected to ensure that the Premises and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (2) To comply with its obligation pursuant to **clause 10.11(1)** above, the Lessee acknowledges that it will be required to, amongst other things comply with the requirements of the *Work Health and Safety Act 2020*, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices installed by the Lessee to be safe and appropriately inspected, tested and maintained by a competent person.

10.12 Grounds Maintenance

The Lessee acknowledges and agrees that they are fully responsible at their cost for ensuring that the grounds are maintained to a satisfactory standard. This includes, but is not limited to:

- (a) Reticulation system maintenance
- (b) Mowing of grassed areas on a regular basis
- (c) Removal of weeds
- (d) Caring for gardens and trees

11. Use

11.1 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 the Premises for any purpose other than the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local law, act, statute 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 without consent**

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 (which consent will not be unreasonably withheld provided that such sign, notice or advertisement complies with all relevant regulatory and planning approvals).

(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) **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.

(9) **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 without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Liquor Control Regulations 1989*, *Liquor Licensing Regulations 1989*, *Food Act 2008*, *Food Regulations 2009* and any other relevant written law that may be in force from time to time.

(10) **Removal of rubbish**

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

(11) **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.

11.2 No electrical overloading

The Lessee must not without the consent of the Lessor install or use any electrical equipment on the Premises that overloads or has the capacity to overload the cables switchboards or sub-boards through which electricity is conveyed to or through the Premises.

11.3 Airconditioning plant

The Lessee must comply with and observe the reasonable requirements of the Lessor in respect of the airconditioning plant and not do nor permit to be done anything which interferes with or impairs their safe and efficient operation of the airconditioning plant.

11.4 Keeping Premises and property secure

The Lessee must:

- (a) use the Lessee's best endeavours to protect and keep safe the Premises and any property contained in Premises from theft or robbery; and
- (b) keep all doors windows and other openings closed and securely fastened when the Premises are not open for business.

11.5 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.

11.6 Lessee to observe copyright

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

11.7 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.

11.8 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 11**.

12. Alterations

12.1 Restriction

The Lessee must not without prior written consent from the Lessor, from any other person from whom consent is required under this Lease, or as 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 10**, 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 grant its consent subject to conditions and:
 - (a) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (b) require that any alteration 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 statute 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.

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 at the option of the Lessor either:

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

in accordance with the Lessor's requirements.

13. Lessor's right of entry

13.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice, at all reasonable times, with or without workmen and others and with or without plant, equipment, machinery and materials, for each of the following purposes:

- (a) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;

- (b) 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;
- (c) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
- (d) 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 13.1(d)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 13.1(d)** 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.

14. Statutory obligations and notices

14.1 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 use of the Premises specified at **clause 11**;
- (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.

14.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 14.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 14.1**.

15. Report to Lessor

The Lessee must immediately report to the Lessor:

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

- (b) 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; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

16. Default

16.1 Events of Default

A default occurs if:

- (a) any Rent remains unpaid for 7 days after a Notice has been given to the Lessee to rectify the breach;
- (b) the Lessee is in breach of any of the Lessee's Covenants other than the covenant to pay Rent for 14 days after written notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (c) the Lessee repudiates the Lease;
- (d) where the Lessee is an individual, the Lessee dies or becomes of unsound mind, or is declared bankrupt;
- (e) where the Lessee is a partnership, the Lessee having a change in its constitution;
- (f) an application is made to a court for the Lessee to be wound up;
- (g) the appointment of a controller under section 9 of the *Corporations Act 2001* of any of the Lessee's assets;
- (h) the Lessee becomes an insolvent under administration under section 9 of the *Corporations Act 2001*;
- (i) the Lessee proposes to enter into or enters into any form of arrangement with any of its creditors;
- (j) the Lessee is unable to pay all its debts when they become due, it fails to comply with a statutory demand under section 459F of the *Corporations Act 2001*, or it is deemed to be unable to pay its debts under section 585 of the *Corporations Act 2001*;
- (k) a meeting is convened to place the Lessee in voluntary liquidation or to appoint an administrator;
- (l) a mortgagee takes possession of the property of the Lessee under this Lease;
- (m) any execution or similar process is made against the Premises on the Lessee's property;
- (n) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the Permitted Purpose for a six-month period; or
- (o) 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.

16.2 Costs of Default Notice

The Lessee is liable for any legal costs incurred by the Lessor in respect of the Notices referred to in **clauses 16.1(a) and 16.1(b)**.

16.3 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** 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 19**,

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

16.4 Lessor may remedy breach

If the Lessee:

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

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

16.5 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 conferred on 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.

16.6 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **6.1** (Insurance), **8** (Indemnity), **10** (Maintenance, Repair and Cleaning), **11** (Use), **23** (Assignment, Subletting and Charging) and **27** (Goods and Services Tax), is an essential term of this Lease but this **clause 16.6** does not mean or imply that there are no other essential terms in this Lease.

16.7 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 covenants 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 effluxion 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 covenant set out in this **clause 16.7(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) 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.

17. Damage or destruction of Premises

17.1 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, and in case of any dispute arising under this provision the same will 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.

17.2 Total damage or destruction

If the Premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee either Party may by Notice in writing to the other of them given within sixty (60) days after the event elect to cancel and terminate this Lease. The Term will terminate upon such Notice being given and the Lessee must vacate the Premises and surrender the same to the Lessor, but such termination will be without prejudice however to the liability of the Lessee under this Lease up to the date of termination.

18. Option to renew

If the Lessee at least two months, but not earlier than 12 months, prior to the date for commencement of a Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (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 Covenants,

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on terms and conditions similar to this Lease other than this **clause 18** 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.

19. Holding over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term increased by 3.5 % and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) The Lessee shall not be entitled to hold over for more than 12 months after the expiry of the Term.
- (3) To avoid doubt, the Lessee is obliged during any holding over period to pay the Rent and any outgoings as if the holding over period was included in the Term.

20. Restore premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease.

21. Yield up the premises

21.1 Peacefully surrender

On Termination the Lessee must:

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

21.2 Clause 21.1 to survive termination

The Lessee's obligation under **clause 21.1** will survive termination.

22. Removal of property from Premises

22.1 Remove 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 which is not a fixture 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.

22.2 Lessor can remove property on re-entry

If the Lessee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Lessee in accordance with **clause 22.1** within fourteen (14) days from the determination of the Term, the Lessor may at its option:

- (a) cause any such fixtures or fittings to be removed and stored at the cost of the Lessee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Lessee as a liquidated debt payable on demand; or
- (b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

23. Assignment, subletting and charging

23.1 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 Lessor, the Minister for Lands and any other persons whose consent is required under the terms of this Lease or at law.

23.2 Change in ownership of shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001* (Cth) will be deemed to be an assignment of the leasehold estate created by this Lease and the Lessee must give the Lessor written notification of the change in ownership of shares within 14 days of the change.

23.3 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 Covenants;
- (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 Covenants.

23.4 Consents of assignee supplementary

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

23.5 Property Law Act 1969

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

23.6 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 person 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.

23.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises without prior approval of the Lessor and the Minister for Lands first being obtained.

24. Disputes

24.1 Referral of dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's representative as nominated in writing by the Lessor from time to time (**Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such Notice from the Lessee or such other period of time as is agreed to by the Parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**Original Meeting**).

24.2 Referral of dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 24.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the Parties between the CEO of the Lessor and the Managing Director of the Lessee for the purpose of resolving the dispute.

24.3 Appointment of arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 24.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

24.4 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.

25. Provision of information

Not used.

26. Caveat

26.1 No absolute caveat

The Lessee nor any person on behalf of the Lessee will not, without the prior written consent of the Lessor and the Minister for Lands, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

26.2 CEO & Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally:

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

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

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

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

26.3 Ratification

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.

26.4 Indemnity

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.

27. Goods and services tax

27.1 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.

27.2 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 at **clause 27.2(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.

27.3 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 27.2(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.

27.4 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.

27.5 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.

27.6 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.

27.7 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.

28. 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.

29. Additional terms covenants and conditions

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

30. Guarantee

30.1 Guarantee

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

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

30.2 Guarantor's Covenants

The Guarantor covenants and agrees with the Lessor as follows:

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

30.3 Obligations Effective in All Circumstances

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

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

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. 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 or the agent, solicitor, contractor or employee of the Lessor.

33. 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.

34. 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.

35. Notice

35.1 Form of delivery

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

- (a) by delivery to the Party personally;
- (b) by addressing it to the Party and leaving it at or posting it to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other;
- (c) by addressing it to the Party and faxing it to the facsimile number appearing in this Lease or any other facsimile number nominated by a Party by Notice to the other; or

- (d) by addressing it to the Party and emailing it to the email address appearing in this Lease or any other email address nominated by a Party by Notice to the other.

35.2 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 35.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours;
- (c) if by post to an address specified in **clause 35.1(b)**, on the fourth Business Day following the date of posting of the Notice;
- (d) if by facsimile, when despatched by facsimile to a facsimile number specified in **clause 35.1(c)** of this Lease unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day; and
- (e) if by email, when despatched by email to an email address specified in **clause 35.1(d)** of this Lease unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

35.3 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 CEO of that local government or any other authorised officer;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association;
- (e) if given by the Lessor, by the representative of the Managing Agent; or
- (f) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

36. 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.

37. Variation

This Lease may be varied only by deed executed by the Parties subject to such consents as are required by this Lease or at law and the costs of such variation will be borne by the Lessee.

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. 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.

40. Waiver

40.1 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.

40.2 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.

Schedule

Item 1 Land and Premises

Land

Reserve 31381 being Lot 500 on Deposited Plan 52887 and being the whole of the land in Crown Land Title Volume LR3015 Folio 247.

Premises

The whole of the Land and all buildings, fixtures and structures situated thereon as depicted for illustrative purposes only in **Annexure 1**.

Item 2 Term

Five (5) years commencing on the Commencement Date.

Item 3 Further Term

Five (5) years.

Item 4 Commencement Date

1 January 2026.

Item 5 Rent

Five thousand two hundred dollars (\$5,200.00) plus GST per annum payable in advance in equal monthly instalments of four hundred and thirty three dollars and thirty three cents (\$433.33) plus GST commencing on the Commencement Date.

Item 6 Rent Review Dates

CPI Reviews

CPI Reviews are to be undertaken on each anniversary of the Commencement Date for each year of the Term (including any Further Term and period of holding over, if applicable) except for years where a Market Review is required to be carried out. Any increase in the Rent payable from a CPI Review shall not exceed five percent (5%) increase from the previous year CPI Reviewed Rent payable.

Market Reviews

At the commencement of the Further Term.

Item 7 Permitted Purpose

Child Care Premises.

Item 8 Public Liability

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

Item 9 Repainting Dates

Upon expiration of the Term and the Further Term in accordance with the Lessor's current colour scheme or if those colours are no longer available at the time of repainting, like colours, to be chosen by the Lessor.

Item 10 Additional terms, covenants and conditions

Not applicable.

Signing page

EXECUTED by the parties as a Deed

2025

THE COMMON SEAL of the **SHIRE OF JERRAMUNGUP** was hereunto affixed by authority of a resolution of the Council in the presence of -

President

Print full name

Chief Executive Officer

Print full name

EXECUTED by **PURPLE BUTTERFLY PTY LTD (ACN 669 291 329) T/A SKYLAR EARLY LEARNING** pursuant to Section 127 of the Corporations Act:

ANDREW LYLE TALMAGE

Full Name of Director

Signature of Director

JOANNE ERIN TALMAGE

Full Name of Director

Signature of Director

Signed by the said **ANDREW LYLE TALMAGE** in the presence of:

Witness sign:

Witness name:

Address:

Occupation:

Signed by the said **JOANNE ERIN
TALMAGE** in the presence of:

Witness sign:

Witness name:

Address:

Occupation:

Annexure 1 – Sketch of Premises

Annexure 2 – Consent of Minister for Lands
