



EQUIPMENT AND MOTOR VEHICLE FINANCE LEASE AGREEMENT

BETWEEN

SMITH SUPER NOMINEES PTY LTD ACN 124 547 877
ATF THE SMITH FAMILY SUPER FUND

(THE LESSOR)

AND

JOHN SMITH ATF THE SMITH FAMILY TRUST

(THE LESSEE)

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LAST UPDATED 1 JULY 2020

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EQUIPMENT AND MOTOR VEHICLE FINANCE LEASE

This lease agreement is made on

between

- 1. **THE LESSOR:** Smith Super Nominees Pty Ltd ACN 124 547 877 of 5 Smith Street, Sydney New South Wales 2000 ATF The Smith Family Super Fund (**Lessor**)
- 2. **THE LESSEE:** John Smith of 5 Smith Street, Sydney New South Wales 2000 ATF The Smith Family Trust (**Lessee**)

BACKGROUND:

- 1. The Lessor has agreed at the request of the Lessee to acquire the goods and to lease the goods to the Lessee.
- 2. The Lessor and the Lessee have agreed to enter into this agreement to set out the terms and conditions of the lease of the goods.

1 Definitions and interpretation

1.1 Definitions

In this lease (including the background) unless the contrary intention appears:

Ancillary Items has the meaning given in clause 2.2.

Balance Due means, in respect of the goods at the relevant time, that amount which is, at that time, the sum of:

- (a) all Rent and other amounts due or accrued due under this Lease;
- (b) interest on the amounts in paragraph 1.1(a) calculated in accordance with clause 7.5;
- (c) the present value of the balance of the total rent that would have been payable during the remainder of the term but which is not then due for payment; and
- (d) the present value of the residual value, the present values being calculated by discounting at the implicit interest rate (as determined by the Lessor) in this lease.

Bank has the same meaning as "banking business" which is defined in the Banking Act 1959 (Cth).

Business Day means, in respect of each payment or other transaction or calculation which needs to be made or done under this lease or for the purposes of this lease, a day on which business by and between banks may be carried on in Sydney.

Casualty Occurrence has the meaning given to it in clause 11.3(a).

Certified Value means the value at the relevant time of the goods as certified either by a dealer in goods of a similar description to the goods or by a licensed valuer, in either case selected by the Lessor.

Commencement Date means 1 September 2020 or such other date as the Lessor and the Lessee agree in writing.

Default Rate means a rate of the Reserve Bank Small Business Rate for outstanding loans per annum.

Documentation Costs means an aggregate amount of \$1,200 (One Thousand Two Hundred Dollars and No Cents), comprising fees for registration of this Lease on the PPSR of \$50 (Fifty Dollars and No Cents).

Event of Default means any of the events, omissions or occurrences specified in clause 15.1.

Goods means the Used Mercedes CLK 250 convertible Qld registration Number SMSF as well as each or any replacement, altered or substitute part and all appliances, parts, components, instruments, appurtenances, accessories and other equipment which may from time to time be incorporated or installed in or attached to the goods and, except where the context otherwise requires, includes any part of such goods but, subject to clause 2.3 does not include intellectual property or services.

GST has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Lease means the lease made on the terms and conditions set out in this agreement as varied or supplemented from time to time.

Location means:

- (a) if the Goods are movable goods, the jurisdiction or jurisdictions in which the Lessee and the Lessor have agreed in writing from time to time that the Goods may be used or, as the context requires, the premises or address at which the Lessee and the Lessor have agreed in writing from time to time that the Goods will be kept, used or garaged (as the case may be), being at the date of this Lease New South Wales and 5 Smith Street NSW 2000, respectively.

Net Proceeds of Sale means the proceeds of sale or other disposal of the Goods received by the Lessor under clause 18 after deducting all expenditure, including a sum for legal costs (on a solicitor and own client basis) and expenses incurred by the Lessor in the seizure, storage and valuation of the Goods, costs and expenses of and incidental to the sale or attempted sale or other disposal of the Goods by the Lessor and costs and expenses of and incidental to related enforcement advice or action or both.

PMSI means a purchase money security interest as defined in the PPSA.

PPSA means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Proceeds has the same meaning as in the PPSA.

Related Body Corporate means, in relation to the Lessee, a corporation, wherever incorporated or registered, which is related, as defined in section 50 of the Corporations Act 2001 (Cth), to the Lessee.

Rent means each of the 48 months instalments of \$922 per month being the rent payable under this Lease and **Total Rent** means \$65,254 (Sixty-Five Thousand Two Hundred Fifty-Four Dollars and No Cents) being the total of those instalment amounts or, where there has been a partial loss of the Goods as contemplated by clause 11.3(a)(ii), a partial termination of this Lease as contemplated by clause 13.1 or an extension of the term as contemplated by clause 14.1, the instalments advised by the Lessor to the Lessee under clause 11.3(c), clause 13.3 or clause 14.1, respectively, and "total rent" will have a corresponding meaning.

Rent Payment Dates means the 1st of each month commencing on 1 September 2020 to and including 1 August 2024.

Residual Value means \$20,000, being a pre-estimate of the value of the Goods upon the expiry of the term or, where there has been a partial loss of the Goods as contemplated by clause 11.3(a)(ii), a partial termination of this Lease as contemplated by clause 13.1 or an extension of the term as contemplated by clause 14.1, the amount advised by the Lessor to the Lessee under clause 11.3(c), clause 13.3 or clause 14.1, respectively.

Return Address means 5 Smith Street Sydney NSW 2000 or such other address as is notified by the Lessor to the Lessee from time to time or upon request by the Lessee as the address to which the Goods must be delivered by the Lessee upon expiration or other termination of this Lease.

Security Interest has the same meaning as in the PPSA.

Term means a period commencing on the Commencement Date and expiring Four years after that, being the term of this Lease.

Write-off has the meaning given to it in clause 11.3(a).

1.2 Interpretation

- (a) Words importing the singular number include the plural and vice versa. Any gender includes the other genders. Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agent.
- (b) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments, modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (c) The clause headings in, and the index to, this Lease are for reference purposes only and do not in any way influence or affect the meaning of this Lease.
- (d) A reference to any deed, agreement, licence, document or other instrument (including this Lease) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- (e) A reference to any party to this Lease or to any other deed, agreement, licence, document or other instrument required under this Lease or for the purposes of this Lease includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (f) Where under or pursuant to this Lease or anything done under this Lease the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on the immediately [*preceding/succeeding*] four (4) Business Day.
- (g) Where under or pursuant to this Lease or anything done under this Lease the day on or by which any act, matter or thing is to be done is the 29th, 30th or 31st day of any month in which such a day does not occur, such act, matter or thing must be done on the last Business Day of that month.
- (h) References to clauses are references to clauses of this Lease.
- (i) A reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution, and becoming an insolvent under administration (as defined

in section 9 of the Corporations Act 2001 (Cth)) and to the circumstances and events giving rise to or constituting such condition or matters.

1.3 Sole agreement

Subject to clause 9.1, the covenants and provisions contained in this Lease exclusively and completely state the rights of the Lessee and the Lessor with respect to the leasing of the Goods. This Lease supersedes all negotiations and prior agreements, whether written or oral, in respect of the Lessor leasing the Goods, or Goods of a similar class, category or description, to the Lessee or to any Related Body Corporate or any person associated with the Lessee or such Related Body Corporate.

1.4 Joint and several liability

Where the Lessee comprises more than one person, the covenants and agreements on their part contained or implied in this Lease bind them jointly and each of them separately.

2 Lease

2.1 Lease of Goods

Subject to clause 3, on and from the Commencement Date the Lessor must lease to the Lessee and the Lessee must take on lease from the Lessor the Goods for the Term at the Total Rent and on the terms and conditions contained in this Lease.

2.2 Ancillary Items

If:

- (a) the Lessee wants to acquire intellectual property in connection with the Goods (for example, a software licence granted by a third party) or to pay the costs of assembling, installing or otherwise making the Goods ready for use by the Lessee (Ancillary Items);
- (b) requires the Lessor's assistance under this Lease in order to do so;
- (c) the Lessor has agreed to provide such assistance;
- (d) the Lessee and the Lessor agree that the Lessor will acquire the Ancillary Items as the Lessee's agent and that the Rent and Total Rent amounts are calculated as if the cost of the Ancillary Items forms part of the cost of the Goods; and
- (e) our Security Interest in the Goods will be taken to extend to, and include, a Security Interest in the Ancillary Items.

2.3 When Ancillary Items part of Goods

The definition of Goods is taken to include Ancillary Items for the purposes of clauses 3.1(a), 3.1(c), 4, 7.6, 9, 10, 11.3, 12, 15.2 and 19 and the definition of Residual Value.

3 Conditions precedent to Lessor's obligations

3.1 Conditions precedent

The Lessor's obligation to lease the Goods to the Lessee is subject to and conditional upon:

- (a) the acquisition of the Goods by the Lessor;
- (b) the Lessee having made the payments to the Lessor specified in clause 7.1 as being payable on the Commencement Date;
- (c) receipt by the Lessor of a written acceptance of the Goods from the Lessee under clause 4.3;
- (d) receipt by the Lessor of every policy of insurance, related cover note and certificate of insurance or other satisfactory evidence that all insurances of the Goods required by clause 11.1 have been effected and are in full force and effect;
- (e) the acknowledgments under clause 6.1 from all persons having an interest in the Location;
- (f) the Lessor having given any consent required under clause 10.9 to the Goods becoming fixtures upon or to the Location;
- (g) receipt by the Lessor of a copy of any maintenance contracts required by clause 10.3, together with satisfactory evidence that those contracts are in full force and effect;
- (h) no Event of Default or event which, with the giving of notice or the lapse of time or both, would be an Event of Default under this Lease having occurred and, having occurred, continuing to subsist; and
- (i) the Goods not having suffered a Casualty Occurrence or Write-off.

3.2 Non-satisfaction of conditions precedent

If the conditions precedent in clause 3.1 have not been fulfilled and fully satisfied or waived by the Commencement Date the Lessor will be relieved of any obligation to lease the Goods to the Lessee under this Lease. Any payment referred to in clause 3.1(b) which has been made will be refunded by the Lessor to the Lessee upon request by the Lessee.

4 Delivery of Goods

4.1 Lessee to obtain possession of Goods

- (a) On and from the Commencement Date and at the Lessee's own expense the Lessor must give and the Lessee must take possession of the Goods.
- (b) Even though the obligations imposed on the Lessor by clause 4.1(a), the Lessee must make any arrangements necessary to enable the Lessee to obtain delivery of the Goods. The Lessor will not be liable for any delay in obtaining, or (where delivery is to be made by a third party whether acting as agent of the Lessee or of the Lessor or otherwise) refusal of, delivery or for any damage to the Goods in the course of delivery.
- (c) The Lessee acknowledges that, even though clause 4.1(a), the Lessor has not given any warranty or representation as to the date of delivery of the Goods and agrees that the Lessee's obligation to make the payments set out in clause 7.1 at the times set out in that clause will not be affected by any delay in delivery howsoever caused, except any delay directly caused by the Lessor.

4.2 Lessee's inspection of Goods

The Lessee acknowledges that before executing this Lease, the Lessee inspected the Goods. As a result of that inspection the Lessee was satisfied as to the condition, quality, safety and (where applicable) roadworthiness of the Goods, their fitness for the Lessee's purposes and their compliance with their description. The Lessee agrees as between the Lessee and the Lessor that the Lessee, on taking delivery of the Goods, will accept the Goods as they are with all faults and defects (if any) subject to the Lessee's rights and remedies (if any) in respect of the Goods referred to in clause 9.1.

4.3 Written acknowledgment of acceptance

The Lessee will give the Lessor a written acceptance of the Goods. The delivery of such an acceptance to the Lessor will, without any further act, irrevocably constitute acceptance of the Goods by the Lessee for all purposes of this Lease and will bind the Lessee absolutely that the Goods have been fully and unconditionally accepted by the Lessee for the purposes of this Lease.

4.4 Non-acceptance of Goods by Lessee

The Lessee acknowledges that the Lessor has acquired or will acquire the Goods for the sole purpose of this Lease. Accordingly, if the Lessee fails to accept the Goods in accordance with clause 4.3, the Lessee will pay the Lessor as and by way of liquidated damages the sums the Lessee would have been liable to pay under this Lease had the Lessee accepted the Goods and then immediately returned them to the Lessor under clause 13.

5 Ownership of the Goods

5.1 Lessor retains title to Goods

The Lessor retains full title to the Goods even though:

- (a) the delivery of the Goods to the Lessee;
- (b) the possession and use of the Goods by the Lessee; and
- (c) any temporary attachment of the Goods to any land or buildings to facilitate use of the Goods,

subject only to the rights of the Lessee as a mere bailee of the Goods with a right only to use them in accordance with, and under, this Lease.

5.2 No option to purchase Goods

The Lessee does not have any right, option or obligation to purchase the Goods and acknowledges that no representation to that effect, express or implied, written or oral, has been made by or on behalf of the Lessor to the Lessee or any nominee of the Lessee at any time.

5.3 Notifying third parties

The Lessee must protect the Lessor's interest in the Goods, including making clear to others that the Lessor is the owner of the Goods. The Lessee must not place, or allow to be placed, on the Goods any plates or marks that are inconsistent with the Lessor's ownership. If requested by the Lessor, the Lessee must put plates on the Goods that state that the Lessor owns them.

6 Installation and location of Goods

6.1 Acknowledgment by third parties

Prior to delivery of the Goods under clause 4.1 and prior to any change in Location as contemplated by clause 6.2, the Lessee must arrange for all persons who have an interest in the Location to deliver to the Lessor an acknowledgment in writing (in a form acceptable to the Lessor) that the Lessor:

- (a) has the absolute, unencumbered title to the Goods (as between the Lessor and that person); and
- (b) has the right to enter upon or into the Location to inspect and remove the Goods at any time without any payment to, or the consent of, any person.

6.2 No unauthorised removal from location

The Lessee must not:

- (a) where the Goods are movable goods, remove the Goods from the jurisdiction comprising the Location; and
- (b) in any event, remove the Goods from any Location in relation to which acknowledgments have been obtained under clause 6.1, without the Lessor's prior written consent. That consent will be deemed to have been given where the Lessee has obtained acknowledgments under clause 6.1 in relation to the proposed location (**new location**), the new location has been agreed in writing by the Lessee and the Lessor and the Goods have been removed to the new location.

6.3 Lessor's rights must prevail

Even though clause 5.1, clause 6.1 and clause 6.2, if the Goods have become affixed to any land or premises in a manner that the Lessor considers has prejudiced or jeopardised or may prejudice or jeopardise the Lessor's rights in, or title to, the Goods, the Lessee must take such action as the Lessor requires to preserve the Lessor's rights in, and title to, the Goods.

7 Rent and other payments

7.1 Amounts payable by the Lessee

- (a) The Lessee must pay:
 - (i) Documentation Costs: the Documentation Costs on the Commencement Date; and
 - (ii) Rent: an instalment of Rent on the Commencement Date and on each Rent Payment Date.
- (b) Duties, taxes, etc: the Lessee must pay any and all rates, road taxes (if the Goods are or include a motor vehicle) and other taxes (excluding any income tax payable by the Lessor), permit, licence and other fees, outgoings, penalties, fines, demands, charges or costs, stamp and other duties and registration fees and assessments imposed by any court or by any federal, state or municipal, statutory or other authority or otherwise (including any related bank charges, penalties and fines) at any time directly or indirectly upon the Goods, the Lessor, the Lessee on account of the Lessor, where the Goods are or include a motor vehicle, the driver or otherwise upon or in respect of this Lease. These amounts exclude costs for which the Lessor obtains an input tax credit for the amount of GST paid by the Lessor.

- (c) GST: the Lessee must compensate the Lessor on demand if the Lessor determines that, as a direct or indirect result of the introduction of GST, or of an increase in the rate of the GST, the Lessor's costs of complying with its obligations under this Lease are increased. If the Lessor reasonably determines that the Lessor is liable to pay GST on a supply made in connection with this Lease and certifies that the Lessor has not priced the supply to include GST or any increase in GST, the Lessee must pay to the Lessor an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.
- (d) Insurance: the Lessee must pay all premiums and any other amounts of whatever nature necessary or desirable in the Lessor's opinion to maintain each and all of the insurances required by clause 11.1 current. Upon reasonable request the Lessee must produce to the Lessor certificates of currency of the insurance policies and originals or certified copies of the insurance policies.
- (e) Use and repair of Goods: the Lessee must pay all repair and operating expenses in respect of the Goods including (without limitation) the cost of fuel and lubricant, the cost of replacement parts and accessories and the costs of complying with any requirements referred to in clause 10.3 and clause 10.5. However the Lessee will not have any authority to pledge the Lessor's credit or to create any lien or charge upon the Goods. The Lessee must give notice of this prohibition on pledging the Lessor's credit and on creating any lien or charge on the Goods to any worker before such worker does any work upon the Goods.
- (f) Related premises: the Lessee must pay all rents, rates, taxes, charges and impositions payable by the Lessee in respect of the Location.

7.2 Lessor may make payments

If the Lessee fails to pay any outgoing referred to in clause 7.1(b), clause 7.1(d), clause 7.1(e) or clause 7.1(f) by its due date for payment the Lessor may, at its discretion, pay the outgoing. In that case, the Lessee must on demand reimburse the Lessor for the amount paid.

7.3 Enforcement costs and expenses

The Lessee must on demand reimburse the Lessor for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Lessor of or incidental to:

- (a) any breach, default or repudiation of this Lease by the Lessee (including the fees of all professional consultants properly incurred by the Lessor in consequence of, or in connection with, any such breach, default or repudiation); and

- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lessor under or by virtue of this Lease, including all amounts incurred in repossessing the Goods from the Lessee under the terms of this Lease and in enforcing this Lease generally.

7.4 Method of payment

The Lessee must make all payments to the Lessor free from all deductions and offsets. Each payment must be made in immediately available funds by 5pm on its due date via bank or credit transfer or at such other place as the Lessor may from time to time direct in writing. Any payments made in any other way and any payment sent by mail will be at the Lessee's risk until it is actually received by the Lessor.

7.5 Interest on overdue payments

Where any, or any part of any, Rent or other moneys payable by the Lessee under this Lease is not paid to the Lessor in the manner required by clause 7.4 on or before its due date for payment default interest will be payable on the outstanding amount.

Default interest will be calculated at the Default Rate for the period for which such outstanding amount is overdue. Accordingly, default interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.

7.6 Net lease

- (a) This Lease is a net lease. Accordingly the Lessee acknowledges and agrees that the Lessee's obligation to make all payments due under this Lease and the rights of the Lessor in and to such payments is absolute and unconditional. Such moneys will continue to be payable in all events in the manner and at the times provided, unless the Lessee's obligations in respect of them have been terminated under an express provision of this Lease.
- (b) The Lessee must continue to make all payments due from the Lessee under this Lease in respect of Rent or otherwise if of damage to, or destruction of, the Goods unless this Lease is terminated pursuant to clause 11.3(a).
- (c) Even though any term whether express or implied in this Lease or any rule of law or course of conduct to the contrary, payments will not be subject to any abatement, reduction, set-off, defence, counter-claim or recoupment of any kind whatsoever.

8 Representations and warranties

8.1 Lessee's representations and warranties

The Lessee represents and warrants to the Lessor that:

- (a) incorporation: (if the Lessee is a corporation) it is registered as a company under the Corporations Act 2001, and has the power to carry on its business and to own its property in the manner and in the locations in which such business is presently being carried on or property owned;
- (b) corporate power: (if the Lessee is a corporation) it has full power and authority under its memorandum and articles of association or other constituent documents to enter into this Lease and to do all things required by this Lease and all necessary meetings have been held and all resolutions have been passed as are required by its memorandum and articles of association or other constituent documents and any other action necessary to authorise the execution and performance of this Lease has been taken and this Lease will constitute the legal, valid, binding and enforceable obligations of the Lessee in accordance with its terms;
- (c) no breach: except as disclosed in writing to the Lessor and dispensed with in writing by the Lessor, neither the execution nor the performance of this Lease will:
 - (i) violate in any respect any statute, decree, rule or regulation or any determination, order or award of any court or any governmental, judicial or public body or authority applicable to the Lessee;
 - (ii) cause any limitation (whether imposed by statute, decree, rule or regulation) on any of the powers of the Lessee or on the Lessee's right or ability to exercise such powers to be exceeded;
 - (iii) conflict with or result in any breach of, or require any consent or approval under, any mortgage, agreement or other undertaking or instrument to which the Lessee is a party or which is binding upon the Lessee or any of the Lessee's assets; or
 - (iv) cause any limit on the powers of the Lessee in respect of borrowing, guaranteeing, raising financial accommodation or otherwise as the case may be to be exceeded;
- (d) no existing default: except as disclosed in writing to the Lessor and dispensed with in writing by the Lessor, the Lessee is not in default or difficulty under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities), which default or

difficulty is reasonably likely to adversely affect the ability of the Lessee to comply with its obligations under this Lease;

- (e) compliance with legislation: (if the Lessee is a corporation) it is in full and ongoing compliance with its memorandum and articles of association or other constituent documents and all companies and securities legislation and regulations and (whether or not the Lessee is a corporation) the Lessee is in full and ongoing compliance with all other legislation and regulations to which the Lessee may at any time and from time to time be subject;
- (f) no default: no Event of Default or event which, with the giving of notice or the lapse of time or both, would be an Event of Default has occurred or, having occurred, is continuing to subsist;
- (g) no litigation: except as disclosed in writing to the Lessor and dispensed with in writing by the Lessor, no litigation or administrative or other proceedings before or of any court or governmental authority or agency or other tribunal have, to the knowledge of the Lessee, been initiated or threatened against the Lessee or any of the Lessee's assets which would or might have a materially adverse effect upon the business, assets or financial condition of the Lessee;
- (h) accounts: all of the most recent annual or half-yearly or both (as the case may be) accounts of the Lessee provided by the Lessee to the Lessor provide a true and fair view of the financial position of the Lessee and, except as otherwise disclosed in writing to the Lessor and dispensed with in writing by the Lessor, no material adverse change has occurred since the date of those accounts to the financial condition of the Lessee; and
- (i) trustee: the Lessee if the trustee of any trust will notify the Lessor that they enter into this Lease as the trustee of a trust and not on its own behalf..

8.2 Deemed repetition

The representations and warranties set out in clause 8.1 must survive the execution of this Lease and will be deemed to be repeated (updated as appropriate) on each Rent Payment Date and on the date of payment of other moneys under or pursuant to this Lease.

9 Exclusion of liability

9.1 Non-excludable terms and conditions

- (a) If the Goods have a value or are of a kind ordinarily acquired for personal, domestic or household use or consumption such as to attract to this Lease the operation of the provisions of the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law (ACL), appended as schedule 2 to the Competition and

Consumer Act 2010 (Cth)) and any relevant legislation of any other state or territory, certain conditions and warranties will be implied into this Lease and rights and remedies conferred upon the Lessee with respect to the Goods which cannot be excluded, restricted or modified by agreement (**non-excludable terms**).

- (b) If there are any non-excludable terms in this Lease the provisions of clause 9.2 will not apply to them.
- (c) The Lessee acknowledges that with respect to any non-excludable terms, the Lessor's liability is, where permitted, limited to replacement (or the cost of replacement) of the Goods, the supply (or the cost of supply) of equivalent Goods or the repair (or the cost of repair) of the Goods.

9.2 Implied terms and conditions regarding Goods excluded

Subject to clause 9.1, the Lessee agrees that to the full extent permitted by law neither the Lessor gives, nor any dealer, other previous owner of the Goods or any person purporting to act with the authority of the Lessor has given, any condition, warranty or representation whatsoever in favour of the Lessee:

- (a) as to the condition or quality of the Goods including, without limitation, latent and other defects and whether or not discoverable by the Lessor or the Lessee;
- (b) as to the suitability or fitness for ordinary or any special use or purpose of the Goods; or
- (c) as to the correspondence by the Goods to any description of them.

9.3 Other implied terms and conditions excluded

- (a) No further or other covenants or provisions, whether in respect of the Goods or otherwise will be deemed to be implied into this Lease or will arise between the Lessee and the Lessor by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by the Lessor, any dealer, other previous owner of the Goods or any person purporting to act with the authority of the Lessor on or prior to the date of this Lease. The existence of any such implication or collateral or other agreement is by this negated.
- (b) Any covenant or provision which is deemed by statute to be incorporated into this Lease but the operation of which may be lawfully excluded, restricted or modified by agreement between the Lessee and the Lessor or otherwise is by this, to the maximum extent possible, so excluded, restricted or modified.

9.4 Exclusion of liability for loss

Subject to clause 9.1, in no event will the Lessor be liable (whether before or after the expiry or termination of this Lease) for any loss or damage which the Lessee suffers arising from, or caused or contributed to by, the Lessor's negligence or the negligence of the Lessor's servants or agents. Nor will the Lessor be liable for special, indirect or consequential loss or damage as a result of a breach by the Lessor of this Lease including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Goods and the costs of any substitute Goods which the Lessee acquires.

10 Covenants regarding possession and use of Goods

10.1 Condition of Goods

- (a) The Lessee must at all times keep and maintain the Goods properly serviced, in proper working order and condition and in good and substantial repair. The Lessor will make due allowance for normal wear and tear but the Goods must at all times be capable of being operated fully and efficiently for the purpose, and to the capacity, for which the Goods were intended at the date of their acquisition by the Lessor for the purposes of this Lease.
- (b) The Lessee will be fully responsible to the Lessor for any loss of or damage to the Goods (however occasioned). The Lessee must give reasonable notice to the Lessor in writing of any such loss or damage [*of a substantial or material nature / in excess of normal wear and tear*].

10.2 Use of Goods

The Lessee must only operate and maintain the Goods in accordance with recognised methods and standards for Goods of their type and only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation. Without limiting the generality of this clause 10.2, the Lessee must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Goods and to their use, in particular where any failure in compliance would limit the obligations of that person to the Lessor or the Lessee under any statute, agreement or otherwise.

10.3 Maintenance of Goods

- (a) Where the Lessee does not employ qualified staff to maintain the Goods in the manner required by clause 10.2 the Lessee must effect, maintain and keep in force maintenance contracts in respect of the Goods providing for regular maintenance in accordance with the manufacturer's or other supplier's specifications. These maintenance contracts include any such contracts as may properly be required by

any insurer pursuant to the Lessee's obligations to effect insurance under clause 11.1.

- (b) Each maintenance contract must be entered into with a reputable contractor engaged in the business of maintenance and repair of equipment such as the Goods and must be reasonably acceptable to the Lessor. The Lessee will prior to the Commencement Date and after that upon request produce to the Lessor copies of all such maintenance contracts, together with satisfactory evidence that those maintenance contracts are at that time still in force.

10.4 Replacement parts

- (a) Subject to the Lessee's rights and obligations under clause 11.3, the Lessee must with reasonable promptness replace all parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence.
- (b) All replacement parts will be the property of the Lessor. The Lessee must ensure that all replacement parts are free and clear of any third party interests (including any Security Interest). The Lessee must also ensure that all replacement parts have a value and utility at least equal to the parts replaced, assuming such replaced parts were in the condition and repair required to be maintained by this Lease.
- (c) The Lessee must not, without the prior written consent of the Lessor, make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of the Goods.
- (d) In this clause, **parts** mean any and all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature constituting part of the Goods or which may from time to time be incorporated or installed in, or attached to, the Goods.

10.5 Compliance with safety rules

- (a) The Lessee must comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Goods.
- (b) If any additional or other equipment, appliance, part, instrument, appurtenance, accessory, replacement or alteration is required to be acquired, incorporated or installed in, or attached or made to, the Goods in order to comply with applicable laws, regulations, requirements or rules the Lessee agrees to acquire, incorporate, install, attach or make such addition, equipment, appliance, part, instrument, appurtenance, accessory, replacement or alteration forthwith upon becoming

aware of the requirement or upon demand by the Lessor. Any such additional or other equipment, appliance, part, instrument, appurtenance, accessory, replacement or alteration will, unless otherwise agreed in writing by the Lessor, without any further act of the Lessor and the Lessee or either of them, become the property of the Lessor and be considered part of the Goods for all purposes of this Lease.

10.6 Inspection of Goods by the Lessor

- (a) The Lessee grants the Lessor the right, and will use its best endeavours to ensure that others grant the Lessor the right, at all reasonable times upon the Lessor giving the Lessee reasonable notice and without unduly interfering with the Lessee's operations, to:
 - (i) enter with its servants, agents and experts upon or into the Location;
 - (ii) inspect the state of repair of the Goods;
 - (iii) carry out such tests on the Goods as may seem necessary to the Lessor;
 - (iv) observe the use of the Goods;
 - (v) inspect any maintenance records in respect of the Goods; and
 - (vi) do any act, matter or thing which may be required to be done to give proper effect to the terms of this Lease or to protect the Lessor's rights in the Goods.
- (b) In the case of an emergency, in the Lessor's reasonable opinion, no notice will be required to be given by the Lessor to the Lessee under clause 10.6(a) and the prohibition in that clause on the Lessor unduly interfering with the Lessee's operations will not apply.

10.7 Repair of Goods

- (a) For the purposes of this Lease (including, without limiting the generality of the foregoing, clause 10.6), the Lessor is entitled to retain such properly qualified experts as it thinks fit in order to determine whether the Goods are in need of repair, removal or replacement or are otherwise deficient. The Lessee will at all times comply with the reasonable requirements of any such expert and of the Lessor as to any repair, removal or replacement or the remedying of any deficiency.
- (b) The Lessor may serve on the Lessee a notice in writing of any defect or deficiency in the Goods or their operation or both (whether that defect or deficiency comes to the Lessor's attention in the course of any inspection under clause 10.6 or otherwise) requiring repair or replacement for which the Lessee is or may be responsible under this Lease. The notice may require the Lessee within a reasonable

time (as specified in the notice) to repair or replace the Goods or make good the defect or deficiency.

10.8 Lessor may remedy

If the Lessee fails to carry out the requirements under this clause 10 of the Lessor or its nominated expert or of any person or authority having jurisdiction in respect of the Goods it will be lawful but not obligatory for the Lessor to enter upon or into the Location with workers and others and all necessary materials for the purpose of carrying out those requirements and ensuring that the value of the Goods is not adversely affected.

10.9 The Goods as fixtures to land

The Lessee must not at any time or from time to time attach, affix or secure the Goods upon or to any Location unless their use so requires and the prior written consent of the Lessor has been obtained in relation to that Location.

Without limiting the generality of this clause, it is agreed as follows:

- (a) if the Location is owned by the Lessee the Goods are deemed not to be fixtures. In those circumstances:
 - (i) the Goods may be removed by the Lessor at any time in accordance with the provisions of this Lease;
 - (ii) the Lessor will be entitled to enter upon the Location at any time for the purpose of removing the Goods and will not be liable in respect of loss or damage arising from such entry or from the removal of the Goods; and
 - (iii) if the Location is to become the subject of a mortgage or charge then, before the Lessee gives the mortgage or charge, the Lessee must, without any request from the Lessor, obtain the written acknowledgment of the proposed mortgagee or chargee (as the case may be) that, first, the Goods are not fixtures for the purposes of the proposed mortgage or charge, second, that the mortgagee or chargee will not make any claim in relation to the Goods and, third, that the mortgagee or chargee will permit the Lessor, (whether or not there has been any default under the proposed mortgage or charge) to enter upon the land or premises and to remove the Goods; and
- (b) prior to the Goods becoming attached, affixed or secured to a Location which is not owned by the Lessee, the Lessee must obtain the written consent of the owner of the land or premises to the entry by the Lessor and the removal of the Goods as required by clause 6.1. As between the Lessor and the Lessee the Lessor will have the same rights of entry and removal as set out in clause 10.9(a).

10.10 Registration

If the Goods are or include a motor vehicle or other registrable item, the Lessee must keep the Goods duly registered at all times as required by law in the name of the Lessee as if the Lessee were the owner and, where permitted by law, in the name of the Lessor as proprietor.

10.11 Name plates and identification of Goods

The Lessee must not without the Lessor's prior written consent, remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Goods, except so as to indicate any replacement, alteration or addition.

10.12 Notification of Lessor's ownership of the Goods

The Lessee must notify any person seizing the Goods of the ownership of the Lessor and must give immediate written notice to the Lessor of such seizure.

10.13 No dealings with Goods

The Lessee must not without the Lessor's prior written consent:

- (a) agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire, grant a Security Interest in, allow any lien or other encumbrance to arise in, or otherwise part with or attempt to part with the personal possession of or otherwise deal with, the Goods or any part of the Goods except:
 - (i) a repairer's lien, in which case the Lessee must take the necessary steps to have the lien removed or satisfied immediately and, in any event, immediately upon demand by the Lessor; and
 - (ii) such interest as may arise by operation of law in respect of unpaid rates, taxes, fees or duties of any kind whatsoever, in which case the Lessee must immediately pay the same as provided in clause 7.1(b) so that the Goods will be free of that interest, provided that where the Lessor elects to satisfy the interest at the Lessor's cost the Lessee must on demand reimburse the Lessor the amount paid and any incidental costs and expenses; or
- (b) conceal or alter the Goods or make any addition to the Goods except as required pursuant to this clause 10.

10.14 Return of documents

If the Goods are registered in the name of the Lessee as required by clause 10.10 then, upon the Lessee becoming bound to return the Goods to the Lessor under any provision

of this Lease, the Lessee must forthwith at the Lessee's expense obtain and deliver to the Lessor all certificates and other documents relating to the Goods required by law on any transfer of the registration of the Goods. The Lessee must execute and deliver to the Lessor all transfer and other documents necessary or desirable to have the Goods registered and insured in the name of the Lessor or of any person nominated by the Lessor as owner. The Lessee must also give all notices and pay all costs, fees, stamp duty and other outgoings payable in relation to such transfer of registration and such insurance.

11 Insurance

11.1 Extent of insurance

The Lessee must effect and maintain at all times during the Term and any extension of this Lease or holding over under this Lease the following insurances:

- (a) general insurance: insurance of the Goods for their full insurable value against:
 - (i) damage or destruction caused by accident;
 - (ii) any insurable risk commonly insured against in regard to equipment of a similar nature to the Goods; and
 - (iii) such other insurable risks as the Lessor may reasonably stipulate;
- (b) indemnified risks: insurance with respect to the Lessee's liability to the Lessor pursuant to the indemnity provisions in clause 12.2;
- (c) third party risks: insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law by a policy inuring for the benefit of the Lessor and the Lessee;
- (d) public risk: public risk insurance relating to the Goods for an indemnity (including damage to property of any person) of not less than \$[specify required amount in figures and words] or such other amount as the Lessor may from time to time reasonably stipulate for any one accident (to the extent that such insurance is not covered in any insurance effected by the Lessee under clause 11.1(a), clause 11.1(b) or clause 11.1(c)) [optional: ; and
- (e) excess: insurance with respect to the Lessee's liability under this Lease to the extent that such liability exceeds its liabilities under clause 11.1(a), clause 11.1(b), clause 11.1(c) and clause 11.1(d)].

11.2 Conditions of insurance

- (a) The insurances required by clause 11.1 must be taken out in the names of the Lessor and the Lessee for their respective rights and interests. The Lessee must be shown as the named insured and the Lessor as the joint named insured. Each policy must expressly provide that all of its provisions, except the limits of liability, operate in the same manner as if they were a separate policy covering each insured.
- (b) The insurances must be taken out with an insurer approved by the Lessor in writing. The Lessor's approval of an insurer will not be unreasonably withheld.
- (c) Each policy must contain an agreement by the insurer to give the Lessor written notice of its intention to cancel the policy. Each policy must also contain a clause providing that, even though:
 - (i) the lapse of the policy (except by reason of expiration in accordance with its terms);
 - (ii) any right of cancellation by the insurer; or
 - (iii) any cancellation by the Lessee (whether voluntary or involuntary), that policy will continue in force for the benefit of the Lessor for at least thirty (30) days after written notice of cancellation has been given to the Lessor.
- (d) The Lessee must not, without the prior written consent of the Lessor, permit any reduction in limits or coverage in any insurance policy affecting or relating to the Goods or this Lease.
- (e) Each policy must contain an agreement by the insurer to insure the Lessor's interest up to the limits of the policy regardless of any act or neglect of the Lessee or any breach or violation by the Lessee of any warranties, declarations or conditions contained in the policy.

11.3 Casualty

- (a) If:
 - (i) total loss: the Goods are totally lost, stolen, compulsorily acquired, destroyed, seized, confiscated (each a Casualty Occurrence) or if the Goods are damaged to an extent which in the relevant insurer's opinion renders repair impractical or uneconomic (a Write-off), then the Lessee must pay to the Lessor the Balance Due;
 - (ii) partial loss: any part or parts of the Goods suffer a Casualty Occurrence or a Write-off, then the Lessee must pay to the Lessor the Balance Due in regard to that part or those parts. The Lessor will determine the Balance Due in regard

to that part or those parts by reference to the proportion of the value, utility or other relevant measure of the Goods which has suffered the Casualty Occurrence or Write-off and will inform the Lessee in writing of the basis of its calculation; or

- (iii) damage: the Goods are damaged but are not a Write-off, then the Lessee must ensure the Goods are restored at the Lessee's expense to the condition required by clause 10.1.
- (b) The Balance Due required to be paid under clause 11.3(a)(i) or clause 11.3(a)(ii) must be paid by the Lessee to the Lessor on the first to occur of:
- (i) the next Rent Payment Date after the Casualty Occurrence or Write-off;
 - (ii) the last day of the Term; and
 - (iii) the date the relevant insurance moneys are received by the Lessee, but not, in any event, later than the date of termination of this Lease.
- (c) Upon payment of the Balance Due required under clause 11.3(a)(i) or clause 11.3(a)(ii), this Lease will determine in respect of the Goods or the part or parts of the Goods which suffered the Casualty Occurrence or Write-off. This Lease will continue in respect of the remainder of the Goods (if any) at a revised Rent and with a revised Residual Value both calculated by the Lessor having regard to the proportion of the value, utility or other relevant measure of the Goods which has not suffered the Casualty Occurrence or Write-off. The revised Rent and Residual Value will be advised by the Lessor to the Lessee in writing.
- (d) Any determination of this Lease under clause 11.3(c) will not prejudice any right or remedy of the Lessor in respect of any antecedent breach by the Lessee under this Lease.

11.4 Recovery of insurance moneys

While any moneys remain owing to the Lessor under this Lease, the Lessor will be entitled to receive all moneys payable to the Lessee or to the Lessor and the Lessee by the insurer under any relevant insurance policy or by any other person in respect of damage to, or loss of, the Goods. The Lessee appoints the Lessor and each and every duly authorised officer of the Lessor the Lessee's attorney to recover or reasonably compromise in the Lessee's and the Lessor's respective names any claim for loss or damage under any such policy or otherwise and to give effectual releases and receipts for any claim.

11.5 Appropriation of insurance moneys

- (a) The Lessor is irrevocably authorised to appropriate any insurance or other moneys received by it in respect of a Casualty Occurrence to, or a Write-off of, the Goods

towards any moneys then due and owing by the Lessee to the Lessor under this Lease.

- (b) Any insurance moneys received by the Lessor after payment to it in full of the Balance Due under clause 11.3(a)(i) or clause 11.3(a)(ii) will be paid to the Lessee.
- (c) The Lessor will pay any insurance moneys received by it in respect of damage to the Goods which does not result in a Write-off to the Lessee. The Lessee must from those moneys and, to the extent that those moneys may be insufficient, from its own moneys reinstate and replace and repair and make good the whole of the Goods at least as nearly as possible to the condition in which they were immediately prior to such damage.

11.6 Protection of insurance

The Lessee must not at any time do or suffer anything to be done to the Goods or use, modify or otherwise affect the Goods by which the insurance on the Goods against damage from any insurable risk may be rendered void or voidable. In any case where the Lessor approves in writing of any proposal of the Lessee to increase the risk of damage to the Goods, the Lessee must pay any and all additional premiums and any other amounts of whatever nature necessary or desirable to extend the insurance cover on the Goods required on account of the additional risk.

12 Indemnities

12.1 Goods used at Lessee's risk

The Lessee agrees to use, operate and possess the Goods at the Lessee's risk. The Lessee agrees that the Lessor will have no responsibility or liability for any loss or damage to any property of the Lessee. To the full extent permitted by law the Lessee releases and discharges the Lessor and its agents and employees from:

- (a) all claims and demands on the Lessor; and
- (b) any loss or damage whatsoever and whenever caused to the Lessee or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods or any accident to or involving the Goods or their use, operation, repair, maintenance or storage (whether occasioned by the negligence of the Lessor or otherwise) or which may otherwise be suffered or sustained in, upon or near the Goods.

12.2 Indemnity against other costs and liabilities

The Lessee assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless the Lessor and its agents and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):

- (a) arising out of or alleged to arise out of the delivery, selection, purchase, acceptance or rejection, ownership, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), repair, maintenance, storage, or operation of the Goods, and by whomsoever used or operated (except where used by the Lessor or any person on behalf of the Lessor);
- (b) incurred by the Lessor in respect of any loss of the Goods by seizure, distress, execution or other legal process, confiscation or forfeiture of the Goods; or
- (c) arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against the Lessor in connection with the Goods or their operation.

12.3 Tax indemnity by Lessee

The Lessee indemnifies and will keep indemnified, protected, saved and harmless the Lessor against any liability or additional liability the Lessor may incur under the Income Tax Assessment Act 1936 (Cth) or Income Tax Assessment Act 1997 (Cth) by reason of use of the Goods by the Lessee for any purpose.

If the Lessor's liability for income tax is increased or is payable earlier because:

- (a) deductions at the depreciation rates which the Lessee may have represented to the Lessor as applicable to the Goods or their use or upon which the Lessor may have relied for calculation of the Rent are not for any reason allowed in full at the times they would normally have been allowed; or
- (b) the Residual Value is not approved by the Commissioner of Taxation,

then the Lessee must pay to the Lessor on demand by the Lessor such amount as will result in the after-tax yield to the Lessor being the same as it would have been but for such increase or acceleration in liability.

12.4 Survival of indemnities

The indemnities and assumptions of liability contained in clause 12.1, clause 12.2 and clause 12.3 will continue in full force and effect even though the termination of this Lease

whether by expiration of time or otherwise as to any act or omission relating to the Goods occurring during the continuance of this Lease which at any time is claimed to have created a cause of action against the Lessor or assumption of liability by the Lessee. The indemnities and assumption of liability against any claims for patent infringements will continue in full force and effect throughout the life of the Goods, except as to any alterations or modifications to the Goods occurring after the termination of this Lease.

13 Voluntary return of the Goods

13.1 Right to terminate

The Lessee has the right, subject to the conditions set out in clause 13.2, to terminate this Lease during the Term in respect of all, or any specified part, of the Goods on any Rent Payment Date (**proposed termination date**). The Lessee may exercise this right by serving a notice on the Lessor at least ninety (90) days prior to the proposed termination date stating that the Lessee wishes to terminate this Lease in respect of all or such part of the Goods on the proposed termination date.

13.2 Conditions of termination

This Lease may only be terminated or partially terminated under clause 13.1 if:

- (a) on both the date of service of the notice under clause 13.1 and the proposed termination date:
 - (i) no Event of Default or event which, with the giving of notice or the lapse of time or both, would become an Event of Default has occurred or, having occurred, is continuing to subsist; and
 - (ii) the Lessee has not repudiated this Lease;
- (b) the Lessee returns the Goods or the specified part of the Goods, at the Lessee's expense, appropriately protected and in the condition required by clause 10.1, to the Lessor at the Return Address; and
- (c) the Lessee pays to the Lessor on the proposed termination date the Balance Due in respect of all or such part of the Goods as at that date.

13.3 Termination as to part only

Where this Lease is terminated under this clause 13 as to part only of the Goods, the Lessor will determine the Balance Due for the purposes of clause 13.2 and the revised Rent and revised Residual Value in respect of the remainder of the Goods by reference to the proportion of the value, utility or other relevant measure of the part of the Goods to which the termination applies. The Lessor will inform the Lessee in writing of such Balance Due, Rent and Residual Value, giving the basis of its calculation, within fourteen

(14) days of receiving the Lessee's notice of termination under clause 13.1. The Lessee may, within fourteen (14) days of receiving such information, withdraw its notice of termination should it elect to do so.

14 Extension of Lease Term and holding over

14.1 Extension of Term

- (a) Not less than one hundred and twenty (120) days prior to the expiry of this Lease the Lessee may make a written request to the Lessor to vary this Lease by extending the Term for an unspecified period or until a particular date. The Lessor must, within thirty (30) days of receiving the Lessee's request, notify the Lessee in writing whether or not the Lessor agrees to grant that request.
- (b) If the Lessor agrees to grant the Lessee's request the Lessor must also notify the Lessee of the revised Rent and revised Residual Value (or where the Term is extended for an unspecified period and the Lessor elects not to specify a Residual Value, the basis on which the Lessor will calculate the Residual Value).
- (c) Where the Lessor agrees to the Lessee's request to extend the Term the Lessee must, within thirty (30) days of receiving the details referred to in clause 14.1(b), notify the Lessor in writing whether or not it accepts an extension of the Term on that basis. In the absence of any express acceptance of those terms this Lease will expire on its then current expiry date.
- (d) Where the Term is extended for an unspecified period, this Lease will continue until it is determined by either the Lessor or the Lessee giving thirty (30) days' written notice to the other party nominating an expiry date.
- (e) The Term may be extended under this clause 14.1 as often as the Lessor and the Lessee may so agree.

14.2 Holding over

In any case where the Lessee continues in possession of the Goods after the expiration or sooner termination of this Lease, the Lessee must (without prejudice to the exercise by the Lessor of its rights, powers and remedies under this Lease) continue to pay a monthly rental equal to the amount determined from time to time by the Lessor or, in the absence of such a determination, a monthly rental equal to the aggregate of the Rent then current. All other terms and conditions set out in this Lease will continue to apply to the Lease of the Goods.

15 Default and termination

15.1 Events of default

Each of the following events is an Event of Default, namely:

- (a) if the Lessee fails to pay Rent or other moneys payable under this Lease on the due date for payment and such failure continues for more than one (1) Business Day;
- (b) if the Lessee fails to perform or observe any of the covenants or provisions of this Lease on the part of the Lessee to be performed or observed (other than a failure of the type contemplated by clause 15.1(a)) and (if capable of remedy) such default continues for more than ten (10) Business Days (or such longer period as the Lessor in its absolute discretion permits) after notice from the Lessor requiring the Lessee to remedy the same;
- (c) if the Lessor ascertains that the Lessee has made any false, inaccurate or misleading statement having a material effect in relation to the making of this Lease or any related or collateral document;
- (d) if an application for the winding up or bankruptcy of the Lessee or any Related Body Corporate is presented and the Lessee or the Related Body Corporate (as the case may be) cannot within ten (10) days reasonably satisfy the Lessor that the application is frivolous or vexatious or an order is made, or any resolution is passed, for the winding up of the Lessee or any Related Body Corporate provided always that it will not be an Event of Default where the winding up of the Lessee or the Related Body Corporate (as the case may be) is for the purpose of reconstruction or amalgamation and has the Lessor's prior written consent (which consent will not be unreasonably withheld);
- (e) if a receiver or receiver and manager or provisional liquidator of the undertaking or any part of the undertaking of the Lessee or any Related Body Corporate is appointed;
- (f) if any execution or other process of any court or authority is issued against or levied upon the Goods (other than as a result of any act or omission on the part of the Lessor) or if any such execution or other process is issued against any other property of the Lessee or any Related Body Corporate for an amount exceeding \$[amount in figures and words] and is not discharged or a stay of execution is not obtained within thirty (30) days or, a stay of execution having been so obtained, the execution or process is not discharged within ten (10) weeks after the issue or levy of the execution or process, as the case may be;

- (g) if without the Lessor's prior written consent the Lessee or any Related Body Corporate suspends payment generally or ceases to carry on its business or is unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
- (h) if without the Lessor's prior written consent the Lessee or any Related Body Corporate enters into any arrangement, reconstruction or composition with its creditors or any of them;
- (i) if the Lessee or any Related Body Corporate appoints an administrator to the Lessee or the Related Body Corporate, or begins any process in order to do so or if an inspector is appointed to investigate its affairs;
- (j) if without the Lessor's prior written consent (which consent will not be unreasonably withheld) the Lessee or any Related Body Corporate reduces its share capital or attempts to do so;
- (k) if without the Lessor's prior written consent effective control of the Lessee is altered to any material extent from that subsisting at the date of this Lease. For the purposes of this clause 15.1(k), **effective control** of the Lessee means:
 - (i) control of the composition of the board of directors of the Lessee;
 - (ii) control of more than half of the voting power of the Lessee; or
 - (iii) control of more than half of the issued share capital of the Lessee excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital;
- (l) if, in the opinion of the Lessor there is a material adverse change in the financial condition of the Lessee; or
- (m) if the Goods are abandoned or condemned or are seized or appropriated by any lawful authority and not released within twenty-one (21) days or are attached, sequestrated, impounded or restrained upon and not released within twenty-one (21) days unless such an event constitutes a Casualty Occurrence.

15.2 Consequences of default

If an Event of Default occurs the Lessor at its option may:

- (a) enforce performance: by proceeding by appropriate court action, either at law or in equity, enforce performance by the Lessee of the applicable terms and provisions of this Lease or recover damages for the breach concerned; or
- (b) termination: terminate this Lease and the Lessee's right to possession of the Goods by notice in writing to the Lessee. Upon service of such notice all rights of the

Lessee to or in the use of the Goods will terminate and the Lessor may, directly or by its agent, take possession of the Goods. Any damages reasonably occasioned by the Lessor taking possession are expressly waived by the Lessee. The Lessor will, upon taking possession of the Goods hold, possess and enjoy the Goods free from any right of the Lessee or its successors or assigns to use the Goods for any purpose. Alternatively, the Lessor may require the Lessee at the Lessee's expense to dispose of the Goods and to account to the Lessor for the proceeds of such disposal. In any event, the Lessee will remain liable to the Lessor as provided in clause 16.2 and clause 19.

15.3 Events constituting fundamental breach

- (a) It is expressly agreed and declared by the Lessee and the Lessor that the obligations of the Lessee under the following clauses are essential and fundamental terms of this Lease such that failure to comply with them will constitute a repudiation of this Lease entitling the Lessor to accept such repudiation, clause 7, clause 10, clause 11.1, clause 12 and clause 19. The Lessee further agrees that should any Event of Default occur, its occurrence will be a breach of an essential and fundamental provision of this Lease by the Lessee amounting to a repudiation by the Lessee of this Lease.
- (b) The presence of clause 15.3(a) does not mean, and will not be construed as meaning, that there are no other terms and conditions which are fundamental and essential terms and conditions of this Lease.
- (c) If the Lessor terminates this Lease following any such repudiation by the Lessee then without prejudice to any other right or remedy available to the Lessor it is expressly agreed and declared that the Lessor must be entitled to recover from the Lessee by way of liquidated and ascertained damages for such breach the aggregate amount determined under clause 16.2.

16 Amounts due upon expiry and upon early termination

16.1 Expiry

Upon the expiry of the Term, including the expiration of any extension of the Term under clause 14.1 or the cessation of any holding over, the Lessee must pay to the Lessor:

- (a) the Balance Due (if any); and
- (b) upon demand by the Lessor, the amount (if any) by which the Residual Value exceeds the Net Proceeds of Sale.

16.2 Early termination

Upon early termination of this Lease under clause 13 (including, for the avoidance of doubt, where clause 13 is applicable as a result of the operation of clause 4.4), clause 15.2 or clause 15.3 the Lessor:

- (a) will be entitled to retain all Rent and other moneys previously paid by the Lessee to the Lessor under this Lease;
- (b) may recover from the Lessee as liquidated and ascertained damages, but not as a penalty, the Balance Due with respect to the Goods less the Net Proceeds of Sale of the Goods; and
- (c) may recover from the Lessee any and all additional damages and expenses sustained by the Lessor by reason of such early termination or by reason of the breach of any covenant, representation or warranty contained or implied in this Lease other than for due payment of Rent.

If the payment of any amount included in a payment required by this clause 16.2 to be made by the Lessee to the Lessor is held to be unenforceable the payment will be unenforceable only to the extent of such amount. The Lessee's obligation to make the balance of the payment will remain unaffected by such unenforceability.

16.3 Adjustment for Net Proceeds of Sale

- (a) If the Net Proceeds of Sale have been ascertained at the date upon which the payment required by clause 16.1 or clause 16.2 (as the case may be) is due to be made and such proceeds are less than the amount of such payment, the Lessee must pay the difference between the Net Proceeds of Sale and that amount to the Lessor on the last day of the Term or on the early termination date, (as the case may be).
- (b) If the Net Proceeds of Sale have not been ascertained at the date upon which the payment required by clause 16.1 or clause 16.2 (as the case may be) is due to be made, the Lessee must pay the amount of such payment to the Lessor on the last day of the Term or on the early termination date, as the case may be. When the net sales proceeds have been ascertained the Lessor will pay to the Lessee an amount equal to the lesser of the Net Proceeds of Sale and the payment required by clause 16.1 or clause 16.2 (as the case may be).

17 Return of Goods

17.1 Redelivery of Goods by the Lessee

Upon the expiry of the Term or early termination of this Lease (other than a termination pursuant to clause 11.3), the Lessee must immediately deliver the Goods, at the Lessee's

expense appropriately protected and in the condition required by clause 10.1, to the Return Address.

17.2 Repossession of Goods by Lessor

If the Goods are not returned to the Lessor as and when required by clause 17.1, the Lessor may retake possession of the Goods. For that purpose the Lessor and its employees and agents may, without notice, liability or legal process, enter upon or into the Location and may break open any gate, door or fastening and detach or dismantle the Goods from any part of the Location to which the Goods have been affixed.

18 Sale or other disposal of Goods upon expiry or termination

18.1 Sale or valuation of Goods

- (a) Not less than sixty (60) days prior to the expiry of the Term the Lessor may offer the Goods for sale by public auction, tender or private treaty (such sale not to be capable of completion before the expiry of the Term) at such Location and on such dates and terms and conditions as the Lessee and the Lessor may agree or, failing agreement, then as the Lessor decides.
- (b) Subject to clause 18.1(a), when the Lessor obtains possession of the Goods under clause 17, the Lessor will be entitled to sell or otherwise dispose of the Goods in whole or in part by public auction, by tender, by private treaty or to or through persons dealing in equipment of the same or similar description or in any other manner and upon such terms and conditions as the Lessor thinks fit.
- (c) If the Goods are not sold by the Lessor for a price the Lessor considers to be reasonable within three calendar months after the Lessor has obtained possession of them, the Lessor may determine the Certified Value of the Goods and the provisions of clause 16 and clause 19 will apply as if the Goods had been sold for a price equal to the amount of the Certified Value.

18.2 Goods not returned to Lessor

If the Goods are not returned to or recovered by the Lessor and the Lessor is of the opinion that it is impossible, impracticable or uneconomical to retake possession of the Goods then for the purpose of clause 16 and clause 19 the Net Proceeds of Sale of the Goods will be deemed to be nil.

19 Capital loss indemnity

- (a) The Lessee indemnifies the Lessor in all circumstances, including but not limited to termination of this Lease by the Lessor following a non-repudiatory breach by the Lessee, in respect of any capital loss which the Lessor may suffer as a result of entering into this Lease.

- (b) The measure of the Lessor's capital loss at any time will, except as otherwise provided by this Lease, equal the amount (if any) by which the depreciated value of the Goods exceeds the Net Proceeds of Sale, together with any loss of investment, opportunity cost or other capital loss suffered by the Lessor resulting from the early return to it of its capital or otherwise.
- (c) For the purpose of this clause 19, **depreciated value** means that portion of the original cost to the Lessor of acquiring the Goods which is outstanding to the Lessor on the date of termination of this Lease, as certified in writing by the Lessor, which certificate must (in the absence of manifest error) be conclusive and binding. Nothing in this clause 19 will entitle the Lessor to recover under this clause more than an amount equal to the Balance Due nor to recover the same amount twice.

20 Application of moneys

If the Lessee makes a payment to the Lessor at any time whether in connection with this Lease or otherwise, the Lessor may, in its absolute discretion, apply that payment in any manner the Lessor sees fit.

21 Power of attorney

21.1 Appointment of attorney

For valuable consideration and by way of security for the interest of the Lessor in the Goods and for the performance of the obligations owed by the Lessee to the Lessor under this Lease, the Lessee irrevocably appoints the Lessor and its successors and assigns, and every director, secretary, and officer of the Lessor whose title includes the word "manager" severally the attorney of the Lessee for the purpose of doing all acts and things which the Lessee is obliged to do or which the Lessor is empowered or authorised to do under this Lease.

21.2 Exercise of power of attorney

Upon the exercise of any power or authority contained or implied in this Lease, including the power conferred on the Lessor by clause 21.1, no person dealing with the Lessor or any attorney appointed under this Lease must be bound to inquire:

- (a) whether any Event of Default has occurred;
- (b) whether this Lease has been repudiated by the Lessee and such repudiation accepted by the Lessor;
- (c) as to the due appointment of any attorney; or
- (d) otherwise as to the propriety or regularity of the exercise of any power or authority under this Lease.

No such person must be affected by notice express or otherwise that any such exercise is unnecessary or improper. Though any irregularity or impropriety in the power or authority its exercise must as regards the protection of other persons be deemed authorised by that power and authority and must be valid and effectual accordingly.

22 PPSA

22.1 Contracting Out of PPSA Enforcement

If chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with this Lease, the Lessee agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest:

- (a) section 95 (notice of removal of accession), to the extent that it requires the Lessor to give the Lessee a notice;
- (b) section 96 (when a person with an interest in the whole may retain accession);
- (c) subsection 121(4) (enforcement of liquid assets - notice to grantor);
- (d) section 125 (obligation to dispose of or retain collateral);
- (e) section 130 (notice of disposal), to the extent that it requires the Lessor to give the Lessee a notice;
- (f) paragraph 132(3)(d) (contents of statement of account after disposal);
- (g) sub-section 132(4) (statement of account if no disposal);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

22.2 Controllers

Where a person is a controller in relation to the Goods, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Goods by that controller.

22.3 PPSA notices

Despite clause 22.1, notices or documents required or permitted to be given to the Lessor for the purposes of the PPSA must be given in accordance with the PPSA.

22.4 Registration on PPSR

The Lessee consents to the Lessor effecting a registration on the PPSR (in any manner the Lessor considers appropriate) in relation to any Security Interest arising under or in connection with this Lease and the Lessee agrees to provide all assistance reasonably required by the Lessor to facilitate this.

22.5 Verification certificate

The Lessee waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

22.6 Proceeds and security agreement

The Lessee acknowledges that if the Lessor's interest under this Lease is a Security Interest for the purposes of the PPSA:

- (a) that Security Interest relates to the Goods and all Proceeds of any kind; and
- (b) this Lease is a security agreement for the purposes of the PPSA.

23 General

23.1 Acceptance of Rent after default or repudiation

Acceptance of any payment of Rent by the Lessor:

- (a) within sixty (60) days after the Lessor has become aware of an Event of Default or an event constituting a repudiation of this Lease by the Lessee; or
- (b) more than sixty (60) days after the Lessor has become aware of an Event of Default or an event constituting a repudiation of this Lease by the Lessee where Rent has been accepted by the Lessor expressly without prejudice to its rights and remedies in respect of that Event of Default or that repudiation, will be without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor by this Lease. Such acceptance will not operate as an election by the Lessor either to exercise or not to exercise any of the Lessor's rights, powers or privileges under this Lease.

23.2 Remedies cumulative

The remedies provided in this Lease in favour of the Lessor arising pursuant to an Event of Default or after a repudiation of this Lease by the Lessee will not be deemed to be exclusive but will be cumulative and will be in addition to all other remedies in its favour existing at law, in equity or in bankruptcy. The election at any time to enforce any such remedies will in no way bar the later enforcement from time to time of any other such remedies.

23.3 Quiet enjoyment

If the Lessee pays the Rent and all other moneys payable under this Lease and duly and punctually performs all of its other obligations under this Lease, the Lessee may peaceably possess and enjoy the Goods during the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by, from or under the Lessor.

23.4 Discretion on consent

In any case where, under or pursuant to this Lease, the doing or execution of any act, matter or thing by the Lessee is dependent upon the consent or approval of the Lessor, such consent or approval may be given conditionally or unconditionally or may be withheld by the Lessor in its absolute uncontrolled discretion, unless this Lease otherwise expressly provides.

23.5 Lessee's risk

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

23.6 Non-merger

None of the terms or conditions of this Lease, nor any act, matter or thing done under or by virtue of, or in connection with, this Lease will operate as a merger of any of the rights and remedies of the Lessor in or under this Lease or otherwise. All such rights and remedies of the Lessor will continue in full force and effect.

23.7 Statutes not to abrogate Lease

Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future will apply to this Lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Lessor under this Lease.

23.8 Reimbursement of Lessor

To the extent permissible at law, the Lessee will forthwith upon demand pay to the Lessor by way of additional Rent an amount equivalent to any moneys paid by the Lessor in respect of any liability imposed on the Lessee under or by virtue of this Lease, even though that any statute, ordinance, proclamation, order, regulation or moratorium present or future directly or indirectly imposes such liability upon the Lessor.

23.9 Relationship of Lessor and Lessee

Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee. Specifically, it is understood and agreed that neither the method of computation of Rent, nor any other provision, nor any acts of the Lessee and the Lessor or either of them will be deemed to create any relationship between them other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

23.10 Assignments

The Lessor may at any time grant a Security Interest in, assign or otherwise deal with the Goods or its right, title and interest pursuant to this Lease. The Lessee must not assign or grant a Security Interest in this Lease or any of its rights or obligations under this Lease without the prior written consent of the Lessor.

23.11 Statement by Lessor

A statement in writing signed by a director, secretary, or officer of the Lessor whose title includes the word "manager" stating the amount due or owing by the Lessee to the Lessor, the identity of the Goods, or any other act, matter or thing arising under this Lease as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.

23.12 Severability and survival of covenants

If any provision of this Lease is or at any time becomes void or unenforceable the remaining provisions will continue in full force and effect. Any void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for the Lessor and the Lessee as the unlawful or unenforceable provision was intended to achieve. All obligations of the Lessee under this Lease will survive the expiration or termination of this Lease to the extent required for their full observance and performance.

23.13 No waiver

Time is of the essence of this Lease. However, no failure or delay on the part of the Lessor to exercise any power or right under this Lease will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this Lease preclude any other or further exercise of that power or right. The Lessor will only be taken to have waived any power or right under this Lease, including (without limitation) any right in respect of any Event of Default, to the extent that the right or power has been expressly waived in writing by a director, secretary or other officer of the Lessor whose title includes the word "manager", irrespective of any previous waiver of any other

breach of the same or any other covenant or provision of this Lease or any other agreement.

23.14 Lessee's omissions

If the Lessee omits or neglects or fails to pay any money or to perform any of its obligations under this Lease then on each occasion the Lessor may at its discretion pay such money or perform such obligation (but without prejudice to any other right or remedy of the Lessor by reason of such neglect or failure) as if it were the Lessee. For that purpose, the Lessee may enter any Location and may remain there for the purpose of performing the relevant obligation. Without prejudice to the rights, powers and remedies of the Lessor otherwise under this Lease, the Lessee must on demand reimburse the Lessor all moneys, costs, charges and expenses paid or incurred by the Lessor in connection with the making of such payment or the performance of such obligation.

23.15 Further assurances

The Lessee must at its expense do any further act and execute any further documents which the Lessor may reasonably request in order to protect the Lessor's title to the Goods and the Lessor's rights, powers and remedies under this Lease.

23.16 Notices

Any notice or demand to be given under or in relation to this Lease will be deemed to be duly given or made if it is in writing and in the case of the Lessee left or sent by prepaid post addressed to the Lessee at the Lessee's place of abode or business last known to the officer sending such notice or demand or at the registered office of the Lessee being a company and in the case of the Lessor if it is in writing and left at or sent by prepaid post to the Lessor at its address set out in this Lease or at the registered office of the Lessor. Any notice or demand sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.

23.17 Governing law and submission to jurisdiction

This Lease will be construed in accordance with the law of the state or territory in which it is executed by the Lessor and the law of such state or territory will be the proper law of the contract. The parties submit to the alternative dispute resolution service of [*details of the mediation or dispute resolution provider*], or the non-exclusive jurisdiction of the courts of that state or territory and any courts which may hear appeals from there.

23.18 Confidentiality

The Lessor and Lessee agree that:

- (c) the terms and conditions of this Lease, and any other related document(s) are confidential; and
- (d) the content of these documents will not be disclosed (except to the extent and for the purposes such disclosure is expressly permitted by this agreement) or required by law (other than section 275(1) of the PPSA).

EXECUTED BY THE:

1. LESSOR

SMITH SUPER NOMINEES PTY LTD ACN 124 547 877 ATF THE SMITH FAMILY SUPER FUND in accordance with s127 Corporations Act 2001

.....
John Smith
Director

.....
Date

.....
Sally Smith
Director

.....
Date

2. LESSEE

i. Signed by

.....
John Smith
Trustee

.....
Date

Witnessed by:

.....
Witness Signature

.....
Date

.....
Witness Name