



Lease

Part of Lot 7779 Wannamal Road West Wannamal (Cullala)

Vinsan Holdings Pty Ltd
(Landlord)

Wannamal Rd Organics Pty Ltd
(Tenant)

Our Ref: API:20200287
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Draft

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Lease

Date 28TH FEBRUARY 2020 ~~2019~~

Parties

Vinsan Holdings Pty Ltd ACN 009 026 484 of 25 Katanning Street, Bayswater WA 6053 (**Landlord**)

Wannamal Rd Organics Pty Ltd ACN 604 725 019 of PO Box 163 Bayswater WA 6933 (**Tenant**)

Background

- A. The Landlord is the registered proprietor of the Premises.
- B. The Landlord has agreed to lease the Premises to the Tenant and the Tenant has agreed to lease the Premises from the Landlord on the terms set out in this lease.

The parties agree

1 Definitions and Interpretation

1.1 Definitions

In this lease:

- (a) **Air Conditioning Plant** means any plant, equipment, ducting, vents or machinery for heating, cooling or circulating air;
- (b) **API** means the Australian Property Institute Inc (WA Division);
- (c) **Authority** means any government or any governmental, semi-governmental, local government, administrative, fiscal or judicial body, department, committee, commission, authority, tribunal, agency, Minister, statutory body or entity;
- (d) **Authorisation** includes a consent, authorisation, registration, agreement, certificate, permission, licence, approval, authority or exemption from, by or with a Authority;
- (e) **Business Day** means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia;
- (f) **Car Parking Areas** means those parts of the Land which are designed for use in connection with car parking, including all car bays and vehicle access, exit and thoroughfare areas (if any);
- (g) **Commencement Date** means the date specified in Item 4;

- (g) **Commencement Date** means the date specified in Item 4;
- (h) **Contamination** has the same meaning as is given to the associated term 'contaminated' in section 4(1) of the *Contaminated Sites Act 2003 (WA)* and the expression also includes pollution, hazardous materials and noxious or dangerous substances;
- (i) **Contaminant** means a noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing harm to the Environment;
- (j) **CPI** means the Consumer Price Index (All Groups Index - Perth) published by the Australian Bureau of Statistics or if that index is discontinued, the index substituted by the President for the time being of Chartered Accountants Australia and New Zealand as an index which reflects changes in the cost of living for the City of Perth;
- (k) **Encumbrance** means any mortgage, easement, restrictive covenant, caveat, memorial or notification and includes any right and interest which a person has in relation to the Land;
- (l) **Environment** has the same meaning as given in the *Environmental Protection Act 1986 (WA)*;
- (m) **Environmental Law** means any Law in connection with or for the protection or improvement of the environment including Laws relating to greenhouse gas emissions or concentrations, pollution, the production of clean energy and any emissions trading scheme;
- (n) **Financial Year** means respectively:
 - (i) the period from the Commencement Date to the next 30 June;
 - (ii) each successive full period of 12 months commencing on 1 July and expiring on 30 June during the Term; and
 - (iii) the period from 1 July in the last year of the Term to the date of expiration or sooner determination of the Term;
- (o) **Fire Services** means all stop-cocks, hydrants, alarms, fire and smoke alarms, drench curtains, fire sprinkler systems, hoses, extinguishers or other fire prevention or safety equipment at, on or serving the Premises or the Land from time to time;
- (p) **Greater of CPI and Fixed Percentage Rent Review Date** means each of the dates specified in Item 7(a);
- (q) **Improvements** means all improvements erected on the Land from time to time (if any) including the Service Facilities (if any) and any modifications, extensions or alterations to those improvements;
- (r) **Item** means an item in the Schedule;
- (s) **Keys** means all keys, access cards or other means of access to any part of the Premises;
- (t) **Land** means:
 - (i) the land described in Item 2; and
 - (ii) includes, at the election of the Landlord at any time, any additional land that is owned, developed or used by the Landlord for the purposes of or in

connection with this lease or the Improvements (including for the calculation of any payments owing by the Tenant under this lease),

and any revised description of the land from time to time, whether resulting from subdivision, amalgamation or any other reason;

- (u) **Landgate** means the authority established under s.5 of the *Western Australian Land Information Authority Act 2006 (WA)*;
- (v) **Landlord** includes:
 - (i) if a company, its successors and assigns; and
 - (ii) if an individual, his or her executors, administrators and assigns;
- (w) **Landlord's Property** means anything on the Land that is not the Tenant's Property, including the property specified in Item 3 (if any);
- (x) **Law** includes any present or future requirement of any statute, regulation, proclamation, ordinance or by-law, whether State, Federal, local or otherwise;
- (y) **Lettable Area** means, in respect of an area:
 - (i) the area measured in accordance with the relevant method of measurement as recommended by the Property Council of Australia; or
 - (ii) the area measured in accordance with the method or criteria which the Landlord otherwise selects as being appropriate for the Premises;
- (z) **Loss** means all losses, costs, charges, claims, actions, demands, damages, expenses, penalties and liabilities of any kind whatsoever and whether actual, prospective or contingent;
- (aa) **Make Good Obligations** means each of the Tenant's obligations under clauses 15.2 and 12.2;
- (bb) **Managing Agent** means a person or corporation appointed by the Landlord from time to time to represent the Landlord in all matters relating to this lease and if no person or corporation is nominated at any time, means the Landlord;
- (cc) **Option Term** means each option term set out in Item 5 (if any);
- (dd) **Outgoings** means every cost, expense or charge that is paid or payable by the Landlord in respect of a Financial Year that is in connection with the ownership, operation, administration, insurance, management, maintenance, repair or use of the Land, the Improvements, and/or the Premises, including:
 - (i) Rates and Taxes;
 - (ii) insurance premiums and other charges in connection with insurance cover which the Landlord takes out in connection with this lease;
 - (iii) costs in connection with:
 - (A) cleaning, including rubbish, sullage and sanitary storage and removal;
 - (B) caretaking and security;
 - (C) preventing, controlling or eradicating pests and vermin;
 - (D) gardening, landscaping and reticulation;

- (iv) costs in connection with maintenance, refurbishment and repair;
- (v) costs in connection with the Service Facilities;
- (vi) costs in connection with administration and management, including fees and expenses paid or payable to any managing agent;
- (vii) costs in connection with Environmental Laws, including doing anything the Landlord reasonably considers to be necessary or beneficial having regard to any Environmental Laws or environmental rating;

but excluding:

- (viii) costs of a capital or structural nature;
 - (ix) a cost which the Law does not allow the Landlord to recover from the Tenant;
- (ee) **Permitted Use** means the permitted use specified in Item 8;
- (ff) **Pipes** means any pipes, drains and conduits in or connected to the Premises;
- (gg) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (hh) **Premises** means the premises described in Item 1 and includes the Landlord's Property in or on it;
- (ii) **Premises Plan** means the plan set out in Annexure A to this lease;
- (jj) **Rates and Taxes** means all rates, taxes, levies, charges, duties and impositions of any kind now or in the future charged, assessed or imposed by any Authority in connection with the Land, the Improvements, the Premises or the ownership or occupation of the Land, the Improvements or the Premises, including:
- (i) council rates and charges together with all rubbish removal rates and charges;
 - (ii) land tax and Metropolitan Region Improvement Tax on the basis that the Land is the only land owned by the Landlord;
 - (iii) any fee, levy or charge in relation to any car bays or parking facilities on the Land (including any levy imposed by the Department of Transport);
 - (iv) any fire services levy; and
 - (v) water drainage and sewerage rates and service charges;
- but excluding the Landlord's income tax and capital gains tax;
- (kk) **Related Party** means, in relation to a party, any corporation, person or entity which is:
- (i) a related entity to that party (as defined in the *Corporations Act 2001* (Cth)); or
 - (ii) an associate of that party (as defined in the *Income Tax Assessment Act 1997* (Cth)); or
 - (iii) controlled by or capable of being controlled by that party (whether by virtue of equity ownership, directorships or any agreement or arrangement);

- (ll) **Rent** means the rent specified in Item 6 or as varied or reviewed from time to time under this lease;
- (mm) **Rent Commencement Date** means the date specified in Item 6(c);
- (nn) **Rent Review Date** means each of the dates specified in Item 7;
- (oo) **Schedule** means the schedule to this lease;
- (pp) **Service Facilities** means any plant, equipment, Pipes, services and apparatus on or servicing the Land, the Improvements, or the Premises, including Air-Conditioning Plant, lifts, Fire Services, wires, cables, conduits, other electronic communication equipment, gas and electrical fittings, power points, toilets, sewerage, plumbing, grease traps and wash basins);
- (qq) **Signage** means any:
- (i) signage;
 - (ii) advertising materials or devices, ornamentation, decorations or logos; and
 - (iii) antennae, mast or other apparatus, awning or canopy;
- (rr) **Tenant** means the tenant described in this lease and includes:
- (i) if a company, its successors and assigns; and
 - (ii) if an individual, his or her executors, administrators and assigns;
- (ss) **Tenant's Associates** means each of the Tenant's sub-tenants, licensees, officers, employees, contractors, subcontractors, agents, customers, invitees and visitors;
- (tt) **Tenant's Property** means all property which the Tenant or the Tenant's Associates has (at any time) installed in, brought to, or keeps in or at, the Premises, the Improvements or the Land, including:
- (i) any property that the Tenant owns, hires or leases from a third party; and
 - (ii) the Tenant's stock, fixtures, fittings and Signage (if any);
- (uu) **Tenant's Proportion** means in respect of any item of the Outgoings or any Utility Cost:
- (i) the same proportion of that item as the Lettable Area of the Premises bears to the total Lettable Area of all premises on the Land; or
 - (ii) if that item is attributable to, referable to or for the benefit of a group of premises including the Premises, then the same proportion of that item as the Lettable Area of the Premises bears to the total Lettable Area of that group of premises; or
 - (iii) if that item is directly assessed against or is entirely attributable to, referable to or for the benefit of, the Premises, the Tenant or any area that the Tenant has exclusive use of, then 100% of that item;
- (vv) **Term** means the period specified in Item 4 (as may be extended or renewed, including for any Option Term and holding over period of this lease);
- (ww) **Utility Cost** means a cost or charge in connection with the connection, usage or consumption of a Utility Service which is used or consumed in the Premises or by the Tenant or which the Premises has the benefit of;

- (xx) **Utility Service** means a utility or consumable service, including electricity, gas, water, sewerage, data and telecommunications;
- (yy) **Valuer** means:
 - (i) a valuer licensed under the *Land Valuers Licensing Act 1978* (WA);
 - (ii) is a member of at least 5 years standing of the API; and
 - (iii) at the time of appointment is actively engaged in valuing similar premises to the Premises;
- (zz) **WAPC** means the authority established under section 7 of the *Planning and Development Act 2005* (WA); and
- (aaa) **Work Standards** means work (including any maintenance, repair or servicing work) that is carried out and completed:
 - (i) promptly and efficiently and to the satisfaction of the Landlord (acting reasonably);
 - (ii) using good quality materials and contractors either approved by or nominated by the Landlord (acting reasonably);
 - (iii) in accordance with plans and specifications approved by the Landlord (acting reasonably);
 - (iv) in accordance with the directions of the Landlord (acting reasonably), including directions about the times when work may be done, when work must not be done, safety standards, noise levels, dust levels and odours;
 - (v) in a manner that does not interfere with or disturb any other occupants of the Land or of other properties;
 - (vi) in accordance with all relevant Laws and the requirements of all relevant Authorities; and
 - (vii) if the work involves the replacement of anything, then the replacement must be at least of equivalent quality to the original.

1.2 Interpretation

In this lease, unless the context otherwise requires:

- (a) a month means a calendar month;
- (b) if anything is to be or may be done on a day that is not a Business Day, then it must be done on the next Business Day;
- (c) if a word or phrase is defined in this lease, its other grammatical forms have a corresponding meaning;
- (d) words importing the singular include the plural and vice versa;
- (e) words denoting a gender include any gender;
- (f) an act or omission of any of the Tenant's Associates is deemed to be the act or omission of the Tenant;
- (g) a provision of this lease prohibiting the Tenant from doing or requiring it to do any act or thing requires the Tenant to ensure that the Tenant's Associates comply with that provision;

- (h) a reference to a body, other than a party to this lease includes a reference to any body which replaces it or which substantially succeeds to its powers or functions;
- (i) a reference to a party to this lease includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives;
- (j) the word 'person' includes corporations, firms, unincorporated associations, bodies corporate, authorities and agencies;
- (k) the word 'including' (in any form) is not a word of limitation and is to be taken to be followed by the words 'but not limited to';
- (l) a reference to any schedule, annexure or attachment means a schedule, annexure or attachment to this lease;
- (m) headings and clause numbers are for convenience only and do not affect the interpretation of this lease;
- (n) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time;
- (o) a reference to a body or Authority includes a reference, if that body or Authority ceases to exist, to the successor of that body or Authority or if there is no direct successor then to the body or Authority which has substantially the same functions and objects as the first body or Authority;
- (p) no rules of construction will apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this lease or any part of it;
- (q) a reference to 'this lease' means this document and includes any equitable lease in respect of the Premises that arises because of any one or more of the following:
 - (i) the Tenant having entered into possession of the Premises before this document is signed;
 - (ii) this document not being registered on the certificate of title for the Land; or
 - (iii) the Tenant remaining in possession of the Premises after the lease evidenced by this document ends; and
- (r) an agreement, representation, covenant or warranty:
 - (i) in favour of two or more persons, is in favour of them jointly and severally; and
 - (ii) made by two or more persons, binds them jointly and severally.

2 Grant of Lease

The Landlord grants a lease of the Premises to the Tenant for the Term subject to the terms and conditions in this lease and the Tenant accepts that grant.

3 Rent

3.1 Payment of Rent

The Tenant must pay the Rent to the Landlord:

- (a) on and from the Rent Commencement Date during the Term;
- (b) by the instalments, on the dates and in the manner set out in Item 6;
- (c) by electronic funds transfer to an account nominated by the Landlord or as the Landlord may otherwise direct in writing; and
- (d) without any deduction or set-off.

3.2 Review of Rent

- (a) The Rent will be reviewed on each Rent Review Date in accordance with this clause 3.
- (b) The parties agree that:
 - (i) the reviewed Rent is payable from the relevant Rent Review Date regardless of when it is agreed or determined;
 - (ii) until the reviewed Rent is agreed or determined under this clause 3, the Tenant must continue to pay the Rent at the rate that applied immediately before the relevant Rent Review Date; and
 - (iii) when the reviewed Rent has been agreed or determined, the amount of any difference in Rent for the period from the relevant Rent Review Date until the next date on which an instalment of Rent is payable must be paid or allowed with that instalment.
- (c) Notwithstanding anything else in this lease to the contrary, the Rent payable from and after a Rent Review Date must not be less than the Rent payable during the period immediately before the relevant Rent Review Date.

3.3 Greater of CPI and Fixed Percentage

- (a) The Rent payable from that Greater of CPI and Fixed Percentage Rent Review Date will be the greater of:
 - (i) the amount represented by A in the formula:

$$A = B \times \left(\frac{C}{D} \right)$$

where:

- B is the annual Rent payable immediately before the relevant Greater of CPI and Fixed Percentage Rent Review Date (ignoring rent-free periods, rent reductions, concessions and incentives);

C is the CPI for the calendar quarter ending immediately before the relevant Greater of CPI and Fixed Percentage Rent Review Date; and

D is the CPI for the calendar quarter ending immediately before the last Rent Review Date or, in the case of the first Rent Review Date, the Commencement Date,

and

(ii) the Rent payable immediately before the relevant Greater of CPI and Fixed Percentage Rent Review Date (ignoring any rent-free periods, rent reductions, concessions and incentives), increased by 10%.

4 Other Payments by the Tenant

4.1 Utility Costs

- (a) The Tenant must pay for all Utility Costs.
- (b) If any Utility Cost is not separately metered or assessed against the Tenant or the Premises, the Tenant must pay a proportion of that Utility Cost, being:
 - (i) the Tenant's Proportion; or
 - (ii) if required by the Landlord (acting reasonably), such other proportion as the Landlord considers fair and reasonable having regard to the Tenant's use of the relevant Utility Service.
- (c) The Tenant must pay each Utility Cost to the Landlord (or directly to the relevant Authority, if required by the Landlord) within 14 days of demand by the Landlord.
- (d) If the Landlord does not provide any Utility Services to the Tenant, then the Tenant must make its own arrangements to obtain and purchase that Utility Service from a supplier.
- (e) The Landlord is not required to install separate meters to measure the consumption of any Utility Service.
- (f) The Landlord may at any time elect to supply any Utility Service directly to the Tenant. If the Landlord makes that election, then:
 - (i) the Tenant must purchase from the Landlord the Tenant's requirements for that Utility Service to the extent that it is supplied to the Tenant by the Landlord;
 - (ii) the amount payable for that Utility Service will be determined by the Landlord but will not exceed the maximum amount that the relevant Authority or usual supplier would ordinarily charge a single consumer for that Utility Service (in accordance with maximum pricing or other regulatory requirements);
 - (iii) the Tenant must pay the Landlord for the Utility Services within 14 days of the Landlord billing the Tenant for that service; and
 - (iv) the Tenant must comply with the Landlord's general terms and conditions of supply as prescribed from time to time.

4.2 Outgoings

- (a) The Tenant must pay the Tenant's Proportion of Outgoings to the Landlord.
- (b) The Landlord may require the Tenant to pay the Tenant's Proportion of any Outgoings item:
 - (i) by equal monthly instalments in advance on or before the first day of each month. If the Commencement Date is not the first day of a month, the first and last instalments during the Term will be proportionate; or
 - (ii) in full within 14 days of demand by the Landlord and either directly to the Landlord or to the relevant Authority or supplier.
- (c) If the Landlord directs the Tenant to pay any item of Outgoings directly to a third party, then the Tenant must (on request) provide to the Landlord all receipts in respect of the payment.
- (d) Prior to the commencement of each Financial Year, the Landlord will notify the Tenant of the Landlord's estimate of the Outgoings payable by the Tenant for that Financial Year.
- (e) The Landlord may amend the Landlord's estimate at any time (by giving notice to the Tenant) and the Tenant must pay the Tenant's Proportion of the Outgoings in accordance with the Landlord's revised estimate from the date of receipt of that notice.
- (f) Within 3 months after the end of each Financial Year or as soon as is practicable after that period, the Landlord must give the Tenant a statement of the actual Outgoings for that Financial Year. If the statement discloses that:
 - (i) the Tenant's Proportion of the actual Outgoings is more than the Outgoings that have been paid by the Tenant, then the Tenant must pay the deficiency to the Landlord within 14 days after the date of the Landlord's statement; or
 - (ii) the Tenant's Proportion of the actual Outgoings is less than the Outgoings that have been paid by the Tenant, then the Landlord must credit the excess to the Tenant in the next monthly statement or refund the difference.
- (g) If there is a variation of any area relevant to the calculation of the amount of the Tenant's Proportion:
 - (i) the Tenant's Proportion is to be correspondingly varied from the date the variation of the area takes effect; and
 - (ii) the Landlord will notify the Tenant of the variation of the Tenant's Proportion and the effective date of the variation as soon as is practicable.

5 Use of Premises

5.1 Positive Obligations

The Tenant must:

- (a) only use the Premises for the Permitted Use;

- (b) obtain and continue to hold all approvals, consents, licences and other authorisations that are required by any relevant Authority or Law to enable the Tenant to use the Premises for the Permitted Use;
- (c) comply with each order, requisition or requirement of any Authority and every Law (whether imposed on the Landlord or the Tenant) which arises because of or in connection with:
 - (i) the Tenant's use of the Premises or the nature of its business;
 - (ii) the persons who are permitted to enter the Premises;
 - (iii) any works undertaken by the Tenant or at the Tenant's request; or
 - (iv) the Tenant's Property;
 - (v) any deliberate or negligent act or omission by the Tenant or the Tenant's Associates;
- (d) comply with the reasonable requirements of the Landlord and the manufacturer in respect of any plant and equipment installed in the Premises;
- (e) use the Service Facilities only for the purpose for which they were designed;
- (f) keep the Premises free of infectious diseases and carry out regular preventative maintenance for such purposes by properly qualified persons;
- (g) if the Tenant believes (or reasonably suspects) that there is any infectious disease in the Premises, the Tenant must promptly notify the Landlord and comply with the requirements of the Landlord; and
- (h) ensure that the Tenant and the Tenant's Associates only park their vehicles in the areas set aside by the Landlord for the purposes of parking vehicles (if any).

5.2 Negative Obligations

The Tenant must not:

- (a) discontinue its business or vacate the Premises other than in accordance with the terms of this lease;
- (b) install any equipment or do anything that overloads any of the Service Facilities;
- (c) do or permit to be done anything which might negate, reduce or modify any warranty given by the manufacturer of any plant and equipment in the Premises or any insurance policy relating to it;
- (d) do or allow to be done anything which may cause loss or damage to the Premises;
- (e) hold any auction, fire or bankruptcy sale in the Premises;
- (f) store any hazardous thing on the Premises except to the extent that is necessary for the conduct of the Permitted Use and in accordance with the Law;
- (g) do or allow to be done on the Premises anything which may be a nuisance or annoyance or cause loss or damage to the Landlord or any other person;
- (h) do anything in the Premises or on the Land which involves the use of asbestos, fibreglass wool or any other harmful material;

- (i) do anything which would breach any relevant town planning scheme or zoning requirements or which would change the current zoning or permitted use of the Premises under any Law;
- (j) use the Premises as a residence;
- (k) keep or allow to be kept any animals or pets at the Premises (except as may be otherwise be expressly permitted by the Permitted Use); or
- (l) use or allow the Premises to be used for any unlawful purpose.

5.3 Tenancy Mix

- (a) The Landlord makes no representation, warranty or undertaking that the Tenant has any exclusive right to carry on the Permitted Use on the Land.
- (b) The Landlord may allow other tenants or occupiers of the Land to carry on the same or similar use as the Permitted Use.

5.4 Landlord's Property

The Tenant acknowledges and agrees that:

- (a) the Landlord owns the Landlord's Property;
- (b) the Landlord has a security interest and a purchase money security interest in the Landlord's Property as the collateral under the PPSA; and
- (c) the Landlord's Property is not intended, and will not be used, for personal, household or domestic use under this lease.

5.5 Occupational Health and Safety

- (a) The Tenant agrees that, for the purposes of the *Occupational Safety and Health Act 1984 (WA)*, the Tenant has control of the Premises.
- (b) The Tenant releases and indemnifies and keeps the Landlord indemnified from and against all Loss for which the Landlord is, or may become, liable by reason of that Act in respect of the Premises or the use of the Premises by the Tenant.
- (c) The Tenant occupies and uses the Premises at its own risk.

5.6 No warranty from Landlord

- (a) The Landlord does not warrant, expressly or impliedly, that the Premises:
 - (i) are suitable for any purpose;
 - (ii) may be used for the Permitted Use; or
 - (iii) are now or will remain suitable or adequate for all or any of the Tenant's purposes.
- (b) Except as may otherwise be expressly provided for in this lease, the Premises is taken by the Tenant under this lease on an 'as is' basis.
- (c) The Tenant acknowledges and declares that in entering into this lease, it has not relied on any promise, representation, undertaking or warranty given by or on behalf of the Landlord as to the suitability of the Premises or its facilities, finishes, amenities or Service Facilities for any business or undertaking to be carried on or conducted there.

- (d) This lease is not affected and the Landlord is not responsible or liable to the Tenant in any way if at any time:
 - (i) the Permitted Use is not permitted (or becomes prohibited) by any Law, by any Authority; or
 - (ii) the Tenant is unable to obtain or maintain any necessary permit, licence or other approval that is required for the Permitted Use.

5.7 Access Conditions

Notwithstanding anything else in this lease to the contrary, the Tenant will not be entitled to access and use the Premises until the Tenant has first:

- (a) executed this lease;
- (b) provided at least one original executed version to the Landlord (or such other number as the Landlord requires);
- (c) paid the deposit pursuant to any offer to lease the Premises made between the Landlord and the Tenant;
- (d) paid all costs that the Tenant is required to pay under clause 27 (if any); and
- (e) provided all insurance certificates to the Landlord in accordance with this lease.

6 Care of the Premises

6.1 General obligations

The Tenant must at its own expense and at all times keep and maintain the Premises in good, clean and substantial repair and condition, excluding:

- (a) fair wear and tear; and
- (b) repairs, maintenance or replacements of a structural or capital nature unless they are required because of:
 - (i) the Tenant's particular use or occupation of the Premises;
 - (ii) the Tenant's design or layout of the Premises; or
 - (iii) any act, omission, default or negligence of the Tenant or the Tenant's Associates.

6.2 Cleaning

The Tenant must:

- (a) keep the Premises clean and tidy and free from dirt to the satisfaction of the Landlord and each relevant Authority;
- (b) store all waste, garbage and refuse in a proper and hygienic manner in the Premises and attend to its proper disposal; and
- (c) comply with the Landlord's reasonable directions in connection with cleaning and waste disposal.

6.3 Repair or replace

The Tenant must immediately:

- (a) repair and make good any damage to the Land, Improvements or the Premises that is caused by the Tenant or the Tenant's Associates and where the Tenant cannot adequately repair the damaged item (as determined by the Landlord), then replace that item with a new item;
- (b) replace all broken or damaged window frames and glass in the doors, walls, windows or any other part of the Premises, irrespective of the cause of breakage or damage unless broken or damaged by the Landlord, its employees, agents or contractors; and
- (c) replace all electric globes, fluorescent tubes, power points and associated fittings in the Premises, which fail to work properly for any reason.

6.4 Fire Breaks

The Tenant must at its own expense and at all times during the Term:

- (a) keep and maintain and plough or spray (as required) all fire breaks in accordance with the requirements of the local authority in which the Premises is situated and in accordance with the requirements of the *Bush Fires Act 1954* and any other relevant Law; and
- (b) take all precautions to prevent the outbreak of fire on the Premises and to safeguard all crops and livestock against any such outbreak.

6.5 Drains, Pipes and Waste

The Tenant must:

- (a) not do anything to cause any Pipes to become blocked, cracked or compromised;
- (b) immediately notify the Landlord of any cracked or leaking Pipes and use all reasonable endeavours to promptly stop any leakage;
- (c) employ licensed tradespersons to clear any blockages which may occur within Pipes; and
- (d) regularly clean any grease traps (if any) in, or exclusively servicing, the Premises.

6.6 Service Facilities

- (a) The Tenant must not use the Service Facilities for purposes other than those for which they were designed.
- (b) If the Landlord upgrades any Service Facility at the request of the Tenant or to accommodate any equipment which the Tenant wishes to install, the Tenant must pay to the Landlord, within 7 days of demand, the costs of the alterations or upgrade.
- (c) The Tenant will have no Claim against the Landlord or be entitled to terminate this lease solely because:
 - (i) a Service Facility fails to operate properly; or
 - (ii) the Landlord shuts down or removes any Service Facility so as to repair, maintain or replace it or because of the provisions of any Law or the requirement of any Authority.
- (d) The Tenant must not install in the Premises anything which will or may (in the reasonable opinion of the Landlord) interfere with the performance of any Service

Facility. The Tenant must immediately remove any such equipment upon request by the Landlord.

- (e) If the Tenant installs anything that covers or obstructs any Service Facility, then the Landlord may remove that cover or obstruction (including for the purposes of accessing that Service Facility under clause 9.1) and the Landlord is not responsible for making good or reinstating that cover or obstruction.

6.7 Pest control

The Tenant must take reasonable precautions to keep the Premises free of rodents, vermin, animals, birds and insects (including termites and borers) and, if required by the Landlord, employ from time to time pest controllers and exterminators approved by the Landlord.

6.8 Tenant to report damage and defects

The Tenant must promptly notify the Landlord of any damage to the Premises or of any defective operation of any of the Landlord's Property or the Service Facilities.

7 Alterations and Tenant's Works

7.1 Alterations to Premises

- (a) Unless the Tenant has obtained the prior written consent of the Landlord, the Tenant must not alter any part of the Premises.
- (b) In giving consent to an alteration, the Landlord may impose any reasonable condition, including a condition that the Tenant must:
 - (i) prepare and provide plans and specifications for the works;
 - (ii) not commence any works until the Landlord has approved those plans and specifications (which will not be unreasonably withheld or delayed);
 - (iii) pay for the reasonable costs and expenses of the Landlord in supervising or inspecting the work; and
 - (iv) carry out any additional work that may be reasonably required having regard to the work proposed by the Tenant.
- (c) If any work does not comply with any Law or the requirement of any Authority, the Tenant must immediately carry out all required alterations, repairs or replacements so that it becomes compliant.
- (d) If required by the Landlord, the Tenant must (at the Landlord's election):
 - (i) supply and erect hoardings of a type and in the location approved by the Landlord before commencing any works and remove those hoardings once those works are complete; or
 - (ii) pay the cost to the Landlord of supplying, erecting and removing those hoardings.
- (e) If any work carried out by the Tenant (including any initial fitout works) requires, or results in the need for, any repair, alteration or addition to any Service Facility or any part of the Improvements or the Premises (as reasonably determined by the Landlord or as required by any Authority or Law), then:

- (i) the Landlord may carry out those works at the Tenant's cost and the Landlord may require the Tenant to make payment of the Landlord's reasonable estimate of the cost of those works prior to the Landlord commencing the works; or
 - (ii) the Landlord may require the Tenant to carry out those works at the Tenant's cost,
- (f) The Tenant must pay for the Landlord's costs in connection with:
- (i) engaging any architect, engineer or suitably qualified consultant to review the Tenant's plans and specifications;
 - (ii) any work that the Landlord carries out at the request of the Tenant;
 - (iii) any work that the Tenant has not done properly; and
 - (iv) any work that is required to make the Premises or Improvements compliant with all relevant Laws and the requirements of each relevant Authority to the extent that any work done by the Tenant has caused the Premises or Improvements to not be compliant.

7.2 Work Standards

If any work is carried out by the Tenant or any of the Tenant's Associates in the Premises or on any part of the Land (including any repair, maintenance, replacement or alteration work), the Tenant must ensure that the Work Standards are complied with in doing so.

8 Signage

- (a) The Tenant must not display, place or install any Signage on any part of the Premises, the Improvements or the Land unless it has first:
- (i) obtained all necessary approvals from each relevant Authority and provided a copy of those approvals to the Landlord; and
 - (ii) obtained the Landlord's written approval (including to the design, location and content of any Signage), which approval must not be unreasonably withheld or delayed.
- (b) The Tenant must:
- (i) install the permitted Signage in accordance with the Work Standards;
 - (ii) maintain its Signage in good condition and repair at all times; and
 - (iii) comply with all Laws and the requirements of each relevant Authority in respect of its Signage.

9 Access by the Landlord

9.1 Access

- (a) At any time during the Term, the Landlord and its contractors, employees and agents may enter the Premises to:

- (i) view the state of repair of, and maintain or repair, the Premises or the any Service Facility;
 - (ii) carry out any repairs, alterations, renovations, extensions or works;
 - (iii) abate any actual or potential hazard or safety issue;
 - (iv) comply with any Law;
 - (v) remedy any breach by the Tenant of this lease; or
 - (vi) do anything else which the Landlord is required to do by law or is permitted to do under this lease.
- (b) The Landlord will give the Tenant at least 24 hours' notice before entering the Premises under this clause 9.1 (except in the case of an emergency when no notice is required).

9.2 Inspection by prospective tenants or purchasers

- (a) At all times during the Term, the Tenant must permit the Landlord and its contractors, employees and agents to:
- (i) enter the Premises to show it to prospective purchasers; and
 - (ii) affix and exhibit any signs indicating that the Premises or the Land is available for purchase.
- (b) Within 6 months before the end of the Term, the Tenant must permit the Landlord and its employees and agents to:
- (i) enter the Premises to show it to prospective tenants; and
 - (ii) affix and exhibit any signs indicating that the Premises is available for lease.
- (c) The Landlord will give the Tenant at least 24 hours' notice before entering the Premises under this clause 9.2.

9.3 General

- (a) The Landlord must use reasonable endeavours not to unreasonably and materially interfere with the Tenant's use or occupation of the Premises when accessing the Premises under this clause.
- (b) If the Landlord is permitted to access the Premises under this lease and the Tenant does not allow it within the required time, then the Landlord may enter the Premises by any means for the purposes of exercising its rights under this lease.

10 Insurance

10.1 Landlord's insurance

- (a) At all times during the Term, the Landlord must take out and maintain an insurance policy covering loss and damage to the Improvements and the Premises, resulting from fire, rain, storm and all other normal and usual risks, to their full insurable value.

- (b) The Landlord may, from time to time during the Term, take out and maintain any other policy of insurance which the Landlord reasonably considers to be necessary or desirable, including:
 - (i) a public liability insurance policy in connection with the Premises or the Land; and
 - (ii) a policy for loss of rentals and other money that is payable under this lease for any reason (including as a result of default by the Tenant).
- (c) If a claim is the result of any breach, act or omission of the Tenant or the Tenant's Associates, the Tenant is liable for and must pay for all excesses on each insurance claim made by the Landlord.

10.2 Tenant's insurance

- (a) The Tenant must at all times during the Term, maintain the following policies of insurance:
 - (i) public and products liability for at least \$10 million for any one occurrence and not less than \$10 million in the annual aggregate for personal injury and/or property damage arising from the acts and omissions of and the use and occupation of the Premises or the Land by the Tenant;
 - (ii) a policy insuring the Tenant's Property and any other property for which the Tenant has responsibility under this lease against loss or damage from any insurable cause whatsoever for the full replacement value;
 - (iii) an insurance policy in respect of plate glass (including all external and internal glass fixed to and forming part of the Premises and window frames) for the market value replacement cost;
 - (iv) a policy for loss of profits in respect of the Tenant's business not being carried on from the Premises for a period of at least 12 months;
 - (v) a policy of employer's indemnity insurance including workers' compensation insurance for all of the Tenant's employees employed in, about or from the Premises;
 - (vi) whenever there are works being effected on or to the Premises, a contractor's all risk policy to the full value of the works being conducted which policy may be maintained by the Tenant's contractor on behalf of the Tenant; and
 - (vii) any other insurance reasonably required by the Landlord.
- (b) The Tenant must:
 - (i) pay all premiums and other money payable in respect of each insurance policy when they are due and payable;
 - (ii) provide to the Landlord a copy of each insurance policy or Certificate of Currency for each insurance policy under this clause 10.2:
 - (A) no later than 7 days before the Commencement Date;
 - (B) within 7 days after each policy is renewed; and
 - (C) on written request by the Landlord; and

- (iii) not cancel or reduce the amount of cover of any insurance policy under this clause 10.2 without the Landlord's prior written approval (which approval the Landlord shall not unreasonably withhold).
- (c) The Tenant must ensure that each policy of insurance it must take out under this lease:
 - (i) is with an independent and reputable insurer approved by the Landlord;
 - (ii) is for an amount and covers risks and contains conditions, which are acceptable to the Landlord and its insurer;
 - (iii) has no exclusions, endorsements or alterations unless first approved by the Landlord; and
 - (iv) is taken out in the joint names of the Landlord and the Tenant for their respective rights and interests (and noting any interest of the Landlord's mortgagee (if any)).
- (d) If any loss or damage occurs to any of the Landlord's Property or the Tenant's property which is covered by insurance effected by the Tenant, the Tenant must promptly replace, repair or reinstate the damaged or destroyed property, utilising the proceeds from the insurance.

10.3 Tenant's conduct affecting insurance

- (a) The Tenant must notify the Landlord immediately if an insurance policy required by this lease is cancelled or an event occurs which may allow a claim or affect rights under any of those policies.
- (b) The Tenant must not and must not permit anything to be done or omitted to be done which may or does:
 - (i) make any insurance required under this clause 9.1 to become void or voidable; or
 - (ii) increase any premium payable.
- (c) Without limiting any other provision of this lease or any other rights of the Landlord, if the Tenant does or omits to do an act which results in the increase of any insurance premiums payable by the Landlord, the Tenant must immediately on demand pay those increased premiums.
- (d) If, at any time, the Landlord is not reasonably able to take out or maintain any insurance under clause 10.1 (as certified by the Landlord) due to:
 - (i) the use of the Premises by the Tenant; or
 - (ii) any act or breach of this lease by the Tenant or the Tenant's Associates,
 then the Landlord may terminate this lease by written notice to the Tenant.
- (e) If, having regard to the Tenant's use of the Premises or Improvements or any work carried out by the Tenant, the Landlord's insurer requires any repair, alteration or addition to any Service Facility or any part of the Improvements or the Premises, then:
 - (i) the Landlord may carry out those works at the Tenant's cost and the Landlord may require the Tenant to make payment of the Landlord's

reasonable estimate of the cost of those works prior to the Landlord commencing the works; or

- (ii) the Landlord may require the Tenant to carry out those works at the Tenant's cost.

11 Assignment and Sub-letting

11.1 No dealings without consent

The Tenant must not assign, transfer, grant a licence, part with possession of or allow anyone to use or occupy any part of the Premises or the benefit of this lease without the prior written consent of the Landlord on each occasion.

11.2 Assignment

- (a) The Landlord will not unreasonably withhold its consent to an assignment by the Tenant of the whole of the Premises and the benefit of this lease, if:
 - (i) the Tenant proves to the Landlord's reasonable satisfaction that the proposed assignee:
 - (A) is respectable, solvent and of at least the same financial standing in Australia as the assignee;
 - (B) can meet the obligations of the Tenant under this lease; and
 - (C) has business experience and skills equal to or greater than the Tenant;
 - (ii) the assignment will not result in any Law applying to this lease, which does not otherwise apply and which limits the Tenant's obligations or the Landlord's rights under this lease;
 - (iii) the proposed assignment does not result in a change in the Permitted Use;
 - (iv) the Tenant withdraws any caveat lodged by it against the Land;
 - (v) the Tenant executes and procures the assignee to execute a deed of assignment of this lease in the form required and prepared by the Landlord;
 - (vi) the Rent and other payments then due or payable by the Tenant under this lease have been paid and there is no existing unremedied breach by the Tenant of the terms of this lease unless they have been waived by the Landlord; and
 - (vii) if requested by the Landlord, the assignee provides or procures the provision of:
 - (A) a bank guarantee or security bond for an amount and otherwise on terms acceptable to the Landlord; and
 - (B) in the case of a corporate or trust assignee, director, shareholder or beneficiary guarantees which are acceptable to the Landlord, as security for the performance of the obligations to be assumed by the assignee under this lease.

- (b) If this lease is assigned with effect after a Rent Review Date and the Rent payable from that Rent Review Date has not yet been agreed or determined under this lease, then as a condition of obtaining the Landlord's consent to the assignment the Tenant must, if required by the Landlord, deposit in a trust account held by the Managing Agent as stakeholder an amount determined by the Landlord in order to provide security for any additional liability for Rent during that period.

11.3 Sub-Letting

- (a) The Landlord will not unreasonably withhold its consent to a sub-lease of part or the whole of the Premises, if:
 - (i) the Tenant proves to the reasonable satisfaction of the Landlord that the proposed sub-tenant is solvent, responsible, respectable and of sound financial standing;
 - (ii) the proposed sub-tenant will not use the Premises (or that part of the Premises to be sublet) for any use which is not a Permitted Use;
 - (iii) the sub-tenant executes a sub-lease to which the Landlord is a party in a form prepared or approved by the Landlord and its solicitors, which approval will not be unreasonably withheld or delayed;
 - (iv) the sub-lease will not result in any Law applying to this lease, which does not otherwise apply and which limits the Tenant's obligations or the Landlord's rights under this lease; and
 - (v) the terms of the sub-lease include the terms of this lease as applicable and are not inconsistent with this lease.
- (b) Any rent payable under the sub-lease must not be used as evidence of market rent under this lease or otherwise, in respect of the Premises.
- (c) The Tenant indemnifies the Landlord for any Claim for which the Landlord is, or may become, liable as a result of or in connection with a sub-lease or a sub-tenant's use or occupation of the Premises.

11.4 Change in Control

- (a) If the Tenant is a corporation the Tenant must obtain the consent of the Landlord under clause 11.1 before there is any Change in Control.
- (b) In this clause 11.4, **Change in Control** means any change in the shareholding of the Tenant or a holding company (as defined in the Corporations Act 2001 (Cth)) of the Tenant which results in a different person or group of persons controlling the board of directors or more than 50% of the shares which have a right to vote at general meetings.

11.5 Costs and Liability

- (a) Whether or not an assignment or sub-lease proceeds, the Tenant must pay to the Landlord, within 7 days of demand, all reasonable costs incurred by the Landlord in connection with:
 - (i) arranging the assignment or sub-lease (including, if relevant, marketing and leasing fees in connection with finding any assignee or sub-tenant);

- (ii) any enquiries made by or on its behalf as to the responsibility, solvency, fitness and suitability of any proposed assignee or sub-tenant;
 - (iii) preparing, negotiating, executing and registering any assignment deed or sub-lease deed; and
 - (iv) obtaining any necessary consents to the assignment or sub-lease.
- (b) The covenants and agreements on the part of any assignee or sub-tenant will be supplementary to this lease and will not in any way relieve or be treated as relieving the Tenant from its liability under this lease.

11.6 Property Law Act exclusions

Sections 80 and 82 of the *Property Law Act 1969* (WA) are expressly excluded from applying to this lease.

12 Environment

12.1 Tenant must not cause Contamination

The Tenant must not cause or permit any Contamination of the Premises or of the Environment.

12.2 Removal of Contamination

Without affecting clause 12.1 or limiting any right of the Landlord or any indemnity in favour of the Landlord, if any Contamination occurs or has occurred during the Term or during any previous period during which the Tenant has occupied the Premises, the Tenant must immediately:

- (a) do everything necessary to remove that Contamination;
- (b) remediate the Land to the standard required under any Environmental Law or by any relevant Authority; and
- (c) make good any damage which it causes in so doing.

12.3 Notice of Contamination

The Tenant must give to the Landlord notice as soon as it becomes aware of:

- (a) the existence of a Contamination or Contaminant affecting the Premises or the Environment; or
- (b) the making of a complaint to any person, including but not limited to, the Tenant or the commencement of proceedings against the Tenant in relation to an alleged failure to observe or perform obligations under an Environmental Law or Authorisation.

12.4 Tenant's obligations

If the use of the Premises is the subject of any Environmental Law or any Authorisation the Tenant must:

- (a) use the Premises in a manner which complies with each Environmental Law and each Authorisation;

- (b) ensure that any Authorisation required for any conduct or activity in relation to the Premises is obtained before that conduct or activity takes place and that all such Authorisations are kept in full force and effect; and
- (c) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Premises or any conduct or activity in relation to the use of the Premises.

12.5 Indemnity

The Tenant indemnifies the Landlord against any Claim for which the Landlord is, or may become, liable resulting from:

- (a) any failure by the Tenant to comply with clause 12.1 to clause 12.4; or
- (b) any Contamination caused by the Tenant.

12.6 Environmental Laws

To the extent that the Tenant's obligations under this clause 12 is to pay any costs or undertake any works that the Landlord or another person would otherwise be responsible for under any Environmental Law, the Tenant must do everything necessary to transfer that responsibility from the Landlord or other person to the Tenant in accordance with the relevant Environmental Law.

12.7 Survival

Without limitation the provisions of this clause 12 survive the expiry of the Term or the termination of this lease and continue until complied with.

13 Option to Renew Lease

13.1 Grant of Option

The Landlord grants to the Tenant an option (or options, as the case may be) to renew this lease for each Option Term (**Option**).

13.2 Exercise of Option

- (a) The Tenant may exercise the Option to renew this lease for the next Option Term by giving a written notice to the Landlord not earlier than 9 months, and not later than 3 months, before the expiry date of the then current Term.
- (b) Time is of the essence in this clause.

13.3 When Option does not apply

Notwithstanding anything else in this clause 13 to the contrary, the Tenant cannot exercise an Option if:

- (a) the Tenant does not give the Landlord notice of its exercise of that Option in the manner and during the period specified in clause 13.2;
- (b) the Tenant is in default of any of the terms or conditions of this lease at the time of giving the Option exercise notice; or
- (c) the Tenant has committed 3 or more breaches of this lease of which the Landlord has given notice during the then current Term.

13.4 New Lease after exercise of Option

If the Tenant validly exercises an Option, then:

- (a) the Landlord will grant to the Tenant a new lease for the relevant Option Term on the following terms and conditions:
 - (i) the new lease will commence and end on the commencement date and expiry date respectively of that Option Term, as specified in Item 5;
 - (ii) the commencing Rent will be determined in accordance with clause 3;
 - (iii) the Option for that Option Term will no longer apply; and
 - (iv) the terms and conditions of this lease will otherwise apply to the new lease;
- (b) the Tenant must accept that new lease;
- (c) the Tenant and each Guarantor (if any) must sign a deed prepared by the Landlord's solicitors recording the terms of the new lease, within 7 days after the Landlord has given that deed to the Tenant; and
- (d) the parties are, in any event, bound by the new lease even if that deed is not executed correctly or at all.

14 Holding Over

- (a) If the Tenant continues to occupy the Premises after the expiry of the Term with the Landlord's approval, it does so as a holding over tenant in accordance with this clause 14 (**Holding Over Lease**).
- (b) The Holding Over Lease is on the same terms as this lease except that:
 - (i) the Holding Over Lease will continue until it is terminated under clause 14(c) or otherwise under this lease;
 - (ii) the Holding Over Lease is subject to any changes which the Landlord requires as a condition of giving its approval to the Holding Over Lease (if any); and
 - (iii) the Tenant does not have any option to extend or renew the Holding Over Lease.
- (c) Either the Landlord or the Tenant may terminate the Holding Over Lease by giving one month's notice to the other.
- (d) The Rent payable during the Holding Over Lease will be as follows:
 - (i) the commencing Rent will be the same as the Rent payable immediately before the commencement of the Holding Over Lease increased by 5%; and
 - (ii) if applicable, the Rent will be increased by 5% on each 12 month anniversary of the commencement date of the Holding Over Lease.
- (e) At the end of the Holding Over Lease, the Tenant must comply with all of the Tenant's obligations which are due to be performed on or before the expiry or sooner determination of this lease (including all of the Make Good Obligations).

15 Tenant's Obligations when Lease Ends

15.1 Vacate Premises

At the end of this lease, the Tenant must vacate the Premises and surrender all Keys to the Landlord.

15.2 Make Good Obligations

During the last 3 months of the Term or within 7 days after the sooner determination of this lease, the Tenant must:

- (a) remove all:
 - (i) Improvements installed by the Tenant or at the request of the Tenant;
 - (ii) Tenant's Property;
 - (iii) Signage that was installed by the Tenant;
 - (iv) stockpiles created or deposited by the Tenant or the Tenant's Associates; and
 - (v) rubbish, debris and waste created or caused by the Tenant or the Tenant's Associates;
- (b) at the election of the Landlord, return the Premises and Service Facilities to the standard and configuration they were in:
 - (i) immediately prior to the Commencement Date; or
 - (ii) if the Tenant (or a Related Party to the Tenant) occupied all or any part of the Premises under any prior lease, licence or arrangement, then in respect of the relevant part of the Premises, immediately before the commencement of that lease, licence or arrangement;
- (c) reinstate any alterations made to the Premises or the Service Facilities by the Tenant or the Tenant's Associates;
- (d) remove all Contamination caused by the Tenant or the Tenant's Associates;
- (e) ensure that all Service Facilities (if any) are in good working order and condition and provide a report from a suitably qualified service and licensed contractor to certify that such Service Facilities are in good working order and condition;
- (f) repair any damage caused by the Tenant or the Tenant's Associates at any time (including by carrying out any Make Good Obligations); and
- (g) leave the Premises and the Service Facilities in a condition that is consistent with the proper compliance with the Tenant's obligations under this lease.

15.3 Extent and Standard of Work

- (a) The Tenant must carry out and complete the Make Good Obligations in accordance with the Work Standards.
- (b) Without being under any obligation to do so, the Landlord may direct the Tenant:
 - (i) not to perform any one or more of the Make Good Obligations; or

- (ii) to leave in the Premises any item which the Landlord considers to be structurally integral or a fixture.
- (c) An obligation to 'remove' something under clause 15.2 means an obligation to remove that thing from the Premises and the Land.

15.4 Abandonment of Tenant's Property

- (a) If the Tenant does not remove any of the Tenant's Property in accordance with clause 15.2 within 7 days after the end of this lease (**Abandoned Property**), then:
 - (i) the Abandoned Property is deemed to be abandoned by the Tenant;
 - (ii) the Landlord may remove, retain, store and/or sell the Abandoned Property on such terms as the Landlord thinks fit and at the Tenant's cost and risk;
 - (iii) the Landlord may apply the sale proceeds towards any unpaid money that is owing by the Tenant under this lease; and
 - (iv) the Tenant must do all things necessary to ensure that the Landlord can exercise its rights under this clause 15.4.
- (b) The Landlord is not liable in conversion or for any loss or damage in exercising its rights under this clause 15.4.
- (c) The Landlord's rights under this clause 15.4 constitute a security interest in the Abandoned Property as the collateral under the PPSA.

15.5 Failure to comply with Make Good Obligations

- (a) The Make Good Obligations and Tenant's obligations under clause 15.4 survive the expiration or sooner termination of this lease.
- (b) Without limiting to any other right or remedy available to the Landlord, if the Tenant fails to comply with the Make Good Obligations by the end of this lease, then:
 - (i) the Tenant must pay to the Landlord (on demand) a daily fee equal to 1/365th of the Rent and all other money payable by the Tenant under this lease during the 12 months immediately before the date that this lease came to an end until those Make Good Obligations have been performed; and
 - (ii) the Landlord may perform all or any of those Make Good Obligations at the Tenant's expense.

16 Essential Terms

Each of the following obligations by the Tenant is an essential term of this lease:

- (a) the obligation to pay Rent and all other money under this lease at the time and in the manner specified in this lease; and
- (b) the obligations in clauses 5, 6, 7, 8(a), 10.2, 10.3, 11, 12 and 15.

This clause does not prevent any other obligation under this lease being an essential term.

17 Default and Termination

17.1 Interest on overdue money

If the Tenant does not pay any money payable to the Landlord under this lease or under a judgment obtained by the Landlord against the Tenant within 7 days of the due date for payment, the Tenant must pay interest to the Landlord on the outstanding amount:

- (a) from the date the payment becomes due until the date the payment is made; and
- (b) at a rate equal to 15% per annum,

which interest accrues daily and is payable on written demand by the Landlord.

17.2 Survival of covenants and Landlord's right to remedy

- (a) The Tenant's obligation to observe and perform the Tenant's covenants and obligations under this lease will survive the expiry or earlier termination of this lease.
- (b) The Landlord may remedy any default or breach by the Tenant under this lease or failure to comply with any of the Tenant's covenants or obligations.
- (c) The Tenant must immediately pay on demand all costs and expenses incurred by the Landlord (including solicitors' costs on a full indemnity basis):
 - (i) in remedying any default or breach of the Tenant;
 - (ii) arising from any breach of this lease by the Tenant; and
 - (iii) for the preparation and service of any notice required to be served under the provisions of the *Property Law Act 1969*.

17.3 Termination

Without prejudice to any other rights the Landlord may have, the Landlord may immediately terminate this lease by:

- (a) re-entering or retaking possession of the Premises (with or without notice to the Tenant); or
- (b) giving written notice to the Tenant (with or without re-entering or re-taking possession of the Premises),

if:

- (c) the Tenant does not pay any amount of Rent or any other money under this lease within 7 days of the due date, whether or not any formal or legal demand for payment has been made;
- (d) the Tenant does not comply with any of its other obligations under this lease and that breach or non-compliance continues for 14 days after written notice is given to the Tenant by the Landlord requiring the Tenant to remedy the breach or non-compliance;
- (e) the Tenant abandons, vacates or otherwise surrenders the Premises during the Term except as required by this lease;
- (f) the Tenant repudiates this lease;

- (g) subject to any Law to the contrary (including Chapter 5 of the *Corporations Act 2001* (Cth)), the Tenant or any Guarantor (if that Guarantor is a director or shareholder of the Tenant) is a corporation and:
 - (i) is deregistered or an order is made or a resolution passed that the corporation be wound up (except for the purpose of reconstruction or amalgamation with the written consent of the Landlord); or
 - (ii) an administrator, a liquidator, a receiver, a manager or an inspector is appointed in respect of the Tenant or any Guarantor or any of the assets of the Tenant or any Guarantor or an order is made or a meeting is called for the appointment of such a practitioner; or
- (h) the Tenant is an individual and becomes bankrupt or takes or tries to take advantage of Part X of the *Bankruptcy Act 1966* (Cth).

17.4 Re-Entry

For the purposes of re-entry, the Landlord or its appointed agent or servant may enter the Premises by any means to resume possession of the Premises and may expel and remove all persons, furniture and other property from the Premises without being liable for any action for trespass, assault or other proceedings for doing so.

17.5 Prior breaches

The termination of this lease does not prejudice or affect any rights or remedies of the Landlord against the Tenant or any other party for any prior breach by the Tenant or that party of any obligation under this lease.

17.6 No waiver

The acceptance by the Landlord of any late payment or part payment or arrears is not a waiver of the Tenant's obligation to pay the full Rent and other money in accordance with this lease.

17.7 Landlord may re-lease

If the Tenant abandons or vacates the Premises prior to the expiration of the Term without the Landlord's consent and without lawful excuse, the Landlord may (before terminating this lease):

- (a) seek and find an alternative tenant for the Premises and permit prospective tenants to inspect the Premises;
- (b) renovate, restore and clean the Premises;
- (c) change the locks and secure the Premises; or
- (d) accept the Keys to the Premises,

without terminating or being deemed to have terminated this lease by re-entry or otherwise or accepted a surrender of this lease and such action will not constitute forfeiture or a waiver of any of the Landlord's rights under this lease or at common law.

17.8 Entitlement to Damages

- (a) The Landlord may recover damages against the Tenant and the Tenant must compensate the Landlord for the loss suffered by the Landlord as a result of any repudiation or breach of this lease (whether or not this lease is terminated for that breach).

- (b) The Landlord's entitlement under this clause is in addition to any other remedy or right to which the Landlord is entitled (including termination of this lease).
- (c) The Landlord's entitlement to recover damages is not affected or limited even if:
 - (i) the Tenant abandons or vacates the Premises;
 - (ii) the Landlord elects to re-enter or terminate this lease;
 - (iii) the Landlord accepts the Tenant's repudiation; or
 - (iv) the party's or parties' conduct constitutes a surrender by operation of law.

17.9 Mitigation of Damages

If the Landlord terminates this lease, the Landlord must take reasonable steps to mitigate its loss. The Landlord's conduct to mitigate damages will not by itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

18 Indemnity by Tenant

- (a) The Tenant is liable for (and indemnifies the Landlord against) all Loss for which the Landlord is, or may become, liable in connection with:
 - (i) the Tenant's use and occupation of the Premises or the Land;
 - (ii) any breach of this lease by, or act or omission of, the Tenant or the Tenant's Associates;
 - (iii) any works performed by the Tenant under this lease; or
 - (iv) anything entering, leaving or affecting the Premises within the control of the Tenant.
- (b) The Tenant's liability and indemnity under clause 18(a) does not apply to the extent that any claim arises out of the Landlord's negligence or breach of this lease.

19 Damage to the Premises

19.1 Termination or reinstatement

If the Premises or the Improvements is damaged or destroyed so that the whole or a substantial part of the Premises is unfit for use by the Tenant, then:

- (a) the Landlord may (in its absolute discretion) give the Tenant a notice which states that the Landlord intends to make the Premises fit for use by the Tenant (**Reinstatement Notice**); and
- (b) if the Landlord does not give a Reinstatement Notice within 3 months after the damage or destruction first occurred, then either the Landlord or the Tenant may terminate this lease before a Reinstatement Notice is given.

19.2 Failure to Reinstat

If:

- (a) the Landlord gives a Reinstatement Notice; and

- (b) does not make the Premises fit for use by the Tenant within 9 months after giving that Reinstatement Notice (or such longer period that is reasonable having regard to the extent of the damage and the time required to obtain all necessary approvals and to carry out the necessary works),

then:

- (c) the Tenant may give the Landlord a notice of intention to terminate this lease; and
- (d) if the Landlord does not make the Premises fit for use by the Tenant within 30 days after the Landlord receives that notice, the Tenant may terminate this lease by a further notice to the Landlord.

19.3 Reduction of rent and other money

- (a) If the Premises or the Improvements is damaged or destroyed so that the whole or a substantial part of the Premises is unfit for use by the Tenant, then the Landlord will reduce the Rent and Outgoings by a reasonable amount having regard to the extent of the damage or destruction.
- (b) If the Tenant disputes the amount of the reduction under clause 19.3(a) by giving notice to the Landlord within 14 days after the reduction is applied, then:
 - (i) the reduction will be determined under clause 19.4; and
 - (ii) the Tenant must continue paying Rent and Outgoings under this lease until the amount of the reduction is determined under clause 19.4. Once the reduction is determined, an adjustment will be made for any amount overpaid.

19.4 Dispute resolution

A dispute arising:

- (a) under clause 19.2 as to the time that is reasonable for the Landlord to make the Premises fit for use by the Tenant; or
- (b) under clause 19.3 as to the reduction in payments,

is to be determined at the joint expense of the Landlord and the Tenant by a suitably qualified person nominated by the President of the API. Either the Landlord or the Tenant may ask the President to nominate that person. That person will act as an expert and not an arbitrator.

19.5 No Other Liability

- (a) The Landlord is not liable for any Claim suffered by the Tenant as a result of this lease being terminated under this clause 19.
- (b) Nothing in this clause 19 imposes an obligation on the Landlord to make good, repair or reinstate the Premises or the Improvements.

19.6 Tenant's Fault

The Tenant is not entitled to terminate this lease and is not entitled to a reduction to Rent and Outgoings under this clause 19 if:

- (a) the Landlord has not received any insurance proceeds because of any act, default or negligence of the Tenant or the Tenant's Associates; or

- (b) the damage or destruction was caused by, or substantially contributed to by, any act, default or negligence of the Tenant or the Tenant's Associates.

20 Dealing with the Land

20.1 Change of Ownership

If any person who is the Landlord under this lease ceases to be the registered proprietor of the Premises, then from the date that occurs:

- (a) that person is released from its obligations under this lease; and
- (b) the registered proprietor(s) of the Premises following the relevant transfer, becomes the Landlord under this lease instead.

20.2 Subdivision and Amalgamation

- (a) The Landlord may at any time during the Term amalgamate the Land with any other land or subdivide the Land (or any part of it).
- (b) Despite any other terms of this lease, if the Landlord wishes to amalgamate or subdivide the Land (or any part of it):
 - (i) the Tenant must consent to the amalgamation or subdivision (as the case may be);
 - (ii) the Tenant must sign all documents that are necessary to enable the Landlord to carry out the amalgamation or subdivision and to amend this lease in accordance with clause 20.2(b)(iii); and
 - (iii) the Landlord may amend this lease to ensure that, to the extent that it is possible, the rights and obligations of the parties under this lease are maintained.

20.3 Tenant's caveats or encumbrances

Immediately on receiving a request from the Landlord to do so, the Tenant must withdraw any Encumbrance it has lodged (if any) to enable the Landlord to carry out an amalgamation or a subdivision.

20.4 Grant of easements and rights

- (a) The Landlord may:
 - (i) for the purpose of providing any public or private access to any part of the Land or Improvements or for rectifying any encroachment; or
 - (ii) for the support of any structures or Service (whether present or future), dedicate land or transfer, grant or create or take the benefit of any easement or other right to or from, or enter into any arrangement or agreement with, any owners, tenants or occupiers or others having an interest in any land (including the Land) near the Premises or with any Authority (under any valid and enforceable requirement of that Authority) as the Landlord thinks fit.
- (b) This lease will be taken to be subject to any easement or other right created or effected under clause 20.4(a) and the Tenant must promptly on written request by

the Landlord confirm to Landgate or any other relevant Authority its consent to that easement or other right.

20.5 Resumptions

- (a) This lease is not affected by, and there is no right of termination by either the Landlord or the Tenant arising from:
- (i) any resumption of any part of the Land; or
 - (ii) any agreement between the Landlord and any Authority with respect to any public service or utility or facility in or over or beneath the Land,
- unless it results in the Premises being wholly unfit for occupation or use for the purpose for which the Premises were leased, in which event the Tenant may terminate this lease by giving written notice of its intentions to the Landlord and this lease will then be determined but without prejudice to any claim by either party against the other in respect of any other breach of any of the provisions of this lease.
- (b) The Landlord is solely entitled to any compensation payable unless the resumption directly affects the Premises and the business carried on within the Premises by the Tenant, in which event such compensation must be divided between the Landlord and the Tenant in such manner as the Landlord, acting reasonably, may determine.

21 PPSA

21.1 PPSA definitions

Unless otherwise defined in this lease, words and expressions defined in the PPSA have the same meaning when used in this clause 21.

21.2 Application of clause to security interests

In relation to each security interest under the PPSA created by this lease:

- (a) this clause 21 applies to that security interest;
- (b) the security interest extends to any accessions to the relevant collateral and the proceeds, if any, of that collateral (including any account); and
- (c) this lease is a security agreement under the PPSA in relation to that security interest.

21.3 Acknowledgements

- (a) In relation to each security interest created by this lease:
- (i) the security interest attaches to the relevant collateral from the date of this lease and there is no agreement to defer attachment to a later time than as specified above;
 - (ii) the Landlord may register any financing statement, financing change statement or other documents and do all other things which are necessary or desirable to perfect and maintain the Landlord's security interest under this lease, to preserve its interest in the relevant collateral and to realise the Landlord's security interest with the agreed priority;

- (iii) the Tenant must pay all fees and expenses (including legal fees) incurred by the Landlord in doing any of the things referred to in clause 21.3(a)(ii) on demand; and
 - (iv) nothing in this clause 21 or this lease obliges the Landlord to register, perfect or maintain any security interest created by this lease and any failure or delay by the Landlord to do so does not in any way affect or limit the obligations of any other party under this lease.
- (b) The parties agree that the Tenant's Property and any partitions, equipment, facilities, fixtures, fittings brought onto the Premises by any predecessor of the Tenant which are not required by the Landlord to be removed by the Tenant before vacating the Premises in accordance with this lease are deemed to be fixtures of the purposes of the PPSA.

21.4 PPSA obligations and third party information

- (a) The Tenant must execute any documents and provide all relevant information and full cooperation to the Landlord to ensure the Landlord has a perfected security interest in the relevant collateral under the PPSA.
- (b) The Tenant must not sell, transfer, lease, encumber, part with possession of or otherwise deal with any of its rights and interest in the relevant collateral or any part of it without the prior written consent of the Landlord.
- (c) The Tenant must notify the Landlord in writing within 3 Business Days after any change in the Tenant's name, trading name or contact details (including its address).
- (d) The Tenant appoints the Landlord (and if the Landlord is a corporation, each officer of the Landlord for the time being) as its agent and authorised representative for the purpose of requesting information from other secured parties under section 275 of the PPSA.

21.5 Waivers and PPSA provisions not applicable

- (a) The Tenant waives its rights to receive any notice under the PPSA (including a copy of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- (b) Where the Landlord has rights in addition to those in Chapter 4 of the PPSA, those rights continue to apply.
- (c) Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA are excluded to the fullest extent permitted by section 115 of the PPSA.

22 Power of Attorney

- (a) The Tenant for valuable consideration irrevocably appoints the Landlord and (if the Landlord is a company) every director and secretary of the Landlord (jointly and severally) to be the Tenant's attorney to:
 - (i) withdraw any caveat which the Tenant is required to withdraw but fails to do so;
 - (ii) complete, execute and register a surrender of this lease at Landgate after this lease ends.

- (b) The Tenant hereby irrevocably ratifies all that the attorney does or causes to be done under this clause.

23 Notices

23.1 Requirement for writing

A notice, demand, consent or other communication (a **Notice**) given or made under this lease must be:

- (a) in writing; and.
- (b)
- (c) signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender).

23.2 Serving notices

A Notice given or made under this lease must be delivered to the intended recipient by:

- (a) hand (including by courier) to the address specified in Item 9 or the address last notified by the intended recipient to the sender;
- (b) post to the address specified in Item 9 or the address last notified by the intended recipient to the sender;
- (c) email to the email address specified in Item 9 or the email address last notified by the intended recipient to the sender; or
- (d) fax to the fax number (if any) specified in Item 9 or the fax number last notified by the intended recipient to the sender.

23.3 When effective

- (a) Subject to clause 23.3(b), a Notice will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting;
 - (iii) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within the next 3 hour period, an automated message that the email has not been delivered; and
 - (iv) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and

the correct destination fax number or name of recipient and indicating that the transmission has been made without error.

- (b) If, under clause 23.3(a), a Notice would be taken to be given or made on a day that is not a business day in the place to which a Notice is sent or at later than 5.00pm (in the place that a Notice is sent to), it will be taken to have been duly given or made at the start of business on the next business day in that place.

24 Trustee Covenants

If the Tenant or the Guarantor at any time during the Term is the trustee (**Trustee**) of a trust and whether or not the trust is disclosed to the Landlord (**Trust**), the Tenant and the Guarantor jointly and severally covenant with and warrant to the Landlord that:

- (a) the Trustee has full power and authority to enter into this lease;
- (b) the Trustee has obtained all consents and approvals necessary to execute this lease so as to bind the property of the Trust;
- (c) the Trustee enters into this lease and is bound by the terms and conditions in this lease both in its own right personally and in its capacity as trustee;
- (d) the assets of the Trust and the personal assets of the Tenant and the Guarantor will, at all times, be available to satisfy the obligations of the Tenant under this lease;
- (e) the Trustee is the sole trustee of the Trust;
- (f) the Trustee (or any of one of them, if there is more than one) will not cease to be the trustee of the Trust unless it complies with clause 11 and the new trustee enters into a deed referred to in clause 11.2(a)(v);
- (g) the Trust will remain in force and will not be varied or vested during the Term; and
- (h) the Trustee will not do any act or thing or omit to do any act or thing so as to harm or impair or be likely to harm this lease or the covenants, terms and conditions of it.

25 Limitation on Landlord's Liability

25.1 General Limitation

- (a) The Landlord is not liable for:
 - (i) any loss or damage suffered by any person;
 - (ii) the injury or death of any person; or
 - (iii) the loss or damage of any property, including the Tenant's stock,
 that occurs in or about the Premises or the Land however occurring unless caused by the wilful act, negligence or default of the Landlord.
- (b) The Landlord is not liable for any Loss suffered by the Tenant from any malfunction, failure to function or interruption of or to any of the Service Facilities or equipment contained in or provided to the Premises however occurring unless caused by the wilful act, negligence or default of the Landlord.

25.2 Landlord as trustee

If the Landlord has entered into this lease as trustee of a trust, then:

- (a) the Landlord has done so in no other capacity;
- (b) the Landlord is not liable personally to the Tenant for any breach of the Landlord's obligations under or implied by this lease;
- (c) no officer of the Landlord is liable personally to the Tenant;
- (d) in respect of any breach by, or liability of, the Landlord under this deed or lease, the Tenant is only able to claim any Loss from the Landlord to the extent that the Landlord is able to be (and is) reimbursed from the net assets of that trust; and
- (e) the Tenant must not seek the appointment of an administrator, liquidator, receiver or similar person to the Landlord personally or prove in any administration, liquidation or other arrangement of or affecting the Landlord personally.

26 Encumbrances

26.1 Encumbrances

- (a) This lease is subject to any Encumbrances affecting the Land.
- (b) The Tenant must not do anything which would cause the Landlord to be in breach of any Encumbrance affecting the Land.

26.2 Tenant Not to Encumber Leasehold Interest

Except with the Landlord's prior written consent, the Tenant must not mortgage, charge or otherwise encumber the Tenant's interest under this lease or any part of it.

26.3 No Absolute Caveat to be Lodged

- (a) Neither the Tenant nor any agent or other person on behalf of the Tenant may lodge a caveat against the Land Strata Lot other than a subject to claim caveat to protect the Tenant's interests under this lease.
- (b) The Tenant must withdraw any caveat it has lodged against the Land immediately upon this lease ending.

27 Costs

- (a) The Tenant must pay the Landlord on demand for:
 - (i) any duty on this lease (if any);
 - (ii) the Landlord's reasonable costs, expenses and disbursements (including legal costs) in connection with:
 - (A) the negotiation, preparation and completion of this lease;
 - (B) any mortgagee consent;
 - (C) any extension or renewal of this lease, including the costs of the deed referred to in clause 13.4;
 - (D) any assignment or subletting;

- (E) any consent sought from the Landlord under this lease;
 - (F) any work or activity that is carried out by the Tenant which affects the Premises or the Improvements; and
 - (G) any default by the Tenant or the Tenant's Associates in observing or performing the obligations in this lease.
- (b) Anything the Tenant must do under this lease must be done at the Tenant's cost, unless this lease expressly provides otherwise.

28 GST

- (a) In this clause:
- (i) **GST** has the same meaning as in the GST Act and includes any replacement or subsequent similar tax;
 - (ii) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) all terms which are defined in the GST Act have the same meaning as they are given by the GST Act when they are used in this clause.
- (b) Unless otherwise expressly provided in this lease, the Rent and any other consideration or money payable by the Tenant under this lease is expressed as a GST exclusive amount.
- (c) If the Landlord pays or is liable to pay any GST on the Rent or any other taxable supply made in respect of or in connection with this lease, then the Tenant must pay to the Landlord the amount of that GST at the same time the payment for the taxable supply is due under this lease.
- (d) The Tenant indemnifies the Landlord for the amount of any GST the Landlord pays or is liable to pay on a taxable supply made in respect of or in connection with this lease.
- (e) The Landlord must issue a tax invoice to the Tenant in respect of a taxable supply as and when required by the GST Act.
- (f) The amount for GST payable by the Tenant under this clause will be reduced by the amount of any input tax credit in relation to that amount which the Landlord has received or claims and is entitled to receive.

29 WAPC Approval

If this lease requires the approval of the WAPC under section 136 of the *Planning and Development Act 2005* (WA), then:

- (a) the Landlord must within 3 months after the date of this lease apply to the WAPC for that approval;
- (b) this lease is conditional on that approval being obtained (on terms and conditions acceptable to the Landlord acting reasonably) within 9 months after the date of execution of this lease; and

- (c) the Landlord must promptly:
 - (i) inform the Tenant of the decision of the WAPC;
 - (ii) provide the Tenant with a copy of the WAPC approval once obtained; and
- (d) the Tenant must pay for the Landlord's costs in connection with applying to the WAPC for approval.

30 Special Conditions

The special conditions (if any) set out in Item 10 (**Special Conditions**) will be treated as incorporated in this lease as if fully set out in it. If there is any inconsistency between the terms of this lease and the Special Conditions, then the Special Conditions prevail to the extent of that inconsistency.

31 General

31.1 Registration of Lease

- (a) Unless this lease is prepared in registrable form, the Landlord is not required to register this lease at Landgate.
- (b) If the Landlord wishes to register this lease at Landgate, then:
 - (i) if required by the Landlord:
 - (A) the Tenant must sign such documents as may be necessary to convert this lease into registrable form, including the relevant Landgate form; and
 - (B) the Landlord may amend or replace the Plan in this lease with another plan in a form that is acceptable to Landgate; and
 - (ii) the Tenant must pay for the Landlord's reasonable costs in connection with registration of this lease (including any survey costs and Landgate production of title and registration costs).
- (c) If this lease is registered at Landgate, the Tenant must also execute and lodge a surrender of the registered lease with Landgate within 14 days after this lease ends.

31.2 Mortgagee Consent

The Landlord is not required to obtain the consent of any mortgagee to this lease unless the Landlord is required to, or wishes to, register this lease and it is necessary to enable registration to occur.

31.3 Confidential Information

- (a) For the purposes of this clause 31.3 **Confidential Information** means:
 - (i) the terms of this lease;
 - (ii) the amount of money payable by the Tenant;
 - (iii) any incentives granted by the Landlord to the Tenant at any time; and
 - (iv) information designated by the Landlord as being confidential.

- (b) The Tenant acknowledges and agrees that the Confidential Information is strictly confidential.
- (c) The Tenant must treat all Confidential Information as strictly confidential and must not disclose any Confidential Information, directly or indirectly to any person except:
 - (i) in connection with an exercise of rights or a dealing with rights or obligations under this lease;
 - (ii) to its legal and other advisers and auditors; or
 - (iii) as required by any Law or any stock exchange.

31.4 Landlord's Consents and Approvals

- (a) Except as otherwise provided in this lease, any consent or approval which may be granted by the Landlord under this lease may be granted, refused or given subject to conditions, in the absolute discretion of the Landlord.
- (b) If the Tenant requests the consent of the Landlord, the Tenant must pay to the Landlord all costs and expenses reasonably incurred by the Landlord (including legal costs) in considering that request, whether or not the consent is granted.

31.5 Landlord May Act by Agent

All acts and things which the Landlord is required or able to do under this lease may be done by the Landlord or any solicitor, agent, contractor or employee of the Landlord, including the Managing Agent.

31.6 Statutory Powers add to Express Powers

Unless inconsistent with the provisions of this lease, the powers conferred on the Landlord under any statute are in addition to the powers conferred on the Landlord by this lease.

31.7 Execution by Attorney

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstances that might affect his or her authority to do so.

31.8 No waiver

- (a) A failure to exercise or a delay in exercising any right, power or remedy under this lease does not operate as a waiver.
- (b) No consent or waiver expressed or implied by the Landlord to or in respect of any breach of the Tenant's obligations under this lease is to be construed as a consent to or waiver of any other breach of that obligation or any other term contained or implied in this lease.
- (c) A waiver is not valid or binding on the Landlord unless it is made in writing.

31.9 No merger

The terms and conditions of this lease or anything done under or in connection with this lease or any other agreement between the Landlord and Tenant will not operate as a merger of any of the rights and remedies of the parties in or under this lease, or in or under any other agreement, all of which will continue in full force and effect.

31.10 Severance

If any provision of this lease or its application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of this lease, which will continue in full force and effect as if the invalid or unenforceable provision had not been included in it.

31.11 Moratorium

The application to this lease of any moratorium or statute (State or Federal) having the effect of:

- (a) extending the Term, reducing or postponing the payment of any Rent or otherwise affecting the operation of the obligations to be performed or observed by the Tenant; or
- (b) providing for compensation, rights or privileges at the expense of the Landlord in favour of the Tenant or any other person,

is expressly excluded and negated so far as the exclusion and negation is lawful.

31.12 Indemnities

Each indemnity in this lease is independent from the Tenant's other obligations and continues during this lease and after this lease ends. The Landlord may enforce an indemnity before incurring expense.

31.13 Entire agreement

This lease covers the whole of the agreement between the parties and no further or other covenants or provisions, whether in respect of the Premises or otherwise, will be considered to be implied or to arise between the parties by way of any collateral or other agreement.

31.14 Digital execution of Lease

This lease and any permitted dealing with this lease is valid and binding notwithstanding that this lease can be or has been signed by an electronic means and with a digital signature.

31.15 Execution by Counterpart

- (a) This lease may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) A party may execute this lease or any counterpart and exchange it by fax or as an electronic copy by email.

31.16 Governing law

This lease will be construed in accordance with and governed by the Law of Western Australia. Each party submits to the non-exclusive jurisdiction of its courts.

Schedule – Lease Details

1 Premises (clause 1.1(hh))

That part of the Land and the Improvements thereon (if any) comprising an area of approximately 25 hectares and being the premises shown hatched and shaded in blue on the Premises Plan.

2 Land (clause 1.1(t))

Lot 7779 on Deposited Plan 209806 being the whole of the land in Certificate of Title Volume 1608 Folio 716.

3 Landlord's Property (clause 1.1(w))

Any floor or window coverings, partitions, light fittings and other fixtures or fittings installed by the Landlord in the Premises and any replacement of those items.

4 Term (clause 1.1(vv))

- | | | |
|-----|--------------------|-------------------------------------|
| (a) | Period: | 5 years |
| (b) | Commencement Date: | day of 2019 |
| (c) | Expiry date: | 5 years after the Commencement Date |

5 Options (clause 13)

- | | | |
|-----|------------------------|---|
| (a) | The first Option Term | |
| | Period: | 5 years |
| | Commencement date: | The day after the expiry of the initial Term |
| | Expiry date: | 5 years after the commencement date of the first Option Term |
| (b) | The second Option Term | |
| | Period: | 5 years |
| | Commencement date: | The day after the expiry of the first Option Term |
| | Expiry date: | 5 years after the commencement date of the second Option Term |
| (c) | The third Option Term | |
| | Period: | 5 years |
| | Commencement date: | The day after the expiry of the second Option Term |
| | Expiry date: | 5 years after the commencement date of the third Option Term |

6 Rent (clause 3.1)

- (a) Annual rent: \$26,000.00 plus GST
- (b) Instalments payable: \$500.00 plus GST per week
- (c) Rent Commencement Date: The Commencement Date
- (d) Payment dates: Instalments are payable weekly in advance on the first day of each week.
- The first instalment must be paid on the Rent Commencement Date.
- If the Rent Commencement Date is not the first day of a week, the first and last Rent instalments during the Term will be proportionate.

7 Rent Review Dates (clause 3.2)

- (a) **Greater of CPI and Fixed Percentage Rent Review Dates:**
- On each 12 month anniversary after the Commencement Date during the Term (including each Option Term)

8 Permitted Use of the Premises (clause 1.1(ee))

Composting facility.

9 Contact Details (clause 23.2)

The parties' contact details for the purposes of clause 23.2 are:

- (a) **Landlord**
- Address: 25 Katanning Street
BAYSWATER WA 6053
- Fax Number: None specified
- Email: vince@vinsan.com.au
- (b) **Tenant**
- Address: 25 Katanning Street
BAYSWATER WA 6053
- Fax Number: None specified
- Email: None specified

10 Special Conditions (clause 30)

10.1 Commencement Date

- (a) The Commencement Date will be the date on which the date upon which the Tenant commences its business operation from the Premises (as certified by the Landlord).

- (b) Once the Commencement Date is determined in accordance with Item 10.1(a), the Tenant irrevocably authorises and directs the Landlord or its Managing Agent to:
 - (i) insert the relevant dates into Item 4(b) by hand; or
 - (ii) replace the relevant pages of this lease with new pages containing those dates.

10.2 Right of first refusal to purchase the Premises

(a) Application of Clause

This Item 10.2 and the Tenant's rights under it only apply if the Landlord has subdivided the Land to create a separate certificate of title for the Premises.

(b) Landlord's notice

If:

- (i) the Landlord wants to sell the Premises during the Term; and
- (ii) the Tenant is not then in breach of an essential term of this lease,

then the Landlord must give the Tenant a notice (**Landlord's Notice**):

- (iii) that the Landlord wants to sell the Premises; and
- (iv) attaching the contract for sale of land setting out the terms on which the Landlord wants to sell the Premises (**Contract**).

(c) What the Tenant must do

If the Tenant wants to purchase the Premises on the terms set out in the Contract for sale then, within 14 days of the receipt of the Landlord's Notice (in which respect time is of the essence), the Tenant must sign the Contract and deliver it to the Landlord together with the deposit and any other money or documents that the Contract requires to be handed over.

(d) Contract

A contract for the sale of the Premises comes into existence between the Landlord and the Tenant on the day the Tenant complies with Item 10.2(c). As soon as practicable after receipt of the Contract, the Landlord must give the Tenant a copy of the fully-executed Contract.

(e) If the Tenant does not comply

If the Tenant does not comply with Item 10.2(c), the Landlord may sell the Premises to any other person for a purchase price that is not less than the purchase price specified in the Contract.

(f) Sale for a lower purchase price

If:

- (i) the Landlord wants to sell the Premises to another person for a purchase price that is less than the purchase price specified in the Contract; and
- (ii) the Tenant is not then in breach of an essential term of this lease,

then the Landlord must comply again with Item 10.2(a) and Items 10.2(c) and 10.2(d) will apply again (except that the time period of 14 days in Item 10.2(c) will be 7 days).

(g) **Excluded circumstances**

Item 10.2(a) to 10.2(f) do not apply if:

- (i) the Landlord sells the Premises under an auction, public tender or set date sale campaign sale process;
- (ii) the Landlord sells or transfers the Premises to a Related Party; or
- (iii) the Land is being sold by the Landlord's mortgagee or by any receiver appointed by that mortgagee.

(h) **Personal rights**

The rights granted under this Item 10.2 are personal to Wannamal Rd Organics Pty Ltd ACN 604 725 019 and may not be assigned or otherwise dealt with.

(i) **Definitions**

In this Item 10.2 **Related Party** means any corporation, person or entity which is:

- (i) a related entity to (as defined in the *Corporations Act 2001* (Cth)); or
- (ii) an associate of (as defined in the *Income Tax Assessment Act 1997* (Cth)); or
- (iii) controlled by or capable of being controlled by (whether by virtue of equity ownership, directorships or any agreement or arrangement),

the Landlord (or a director of the Landlord).

10.3 Bore maintenance

The Tenant is responsible for and must pay all costs associated with the use, operation, maintenance and repair of the bore on the Premises.

10.4 Fencing and gates

Subject to clause 7, the Tenant must at its own expense and at all times during the Term:

- (a) install any fencing or gates on the Premises that it considers necessary to secure the Premises; and
- (b) repair, keep and maintain in good repair all fencing on the Premises in a good state of repair and condition.

Executed by the parties as a deed.

The Landlord:

Executed by Vinsan Holdings Pty Ltd ACN 009 026 484 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director's signature

Santo DiAngelo

Director's name (please print)



Director/Secretary's signature

VINCE DIANGELO

Director/Secretary's name (please print)

The Tenant:

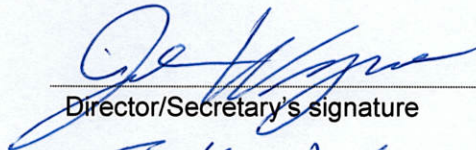
Executed by Wannamal Rd Organics Pty Ltd ACN 604 725 019 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director's signature

PETER KEATINGE

Director's name (please print)



Director/Secretary's signature

JOHN WYNNÉ

Director/Secretary's name (please print)

Annexure A – Premises Plan

